SB 282 by **Hukill**; (Compare to CS/H 0197) Tracking Devices or Applications

612458	D	S	RCS	CJ, Bradley	Delete everything after	03/30 08:23 PM

CS/SB 390 by **JU, Richter**; (Similar to CS/CS/CS/H 0157) Fraud

145370	A	S	RCS	CJ, Bradley	Delete L.117 - 137:	03/30 08:23 PM
488270	A	S	RCS	CJ, Bradley	Delete L.158:	03/30 08:23 PM
538950	A	S	RCS	CJ, Bradley	Delete L.189 - 195:	03/30 08:23 PM
376766	A	S	WD	CJ, Bradley	btw L.382 - 383:	03/30 08:23 PM

SB 440 by **Bean**; (Identical to H 1131) Contraband Forfeiture

757076	D	S	RCS	CJ, Bradley	Delete everything after	03/30 08:23 PM
323508	SD	S	WD	CJ, Brandes	Delete everything after	03/30 08:23 PM

SB 464 by **Joyner**; (Identical to H 0741) Controlled Substances

SB 538 by **Simmons**; (Compare to CS/H 0151) Disclosure of Sexually Explicit Images

595288	A	S	RCS	CJ, Evers	Delete L.58 - 63:	03/30 08:23 PM

SB 732 by **Abruzzo**; (Identical to H 0115) Sentencing

SB 804 by **Abruzzo**; (Compare to CS/H 0443) Violation of an Injunction for Protection Against Domestic Violence

SB 902 by **Clemens**; (Similar to H 0363) Hemp Production

SB 944 by **Soto**; (Identical to H 1047) Secondhand Dealers

SB 1000 by **Hays**; (Identical to CS/H 4023) Slungshot

SB 1010 by **Braynon**; (Identical to H 0117) False Personation

SB 1112 by **Abruzzo**; (Similar to CS/H 0845) Sexting

917056	A	S	RCS	CJ, Brandes	Delete L.94:	03/30 08:23 PM
650934	A	S	WD	CJ, Brandes	Delete L.94 - 98:	03/27 11:56 AM

SB 1174 by **Simmons**; (Similar to CS/H 0967) Trespass on Airport Property

SB 1182 by **Latvala**; (Identical to H 1113) Terroristic Threats

SB 1188 by **Simpson**; (Compare to CS/H 0963) Controlled Substances

195724	D	S		CJ, Clemens	Delete everything after	03/27 02:46 PM

SB 1316 by **Soto**; (Compare to H 0205) Criminal History Records of Minors

767816	D	S	RCS	CJ, Clemens	Delete everything after	03/30 08:23 PM
168352	D	S	WD	CJ, Clemens	Delete everything after	03/27 10:57 AM

SB 1324 by **Latvala**; (Similar to CS/H 1015) Public Records/Agency Personnel Information

526940	A	S	RCS	CJ, Bradley	Delete L.54 - 55:	03/30 08:23 PM
638378	A	S	RCS	CJ, Bradley	Delete L.211 - 288:	03/30 08:23 PM
795432	A	S	WD	CJ, Bradley	Delete L.54 - 55:	03/27 11:09 AM
518382	A	S	WD	CJ, Bradley	Delete L.211 - 288:	03/30 11:32 AM

SB 1376 by **Evers**; Traffic Offenses

SB 1534 by **Brandes**; (Compare to H 1125) Disposition of Liens and Forfeited Property

SB 1536 by **Flores**; (Similar to H 7061) Public Records/Florida RICO Act Investigations

601734	D	S	RCS	CJ, Bradley	Delete everything after	03/30 08:23 PM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Evers, Chair
Senator Gibson, Vice Chair

MEETING DATE: Monday, March 30, 2015
TIME: 4:00 —6:00 p.m.
PLACE: *Mallory Horne Committee Room,* 37 Senate Office Building

MEMBERS: Senator Evers, Chair; Senator Gibson, Vice Chair; Senators Bradley, Brandes, and Clemens

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Testimony by employees of the Department of Corrections, other state employees, and other individuals on the safety and security of the state correctional system.		Discussed

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 appointment to the office indicated.		
	Florida Commission on Offender Review		
2	Davison, Richard D. ()	06/30/2020	Recommend Confirm Yeas 5 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**SB 282** Hukill (Compare CS/H 197)	Tracking Devices or Applications; Prohibiting the use of a tracking device or application to determine the location or movement of a person without the person's consent; creating a presumption that consent is revoked upon initiation of specified proceedings; providing exceptions; providing criminal penalties, etc. CJ 03/30/2015 Fav/CS JU ACJ RC	Fav/CS Yeas 5 Nays 0
4	**CS/SB 390** Judiciary / Richter (Similar CS/CS/CS/H 157)	Fraud; Providing for restitution to victims for certain victim out-of-pocket costs; requiring business entities to provide copies of business records of fraudulent transactions involving identity theft to victims and law enforcement agencies in certain circumstances; specifying that certain false statements made through electronic means are prohibited; expanding specified identity theft offenses to include all persons rather than being limited to natural persons, etc. JU 02/17/2015 Fav/CS CJ 03/30/2015 Fav/CS ACJ FP	Fav/CS Yeas 5 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	**SB 440** Bean (Identical H 1131)	Contraband Forfeiture; Requiring that seizure or forfeiture of property be incidental to an arrest under the Florida Contraband Forfeiture Act, etc. CJ 03/30/2015 Fav/CS ACJ FP	Fav/CS Yeas 5 Nays 0
6	**SB 464** Joyner (Identical H 741)	Controlled Substances; Authorizing a defendant to move to depart from the 3-year mandatory term of imprisonment and from the mandatory fine for a drug trafficking violation involving a specified quantity of a specified controlled substance; authorizing the state attorney to file an objection to the motion; authorizing the sentencing court to grant the motion if the court finds that the defendant has demonstrated by a preponderance of the evidence that specified criteria are met, etc. CJ 03/30/2015 Favorable ACJ FP RC	Favorable Yeas 5 Nays 0
7	**SB 538** Simmons (Compare CS/H 151)	Disclosure of Sexually Explicit Images; Prohibiting an individual from electronically disclosing a sexually explicit image of an identifiable person with the intent to harass such person if the individual knows or should have known that such person did not consent to the disclosure; requiring a court to order that a person convicted of such offense be prohibited from having contact with the victim, etc. CJ 03/30/2015 Fav/CS RC	Fav/CS Yeas 5 Nays 0
8	**SB 732** Abruzzo (Identical H 115)	Sentencing; Revising the definition of the term “victim” to include governmental entities and political subdivisions in certain instances; requiring the sentencing judge to order restitution and a specified number of community service work hours for violations of chapter 838, F.S., relating to bribery and misuse of public office, or chapter 839, F.S., relating to offenses by public officers and employees, etc. CJ 03/30/2015 Favorable JU FP	Favorable Yeas 5 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	**SB 804** Abruzzo (Compare CS/H 443)	Violation of an Injunction for Protection Against Domestic Violence; Providing enhanced criminal penalties for a third or subsequent violation of an injunction for protection against domestic violence or a foreign protection order issued under specified provisions, etc. CJ 03/30/2015 Favorable ACJ FP	Favorable Yeas 5 Nays 0
10	**SB 902** Clemens (Similar H 363)	Hemp Production; Citing this act as the "Hemp Industry Development Act"; providing that hemp is an agricultural crop; providing legislative intent; requiring registration of hemp producers; providing registration requirements; providing exemptions; requiring rulemaking; providing for an affirmative defense to certain charges relating to cannabis; providing exceptions to other laws, etc. AG 03/23/2015 Favorable CJ 03/30/2015 Favorable RI AP	Favorable Yeas 5 Nays 0
11	**SB 944** Soto (Identical H 1047)	Secondhand Dealers; Requiring a law enforcement officer with jurisdiction to place a specified written hold order on specified goods, etc. CM 03/23/2015 Favorable CJ 03/30/2015 Favorable RC	Favorable Yeas 4 Nays 0
12	**SB 1000** Hays (Identical CS/H 4023)	Slungshot; Revising the definition of “concealed weapon” to delete its inclusion of a slungshot; deleting provisions prohibiting the manufacture or sale of any instrument or weapon usually known as slungshot; deleting a provision prohibiting a dealer in arms from selling or transferring a slungshot to a minor, etc. CJ 03/23/2015 Not Considered CJ 03/30/2015 Favorable CM RC	Favorable Yeas 5 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	**SB 1010** Braynon (Identical H 117)	False Personation; Revising the list of officials who are prohibited from being falsely personated; prohibiting the sale or transfer of specified badges bearing in any manner or combination the words “fire department” and the ownership or operation of vehicles marked or identified by the words “fire department”, etc. CJ 03/23/2015 Not Considered CJ 03/30/2015 Favorable CA FP	Favorable Yeas 5 Nays 0
14	**SB 1112** Abruzzo (Similar CS/H 845)	Sexting; Removing the court’s discretion to impose a specified penalty for a first violation of sexting; requiring a minor cited for a first violation to sign and accept a citation to appear before juvenile court or, in lieu of appearing in court, to complete community service work, pay a civil penalty, or participate in a cyber-safety program within a certain period of time, if such program is locally available, etc. CJ 03/23/2015 Not Considered CJ 03/30/2015 Fav/CS ACJ FP	Fav/CS Yeas 5 Nays 0
15	**SB 1174** Simmons (Similar CS/H 967)	Trespass on Airport Property; Providing a criminal penalty for trespass on the operational area of an airport with intent to commit specified acts, etc. CJ 03/30/2015 Favorable ACJ FP	Favorable Yeas 5 Nays 0
16	**SB 1182** Latvala (Identical H 1113)	Terroristic Threats; Providing that a person commits the crime of terroristic threats if he or she communicates, directly or indirectly, a threat to do specified acts; providing criminal penalties, etc. CJ 03/30/2015 Temporarily Postponed ACJ AP	Temporarily Postponed
17	**SB 1188** Simpson (Compare CS/H 963)	Controlled Substances; Specifying the penalty for a person who violates a certain controlled substance law in a dwelling; establishing the felony of “trafficking in synthetic drugs” and specifying a penalty, etc. CJ 03/30/2015 Temporarily Postponed ACJ AP	Temporarily Postponed

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
18	**SB 1316** Soto (Compare H 205, H 7103, S 334)	Criminal History Records of Minors; Decreasing the time that the Criminal Justice Information Program is required to retain the criminal history record of a minor; revising the circumstances under which the Department of Law Enforcement must expunge the nonjudicial arrest record of a minor who has successfully completed a prearrest or postarrest diversion program; providing that all juvenile proceedings are confidential, etc. CJ 03/30/2015 Fav/CS ACJ AP	Fav/CS Yeas 5 Nays 0
19	**SB 1324** Latvala (Similar CS/H 1015)	Public Records/Agency Personnel Information; Providing exemptions from public records requirements for certain information related to active or former sworn or civilian law enforcement personnel and specified agency personnel, current and former state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors, and their parents, siblings, or cohabitants; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. CJ 03/30/2015 Fav/CS GO RC	Fav/CS Yeas 5 Nays 0
20	**SB 1376** Evers	Traffic Offenses; Providing criminal penalties for a person who commits a moving violation that causes serious bodily injury to, or causes the death of, a vulnerable road user; requiring that the person pay a specified fine, serve a minimum period of house arrest, and attend a driver improvement course, etc. CJ 03/30/2015 Favorable TR AP	Favorable Yeas 3 Nays 2
21	**SB 1534** Brandes (Compare H 1125)	Disposition of Liens and Forfeited Property; Deleting a provision authorizing a seizing agency to retain seized property for its use; revising the distribution and the use of proceeds from the sales of forfeited property seized by a county or municipal agency; deleting provisions that exempt certain agencies of the state from depositing proceeds from seizures into the General Revenue Fund, etc. CJ 03/30/2015 Favorable ACJ AP	Favorable Yeas 4 Nays 1

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
22	**SB 1536** Flores (Similar H 7061, Compare H 7059, Link CS/S 1514)	Public Records/Florida RICO Act Investigations; Providing that certain documents and information held by an investigative agency pursuant to an investigation relating to an activity prohibited under the Florida RICO Act are confidential and exempt; providing for legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing exceptions to the exemption; providing a statement of public necessity, etc. CJ 03/23/2015 Not Considered CJ 03/30/2015 Fav/CS GO AP	Fav/CS Yeas 5 Nays 0

Other Related Meeting Documents

5

1705

STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections

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

Richard D. Davison

is duly appointed a member of the

Florida Commission on Offender Review

for a term beginning on the
Nineteenth day of August, A.D., 2014,
until the Thirtieth day of June, A.D., 2020
and is subject to be confirmed by the Senate
during the next regular session of the Legislature.

GREAT SEAL OF THE STATE OF FLORIDA
IN GOD WE TRUST

Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this the Eighteenth day of September, A.D., 2014.

Ken Detzner
Secretary of State

DSDE 99 (3/03)

OATH OF OFFICE

(Art. II. § 5(b), Fla. Const.)

RECEIVED
DEPARTMENT OF STATE

2014 SEP 16 PM 2:44

DIVISION OF ELECTIONS
TALLAHASSEE, FL

STATE OF FLORIDA

County of Leon

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

Commissioner, Florida Commission on Offender Review

(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.]**

Richard Davison

Signature

Sworn to and subscribed before me this 16th *day of* September, 2014

Cindy J. Waymon

Signature of Officer Administering Oath or of Notary Public

CINDY J. WAYMON
MY COMMISSION # EE 204133
EXPIRES: July 9, 2016
Bonded Thru Budget Notary Services
NOTARY PUBLIC STATE OF FLORIDA

Cindy J. Waymon

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

Richard D. Davison

Print name as you desire commission issued

Richard Davison

Signature

DS-DE 56 (Rev. 02/10)

RICK SCOTT
GOVERNOR

RECEIVED
DEPARTMENT OF STATE
2014 SEP 16 AM 10:28
DIVISION OF ELECTIONS
TALLAHASSEE, FL

September 15, 2014

The Honorable 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 the Cabinet and I have made the following appointment under the provisions of Section 947.02, Florida Statutes:

as a member of the Florida Parole Commission, succeeding Mr. Bernard Cohen, subject to confirmation by the Senate. This appointment is effective August 19, 2014, for a term ending June 30, 2020.

Sincerely,

Rick Scott
Governor

RS/cm

THE CAPITOL
TALLAHASSEE, FLORIDA 32399 • (850) 488-2272

110124

QUESTIONNAIRE FOR SENATE CONFIRMATION

The information from this questionnaire will be used by the Florida Senate in considering action on your confirmation. The questionnaire MUST BE COMPLETED IN FULL. Answer "none" or "not applicable" where appropriate.
Please type or print in blue or black ink.

September 17, 2014
Date Completed

1. Name: Mr. | Davison | Richard | Donnell
Mr./Mrs./Ms. | Last | First | Middle/Maiden

2. Business Address:
Street | Office # | City
Post Office Box | State | Zip Code | Area Code/Phone Number

3. Residence Address:
Street | City | County
Post Office Box | State | Zip Code | Area Code/Phone Number

Specify the preferred mailing address: Business ☐ Residence ■ Fax #
(optional)

4. A. List all your places of residence for the last five (5) years.

Address	City & State	From	To

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

Address	City & State	From	To
None			

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2014 SEP 15 PM 2:44
DIVISION OF ELECTIONS
TALLAHASSEE, FL

5. Date of Birth: Place of Birth:

6. Social Security Number:

7. Driver License Number: State: Florida

8. Have you ever used or been known by any other legal name? Yes ■ No ☐ If "Yes" Explain

Rickey Donnell Davis - name given at birth

9. Are you a United States citizen? Yes ■ No ☐ If "No" explain:

If you are a naturalized citizen, date of naturalization:

10. Since what year have you been a continuous resident of Florida? 1963

11. Are you a registered Florida voter? Yes ■ No ☐ If "Yes" list:

A. County of Registration: Leon B. Current Party Affiliation: Democrat

12. Education

A. High School: Seminole High School, Sanford, Florida (Name and Location) Year Graduated: 1981

B. List all postsecondary educational institutions attended:

Name & Location	Dates Attended	Certificates/Degrees Received
Florida State University	Aug. 1981 - Dec. 1984	Bachelor of Science
University of Florida	Aug. 1985 - May 1988	Juris Doctor

13. Are you or have you ever been a member of the armed forces of the United States? Yes ☐ No ■ If "Yes" list:

A. Dates of Service:

B. Branch or Component:

C. Date & type of discharge:

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of $150 or less was paid.) Yes ☐ No ■ If Yes" give details:

Date	Place	Nature	Disposition

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

Employer's Name & Address	Type of Business	Occupation/Job Title	Period of Employment
FCOR, 4070 Esplanade Way Tallah., FL	Offender Reviews	Commissioner	Sept. 4, 2014 - Present
Gadsden County Sheriff's Office, 339 E. Jefferson St. Quincy, FL	Law Enforcement	Legal Counsel	Sept. 2012 - Sept. 2014
City of Tallahassee, 912 Myers Park Dr.	Juvenile Justice	Program Coordinator	May 2011 - March 2014
Florida Department of Corrections, 2601 Blair Stone Tallah.	Corrections	Deputy Secretary	Feb. 2008 - Feb. 2011

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes ■ No ☐
If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

Position	Employing Agency	Period of Employment
Legal Counsel	Gadsden County Sheriff's Office	Sept. 2012 - Sept. 2014
Deputy Secretary	Florida Department of Corrections	Feb. 2008 - Feb. 2011
Legisl Dir., Asst Gen. Counsel, Dep. Sec.	Florida Department of Juvenile Justice	Aug. 1994 - Feb. 2008

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

I have worked in the criminal justice field since 1989. My background and experiences as an assistant state attorney, assistant statewide prosecutor, legislative staff attorney, juvenile justice executive manager, corrections executive manager, and law enforcement executive manager have provided me with a breadth of knowledge in the criminal justice arena. Additionally, I possess the temperament and understanding to knowledgeably and thoroughly consider the issues that come before Florida Commission on Offender Review.

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes ☒ No ☐ If "Yes", list:

Undergraduate Minor - Law and Society

Juris Doctor

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes ☒ No ☐ If "Yes", list:

Service Awards from: State Attorney's Office; Florida House Committee on Criminal Justice;
Statewide Prosecutor's Office; Florida Department of Juvenile Justice;
Florida Department of Corrections; Gadsden County Sheriff's Office

D. Identify all association memberships and association offices held by you that relate to this appointment:

Florida Violent Crime and Drug Control Council; Florida Task Force on Treatment Based Drug Courts; Florida Council on the Social Status of Black Men and Boys; Tallahassee Community College Criminal Justice Advisory Board; Keiser University Criminal Justice Advisory Board; Second Judicial Circuit Juvenile Justice Advisory Board; Florida Bar Criminal Justice and Public Employees Sections

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government? Yes ☐ No ☒ If "Yes", list:

19. A. Have you ever been elected or appointed to any public office in this state? Yes ☐ No ☒ If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

Office Title	Date of Election or Appointment	Term of Office	Level of Government

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: ______________________

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

Meetings Attended	Meetings Missed	Reason for Absence

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes ☐ No ☒ If "Yes", give details:

Date	Nature of Violation	Disposition

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes ☐ No ☒ If "Yes", list:

A. Title of office: ______________ C. Reason for suspension: ______________

B. Date of suspension: ______________ D. Result: Reinstated ☐ Removed ☐ Resigned ☐

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes ☐ No ☒ If "Yes", list:

A. Title of Office: ______________________

B. Term of Appointment: ______________________

C. Confirmation results: ______________________

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes ☐ No ☒ If "Yes", explain:

____

____

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes ☒ No ☐ If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

License/Certificate Title & Number	Original Issue Date	Issuing Authority	Disciplinary Action/Date
Florida Bar - 0776920	October 31, 1988	The Florida Bar	None

25. A. Have you, or businesses of which you have been and owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☐ No ☒ If "Yes", explain:

Name of Business	Your Relationship to Business	Business' Relationship to Agency

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: ______

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

Meetings Attended	Meetings Missed	Reason for Absence

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes ☐ No ☒ If "Yes", give details:

Date	Nature of Violation	Disposition

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes ☐ No ☒ If "Yes", list:

A. Title of office: ______ C. Reason for suspension: ______

B. Date of suspension: ______ D. Result: Reinstated ☐ Removed ☐ Resigned ☐

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes ☐ No ☒
If "Yes", list:

A. Title of Office: ______

B. Term of Appointment: ______

C. Confirmation results: ______

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes ☐ No ☒ If "Yes", explain:

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes ☒ No ☐
If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

License/Certificate Title & Number	Original Issue Date	Issuing Authority	Disciplinary Action/Date
Florida Bar - 0776920	October 31, 1988	The Florida Bar	None

25. A. Have you, or businesses of which you have been and owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☒ No ☐ If "Yes", explain:

Name of Business	Your Relationship to Business	Business' Relationship to Agency

B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☐ No ☒ If "Yes", explain:

Name of Business	Family Member's Relationship to You	Family Member's Relationship to Business	Business' Relationship to Agency

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes ☒ No ☐

A. Did you receive any compensation other than reimbursement for expenses? Yes ☐ No ☒

B. Name of agency or entity you lobbied and the principal(s) you represented:

Agency Lobbied	Principal Represented
Legislative and Executive	Gadsden County Sheriff's Office
Legislative and Executive	Florida Department of Corrections

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

Name	Mailing Address	Zip Code	Area Code/Phone Number
Reginald Luster			
Sean Pittman			
Damian Fletcher			

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

Name	Mailing Address	Office(s) Held & Term	Date(s) of Membership
Tallahassee Barristers Assoc	1961 Quail Grove Lane Tallahassee, FL	None	August 2014- Present
Tallahassee Alumni Kappa Alpha Psi Fraternity	2047 Summer Ln Tallahassee, FL	Lt. Strategus 1996	April 1982 - Present

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes ☐ No ☒ If "Yes", explain:

30. If required by law or administrative rule, will you file financial disclosure statements? Yes ☒ No ☐

MEMORANDUM

AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPTIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC. IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.

- [x] Yes, I assert that identifying information provided in this application should be excluded from inspection under the Public Records Law.

Because: (please provide cite.) Sec. 119.071(4) d.(I)Florida Statutes

IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OFANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.

The Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
(850) 245-0150

RECEIVED
DEPARTMENT OF STATE
2014 SEP 16 PM 2:44
DIVISION OF ELECTIONS
TALLAHASSEE, FL

CERTIFICATION

STATE OF FLORIDA
COUNTY OF LEON

Before me, the undersigned Notary Public of Florida, personally appeared Richard D. Davison, who, after being duty sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

Richard Davison
Signature of Applicant-Affiant

Sworn to and subscribed before me this 16th day of September, 2014.

Cindy J. Waymon
Signature of Notary Public-State of Florida

Cindy J. Waymon
(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: 7/9/2016

Personally Known ☒ **OR** Produced Identification ☐

Type of Identification Produced ______

NOTARY PUBLIC STATE OF FLORIDA
CINDY J. WAYMON
MY COMMISSION # EE 204133
EXPIRES: July 9, 2016
Bonded Thru Budget Notary Services

(seal)

The Florida Senate

Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of

Richard D. Davison

Florida Commission on Offender Review

NOTICE OF HEARING

TO: Mr. Richard D. Davison

YOU ARE HEREBY NOTIFIED that the Committee on Criminal Justice of the Florida Senate will conduct a hearing on your executive appointment on Monday, March 30, 2015, 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 25th day of March, 2015

Committee on Criminal Justice

Greg Evers
Senator Greg Evers
As Chair and by authority of the committee

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

The Florida Senate

COMMITTEE RECOMMENDATION ON EXECUTIVE APPOINTMENT

COMMITTEE: Committee on Criminal Justice
MEETING DATE: Monday, March 30, 2015
TIME: 4:00 —6:00 p.m.
PLACE: Mallory Horne Committee Room, 37 Senate Office Building

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TO: The Honorable Andy Gardiner, President

FROM: Committee on Criminal Justice

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

Office: Florida Commission on Offender Review

Appointee: Davison, Richard D.

Term: 8/19/2014-6/30/2020

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

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 282

INTRODUCER: Criminal Justice Committee and Senator Hukill

SUBJECT: Tracking Devices or Applications

DATE: March 31, 2015 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 282 creates a second degree misdemeanor offense applicable to persons who install a tracking device or tracking application on the property of another person without their consent.

The bill provides exceptions to the prohibition against such installation of tracking devices or applications.

The bill creates definitions for the terms “tracking application,” “tracking device,” “business entity,” and “person” for purposes of the bill.

The bill becomes effective on October 1, 2015.

II. Present Situation:

Cell Phone Tracking

Any time a cellular phone is on, it will periodically send a signal to the local "base station"[1] to verify the strength of the phone's connection to the provider network.[2] Cellular phones also communicate back and forth with base stations during phone calls.[3] Providers divide their service area up among base stations in the area, and the cellular phone communicates with different nearby base stations as the user moves around the service area.[4] Providers keep close track of which base stations a phone communicates with so the provider knows which base stations to send phone calls to.[5] The electronic record created by a cellular phone communicating with a base station is often referred to as "cell site location information" (CSLI).[6]

CSLI is also used by cellular providers to transmit location data for cellular phones that dial 911.[7] The Federal Communications Commission (FCC) developed the Enhanced 911 program (E911) to ensure that wireless carriers provide location information to 911 dispatchers when a 911 call is placed from a cellular phone.[8] Over time the FCC has created more stringent requirements for cellular providers that currently require specific location data such as latitude and longitude of the 911 caller.[9] In similar form to the FCC requirements, Florida law requires the establishment of a statewide E911 program requiring providers to route 911 calls to the correct public safety answering points.[10] This is accomplished by "selective routing based on the geographical location from which the call originated," and requires providers to create automatic number identification and automatic location-identification features.[11]

GPS Tracking

The Global Positioning System (GPS) is a system of twenty-four operating satellites that orbit the earth and transmit radio signals.[12] The GPS system is operated by the United States Air Force,[13] and is used for civilian applications as well as national security and military

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[1] The "base station" is the device or communications tower that transmits cellular radio signals so a telephone call can be made wirelessly. These towers are also referred to as "cellular towers." *See* IEEE Global History Network, *Base Stations*, http://www.ieeeghn.org/wiki/index.php/Cellular_Base_Stations (last visited Jan. 22, 2015).
[2] *ECPA Reform and the Revolution in Location Based Techs. & Servs. before the Subcomm. on the Constitution, Civil Rights & Civil Liberties*, 111th Cong. 13-14 (testimony of Matt Blaze, Assoc. Prof., Univ. Pa.).
[3] *Id.* at 13.
[4] *Id.* at 13.
[5] *Id.* at 14.
[6] *In re Application of U.S. for an Order Directing a Provider of Elec. Commc'n Serv. to Disclose Records to the Gov't, 620 F.3d 304 (3d Cir. 2010)*.
[7] Federal Commc'ns Comm'n, *Enhanced 9-1-1 Wireless Services*, http://www.fcc.gov/encyclopedia/enhanced-9-1-1-wireless-services (last visited Jan. 23, 2015).
[8] Federal Commc'ns Comm'n, *Guide: 911 Wireless Services*, http://www.fcc.gov/guides/wireless-911-services (last visited Jan. 23, 2015).
[9] Federal Commc'ns Comm'n, *Enhanced 9-1-1 Wireless Services*, http://www.fcc.gov/encyclopedia/enhanced-9-1-1-wireless-services (last visited Jan. 23, 2015).
[10] Section 365.172(3)(h), F.S.
[11] *Id.*
[12] GPS.Gov, *Space Segment*, http://www.gps.gov/systems/gps/space/ (last visited Jan. 23, 2015).
[13] Schriever Air Force Base, *GPS*, http://www.schriever.af.mil/GPS/ (last visited Jan. 23, 2015).

operations.[14] GPS can be used for tracking and locating cellular phones that are equipped with hardware that can receive radio signals from GPS satellites.[15] GPS technology can usually identify the location of a cellular phone within a distance of ten meters;[16] however, more recent cellular phone models are the only models equipped with the proper hardware to utilize this technology.[17]

Tracking Software

Tracking software can be downloaded onto phones and other electronic devices and used to track the location of the device for mapping applications or other purposes.[18] Some types of tracking software can monitor messages, emails, web sites that are visited, and contacts that are saved, in addition to tracking a device's location.[19]

Florida Law

Chapter 934, F.S., governs the security of electronic and telephonic communications and the procedural requirements for searching and monitoring such communications. The law covers a number of different investigative and monitoring procedures, including wiretapping, obtaining service provider records, and mobile tracking devices. However, many of the chapter's provisions only apply to law enforcement entities (e.g., s. 934.42, F.S., authorizes a law enforcement officer to apply to a judge of competent jurisdiction for an order authorizing or approving the installation and use of a mobile tracking device[20]).

The statute currently authorizes law enforcement officers to use a pen register,[21] trap and trace device,[22] or a mobile tracking device,[23] after receiving an ex parte court order from a judge.[24] To obtain a court order, the application must include the identity of the applicant, the identity of the law enforcement agency conducting the related investigation, and a certification that "the information likely to be obtained is relevant to an ongoing criminal investigation being

[14] GPS.Gov, *GPS Applications*, http://www.gps.gov/applications/ (last visited Jan. 23, 2015).
[15] *ECPA Reform and the Revolution in Location Based Techs. & Servs. before the Subcomm. on the Constitution, Civil Rights & Civil Liberties*, 111th Cong. 13-14 (statement of Matt Blaze, Assoc. Prof., Univ. Pa.).
[16] *Id.*
[17] *Id.* at 22.
[18] *ECPA Reform and the Revolution in Location Based Techs. & Servs. before the Subcomm. on the Constitution, Civil Rights & Civil Liberties*, 111th Cong. 13-14 (statement of Matt Blaze, Assoc. Prof., Univ. Pa.).
[19] CBS DFW, *Stalkers Using Cell Phones to Track Victims*, http://dfw.cbslocal.com/2015/01/14/stalkers-using-cell-phones-to-track-victims/ (last visited Jan. 26, 2015); Christine Pitawanich, *Virtually Invisible Cell Phone Apps Used to Track and Spy on Victims*, NBC News, Nov. 25, 2014, http://kobi5.com/news/item/virtually-invisible-cell-phone-apps-used-to-track-and-spy-on-victims.html#.VMvymKNOncs (last visited Jan. 26, 2015).
[20] Section 934.42, F.S., defines "tracking device" as an electronic or mechanical device which permits the tracking of the movement of a person or object.
[21] Section 934.02(20), F.S., (defining a "pen register" as a "device or process that records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted," but does not capture the contents of the communications).
[22] Section 934.02(21), F.S., (defining a "trap and trace device" as a "device or process that captures the incoming electronic or other impulses that identify the originating number or dialing, routing, addressing, or signaling information reasonably likely to identify the source of a wire or electronic communication," but does not capture the contents of the communications).
[23] "Mobile tracking device" is not defined in Chapter 934, F.S.
[24] Sections 934.32, 934.33, and 934.42, F.S.

conducted."[25] This certification is a lower standard than the probable cause standard[26] required for obtaining a lawful warrant.

The Florida Supreme Court recently addressed the question of whether probable cause was required for a law enforcement agency to gather real-time CSLI on a cellular phone user.[27] The Court found that cellular phones have become an "indispensable" part of most peoples' lives,[28] and real-time CSLI tracking of a cellular phone requires a probable cause warrant.[29] Also, it should be noted that law enforcement officers who do get a probable cause warrant to gather real-time CSLI are not currently required to create a contemporaneous record describing in detail the circumstances under which the tracking device or application is being used.

Section 934.03, F.S., which applies to all persons, makes it a third degree felony[30] for a person to intentionally use the contents of an electronic communication, knowing or having reason to know that the information was obtained through the unlawful interception of the electronic communication (i.e., without the consent of both parties). The term "electronic communication" is defined as "any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects intrastate, interstate, or foreign commerce."[31] However, the definition specifically excludes "any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object."[32]

Florida law does not currently prohibit a private individual from using a tracking device or application to determine the location or movement of another person without the other person's consent.

Federal Law

Title 18 of the United States Code governs electronic surveillance, including mobile tracking devices, pen registers, and other electronic tracking methods.[33] Title 18 allows law enforcement to gather stored electronic communications data pursuant to a court order when the law enforcement entity can show "specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation."[34] The "specific and articulable facts" standard is lower than that required under the "probable cause" standard.[35]

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[25] Sections 934.32(2) and 934.42(2)(b), F.S.
[26] *Tracey v. Florida, 2014 WL 5285929 (Fla. 2014).*
[27] *Id.*
[28] *Id.* at 17.
[29] *Id.* at 19.
[30] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. Sections 775.082 and 775.083, F.S.
[31] Section 934.02(12), F.S.
[32] *Id*.
[33] 18 U.S.C. ss. 2510-22, 2701-12, 3117, 3121-27 (2014).
[34] 18 U.S.C. s. 2703(d) (2014).
[35] *In re U.S. for Historical Cell Site Data*, 724 F.3d 600 (5th Cir. 2013); *United States v. Thousand*, 558 Fed.Appx 666, 670 (7th Cir. 2014).

The law preempts any state laws that govern electronic surveillance and tracking, although states may enact more restrictive requirements.[36]

III. Effect of Proposed Changes:

The bill creates the following definitions:

- "Business entity" means any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in this state;
- "Tracking application" means any software program whose primary purpose is to track or identify the location or movement of an individual;
- "Tracking device" means any device whose primary purpose is to reveal its location or movement by the transmission of electronic signals; and
- "Person" means an individual and does not mean a business entity.

The bill creates a new section of the Florida Statutes making it a second degree misdemeanor[37] for a person to knowingly install a tracking device or tracking application on another's property without the other person's consent.

The bill specifies that a person's consent to be tracked is presumed to be revoked in the following circumstances:

- When the consenting person and the person to whom consent was given are lawfully married and one person files a petition for dissolution of marriage from the other; or
- When the consenting person or the person to whom consent was given files an injunction for protection against the other person pursuant to s. 741.30, s. 741.315, s. 784.046, or s. 784.0485, F.S.

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

- A law enforcement officer as defined in s. 943.10, F.S., or any local, state, federal, or military law enforcement agency, that lawfully installs a tracking device or application on another person's property as part of a criminal investigation;
- A parent or legal guardian of a minor child who installs a tracking device or application on the minor's property (when the parents or guardians are divorced, separated, or otherwise living apart from one another, this exception applies only if both parents or guardians consent to the installation of the device or application; however, if one parent or guardian has been granted sole custody, consent of the noncustodial parent is not required; the exemption also applies to the sole surviving parent or guardian.);
- A caregiver of an elderly person or disabled adult, if the elderly person or disabled adult's treating physician certifies that such installation is necessary to ensure the safety of the elderly person or disabled adult; or
- A person acting in good faith on behalf of a business entity for a legitimate business purpose.

The effective date of the bill is October 1, 2015.

[36] *Florida v. Otte*, 887 So.2d 1186, 1187 (Fla. 2004).
[37] 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.

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:

Anyone who is prosecuted for a violation of the new law is subject to 2nd degree misdemeanor penalties which would likely include fines, fees, and court costs.

C. Government Sector Impact:

The bill creates a new second degree misdemeanor, which is punishable by up to 60 days in county jail and a $500 fine. This may have a negative jail bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 934.425 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 30, 2015:
- Narrowed the definition of "tracking application" and "tracking device" to encompass applications and devices whose primary purpose was to track or identify its location;

- Added the definitions of "person" and "business entity";
- Narrowed the prohibition against tracking a person's location to only encompass the act of installing a tracking device or tracking application;
- Removed the requirement for law enforcement officers to create a contemporaneous record of the use of the tracking device or application;
- Modified the exception for law enforcement use to apply when a tracking device or tracking application is lawfully installed;
- Added a new exception for installing a tracking device or application by a caregiver of an elderly person or disabled adult; and
- Added a new exception for a person acting in good faith on behalf of a business entity.

B. Amendments:

None.

612458

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 934.425, Florida Statutes, is created to read:

934.425 Installation of tracking devices or tracking applications; exceptions; penalties.—

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

(a) "Business entity" means any form of corporation,

612458

partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in this state.

(b) “Person” means an individual and does not mean a business entity.

(c) “Tracking application” means any software program whose primary purpose is to track or identify the location or movement of an individual.

(d) “Tracking device” means any device whose primary purpose is to reveal its location or movement by the transmission of electronic signals.

(2) Except as provided in subsection (4), a person may not knowingly install a tracking device or tracking application on another person’s property without the other person’s consent.

(3) For purposes of this section, a person’s consent is presumed to be revoked if:

(a) The consenting person and the person to whom consent was given are lawfully married and one person files a petition for dissolution of marriage from the other; or

(b) The consenting person or the person to whom consent was given files an injunction for protection against the other person pursuant to s. 741.30, s. 741.315, s. 784.046, or s. 784.0485.

(4) This section does not apply to:

(a) A law enforcement officer as defined in s. 943.10, or any local, state, federal, or military law enforcement agency, that lawfully installs a tracking device or tracking application on another person’s property as part of a criminal investigation.

612458

(b) A parent or legal guardian of a minor child that installs a tracking device or tracking application on the minor child’s property if:

1. The parents or legal guardians are lawfully married to each other and are not separated or otherwise living apart, and either parent or legal guardian consents to the installation of the tracking device or tracking application;

2. The parent or legal guardian is the sole surviving parent or legal guardian of the minor child;

3. The parent or legal guardian has sole custody of the minor child; or

4. The parents or legal guardians are divorced, separated, or otherwise living apart and both consent to the installation of the tracking device or tracking application.

(c) A caregiver of an elderly person or disabled adult, as those terms are defined in s. 825.101, if the elderly person’s or disabled adult’s treating physician certifies that the installation of a tracking device or tracking application onto the elderly person’s or disabled adult’s property is necessary to ensure the safety of the elderly person or disabled adult.

(d) A person acting in good faith on behalf of a business entity for a legitimate business purpose.

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

Section 2. This act shall take effect October 1, 2015.

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

And the title is amended as follows:

612458

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to tracking devices or tracking applications; creating s. 934.425, F.S.; defining terms; prohibiting the installation of a tracking device or tracking application without a person’s consent; creating a presumption that consent is revoked upon initiation of specified proceedings; providing exceptions to the prohibition on installation of tracking devices or tracking applications; providing criminal penalties; providing an effective date.

By Senator Hukill

8-00433-15 2015282__

A bill to be entitled

An act relating to tracking devices or applications; creating s. 934.425, F.S.; providing definitions; prohibiting the use of a tracking device or application to determine the location or movement of a person without the person’s consent; creating a presumption that consent is revoked upon initiation of specified proceedings; providing exceptions; providing criminal penalties; providing an effective date.

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

Section 1. Section 934.425, Florida Statutes, is created to read:

934.425 Use of tracking devices or applications prohibited; exceptions.—

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

(a) “Tracking application” means any software program that, once installed on an electronic device, enables the device to be used as a tracking device.

(b) “Tracking device” means any device that reveals its location or movement by the transmission of electronic signals.

(2) Except as provided in subsection (3), a person may not use a tracking device or application to determine the location or movement of another person without the consent of that person. For purposes of this section, a person who files a petition for dissolution of marriage or who seeks a restraining order against another person is presumed to have revoked any consent given before the initiation of such proceedings to his

or her spouse from whom the dissolution is sought or the person sought to be restrained, respectively.

(3) This section does not apply to:

(a) The owner of a motor vehicle, including the owner of a motor vehicle available for rent, who has consented to the use of the tracking device or application with respect to such vehicle.

(b) The lessor or lessee of a motor vehicle and the person operating the motor vehicle who have consented to the use of a tracking device or application with respect to such vehicle.

(c) Any law enforcement agency, including state, federal, and military law enforcement agencies, that is acting pursuant to a court order or lawfully using the tracking device or application in an ongoing criminal investigation, if the law enforcement officer employing the tracking device or application creates a contemporaneous record describing in detail the circumstances under which the tracking device or application is being used.

(d)1. A parent or legal guardian of a minor child whose location or movements are being tracked by the parent or legal guardian.

2. When the parents of the minor child are divorced, separated, or otherwise living apart from one another, this exception applies only if both parents consent to the tracking of the minor child’s location and movements, unless one parent has been granted sole custody, in which case consent of the noncustodial parent is not required.

(e) The owner or operator of a correctional institution, as defined in s. 944.241, that is tracking a prisoner or any person detained under the immigration laws of the United States at any such correctional institution who is under its custody or supervision. For purposes of this paragraph, the term “prisoner” means any person incarcerated or detained in any correctional institution who is accused of, convicted of, sentenced for, or adjudicated delinquent for a violation of criminal law or the terms and conditions of parole, probation, community control, pretrial release, or a diversionary program.

(f) Any provider of a commercial mobile radio service, such as a mobile telephone service or vehicle safety or security service, which allows the provider to determine the location or movement of a device provided to a customer of such service.

(g) Any commercial motor carrier operation.

(h) Any commercial enterprise engaged in good faith marketing or advertising to the public through the use of tracking applications if the location of a member of the public, as revealed to the commercial enterprise through the tracking application, is used only for good faith marketing or advertising and no other purpose.

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

Section 2. This act shall take effect October 1, 2015.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Finance and Tax, *Chair*
Communications, Energy, and Public Utilities, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Banking and Insurance
Fiscal Policy

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL
8th District

January 15, 2015

The Honorable Greg Evers
510 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 282 – Tracking Devices or Applications

Dear Chairman Evers:

Senate Bill 282, relating Tracking Devices or Applications has been referred to the Criminal Justice Committee. I am requesting your consideration on placing SB 282 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

Dorothy L. Hukill

Dorothy L. Hukill, District 8

cc: Amanda Cannon, Staff Director of the Criminal Justice Committee
Sue Arnold, Administrative Assistant of the Criminal Justice Committee

REPLY TO:
☐ 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
☐ Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

Senate's Website: *www.flsenate.gov*

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	CS/CS/SB 390
INTRODUCER:	Criminal Justice Committee; Judiciary Committee; and Senator Richter
SUBJECT:	Fraud
DATE:	March 31, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Fav/CS**
2.	Erickson	Cannon	CJ	**Fav/CS**
3.			ACJ	
4.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 390 amends and updates multiple provisions in ch. 817, F.S., which defines and provides penalties for crimes involving fraudulent practices. The most significant provisions of the bill:

- Prohibit a person from falsely personating or representing another person in a manner that causes damage to the other person's credit history or rating;
- Authorize a sentencing court to order restitution for costs and fees an identity theft victim incurs in clearing his or her credit history or rating or similar costs and establishes a civil cause of action against the defendant who has harmed the victim;
- Provide a process for an identity theft victim to obtain documentation of an alleged fraudulent transaction from a business entity and makes the business entity immune from liability for disclosures made in good faith;
- Replace the terms "corporation" with the term "business entity" to ensure that all businesses, regardless of their form, have the same protections against fraud;
- Prohibit the fraudulent transfer or issuance of a membership interest in a limited liability company;
- Increase the criminal penalty for fraudulently obtaining goods or services from a health care provider;
- Make existing laws prohibiting the fraudulent use of an individual's personal identification information also applicable to the fraudulent use of a business' identification information;

- Specify criminal penalties for the fraudulent use of or intent to use the identification information of a dissolved business entity; and
- Specify criminal penalties for knowingly providing false information in a public record to facilitate the commission of another crime.

II. Present Situation:

Chapter 817, F.S., prohibits and punishes various fraudulent acts or practices. In general terms, fraud is the willful act of misrepresenting the truth to someone or concealing an important fact from them for the purpose of inducing that person to act to his or her detriment.[1] Identity fraud, which is also known as identity theft, is a criminal act that occurs when a person illegally obtains someone else's personal information and uses that information to commit fraud or theft.[2] According to the Federal Trade Commission's most recent Consumer Sentinel Network Data Book, "Florida is the state with the highest per capita rate of reported identity theft complaints…."[3]

Identity thieves often take names, Social Security numbers (coupled with birth dates, birth and death certificates), bank account and credit card numbers, and passwords[4] to obtain credit and credit cards, drain money from bank accounts, establish new accounts, apply for loans using the victims' names, and commit other crimes to enrich themselves.[5] Operating under anonymity and hidden from view, identity thieves often ruin someone's finances and credit long before they are discovered.

Individual or Consumer Identity Theft

An unsuspecting person might not realize that he or she has been the victim of an identity theft until months, or sometimes even years, after the fraud has occurred. The loss of personal identification information[6] can have devastating effects. Reconstructing the events and obtaining

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[1] BLACK'S LAW DICTIONARY 731 (9th ed. 2009).
[2] The Federal Bureau of Investigation, *Identity Theft Overview*, http://www.fbi.gov/about-us/investigate/cyber/identity_theft/identity-theft-overview (last visited March 3, 2015).
[3] Federal Trade Commission, *Consumer Sentinel Network Data Book for January-December 2013* (February 2014), available at http://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2013/sentinel-cy2013.pdf (last visited on March 4, 2015).
[4] *Id*.
[5] Florida Office of the Attorney General, *About Identity Theft Crimes*, http://myfloridalegal.com/pages.nsf/Main/932BC47213C29D3385256DBB0048479D?OpenDocument (last visited March 3, 2015).
[6] Section 817.568(1)(f), F.S., states that "personal identification information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:
1. Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
2. Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
3. Unique electronic identification number, address, or routing code;
4. Medical records;
5. Telecommunication identifying information or access device; or
6. Other number or information that can be used to access a person's financial resources.

records of the fraud is often a very difficult task. The *Florida Statutes* do not appear to specifically require businesses to give victims of identity theft or law enforcement officers documents related to the alleged fraudulent use of the victim's identity. Accordingly, it can be a difficult task for victims to collect the necessary documents to restore their identity and credit history.

Business Identity Theft

The crime of business identity theft is virtually the same as personal identity theft except that a business's identity is stolen. Quite often, the losses are much greater and sometimes involve a more sophisticated network of thieves. Some thieves have also resorted to taking the identity of businesses that are dissolved and using that identity to commit fraud. Because several of the fraud statutes in ch. 817, F.S., apply only to "individuals" and not to business entities, some businesses do not currently enjoy the same protections against fraud that individuals do under the chapter.

Additional Fraud Provisions in Chapter 817

Many of the provisions in ch. 817, F.S., have not been substantially revised since they were enacted decades ago. As a result, some of these statutes do not reflect more modern methods of advertising and manufacturing, the use of public records, the occurrence of electronic transactions over the Internet, and the different forms of business entities that are currently authorized by law.

III. Effect of Proposed Changes:

The bill amends ch. 817, F.S., to allow individuals and businesses greater protections against identity theft. In general terms, these changes affect individuals by allowing them to better identify when identity theft has been committed against them and by removing barriers to restoring their identity and credit after the crime has occurred. Additional forms of restitution are provided which might allow the victims additional methods of recovering their financial losses. For business entities,[7] the bill provides greater protections against fraud and identity theft. The bill also amends miscellaneous provisions in ch. 817, F.S., to update them to reflect modern terminology, currently authorized business structures, and current business practices.

Identity Theft Committed Against Individuals (Section 2)

Obtaining Property by False Personation

Section 817.02, F.S., is amended to expand the crime of obtaining property by false personation to address falsely personating or representing another person in a manner that damages the credit history or credit rating, or otherwise causes harm to the other person. A person who commits this

[7] The bill defines the term "business entity" for purposes of ch. 817, F.S., and replaces current references to "corporation" or "firm" throughout the chapter with "business entity." A business entity is defined to mean any corporation, partnership, limited partnership, company, limited liability company, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.

crime is subject to the criminal penalties for larceny.[8] This new provision does not apply to crimes defined in s. 817.568, F.S., which prohibits fraudulent use of another person's personal identification information.

Additional Restitution for Victims

Section 817.02, F.S., is further amended to allow a court, when sentencing a defendant under this section, to order restitution[9] for the victim's out-of-pocket costs, including attorney fees and fees associated with certified public accountant services that the victim incurred clearing his or her credit history or credit rating, or costs incurred with a civil or administrative proceeding to satisfy a debt, lien, or other obligation that arises from the defendant's actions. The sentencing court may also issue orders necessary to correct any public record that contains false information given in violation of s. 817.02, F.S. The bill also amends the section to create a civil cause of action against a person who violates this section as provided in s. 772.11, F.S., which creates a civil remedy for a victim of theft or exploitation.

Information Made Available to Identity Theft Victims (Section 3)

Section 817.032, F.S., is created and establishes procedures for victims[10] of identity theft to obtain documentation of fraudulent applications submitted or fraudulent transactions by perpetrators of identity theft.

The Process

Within 30 days after a victim's request, and subject to verification of the victim's identity and identity theft claim, a business entity that has entered into an alleged fraudulent transaction or accepted a fraudulent application must provide a copy of the application and business transaction records, which evidence a transaction of alleged identity theft, to:

- The victim;
- A law enforcement agency or officer specified by the victim in the request; or
- A law enforcement agency investigating the identity theft and authorized by the victim to receive those records.

The aforementioned requirement does not apply to a third party providing a service to effect, administer, facilitate, process, or enforce a financial transaction initiated by an individual.

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[8] Larceny is not currently defined in statute. Acts that were previously referred to as larceny are now prosecuted as theft crimes under s. 812.014, F.S. *See Nooe v. State*, 892 So.2d 1135, 1138 (Fla. 5th DCA 2005) (Section 812.014 "includes a variety of offenses related to unlawful appropriation of property, including larceny, obtaining by false pretenses and misappropriation"). Punishments for theft are generally commensurate with the monetary value of the property stolen.

[9] The sentencing court may order restitution under this section that is in addition to restitution permitted under s. 775.089, F.S. Under s. 775.089, F.S., a judge is required to order the defendant to make restitution to the victim for damage or loss caused by the defendant's offense and damage or loss that is related to the defendant's criminal episode, unless the court finds clear and compelling reasons not to order the restitution. The restitution may be monetary or nonmonetary.

[10] A victim is defined in this section as a person whose identification or financial information is used or transferred or alleged to be used or transferred without his or her consent with the intent to commit, aid, or abet an identity theft or similar crime.

Identifying Information

Before the business entity is required to provide the requested application or transaction records, unless the business entity, at its discretion, has a high degree of confidence that it knows the identity of the victim making the records request, the victim must provide to the business entity:

- Certain forms of positive identification of the victim, at the election of the business entity; and
- Proof of a claim of identity theft (a copy of the police report of the claim and an affidavit of fact), at the election of the business entity.

Request Requirements

The victim's request to the business entity must be in writing and mailed or delivered to an address specified by the business entity. If the business entity so requests, the victim must include relevant information about the alleged transaction, including, if known or readily obtainable by the victim, the date of the application or transaction and any other identifying information such as an account number or transaction number. The information required to be provided to the victim must be provided at no charge to the victim.

Authority to Decline a Request

A business entity may decline to provide the information requested by the victim if the business entity, in exercising good faith, determines that:

- This provision of law does not require disclosure of the requested information;
- After reviewing the victim's identification materials and alleged claim, the business entity does not have a high degree of confidence that it knows the true identity of the person requesting the information;
- The request is based upon a misrepresentation of fact by the requestor;
- The information requested is Internet navigational data or similar information involving a person's visit to a website or online service; or
- The disclosure is otherwise prohibited by state or federal law.

Civil Liability, Recordkeeping Requirement, Affirmative Defense

A business entity is shielded from civil liability for disclosing information under this section if the disclosure is made in good faith in accordance with the provisions of this section. A business entity is also shielded from civil liability for a decision to decline to provide information in accordance with an authorized reason for non-disclosure (as specified in the section). This section does not impose any recordkeeping obligations on business entities. If a civil action is brought for the purpose of enforcing a person's right to a business entity's records, it is an affirmative defense, which the defendant must establish by a preponderance of the evidence, for a business entity to file an affidavit or answer which states that the entity has made a reasonably diligent search of its available business records and the records that have been requested do not exist or are not reasonably available.

Identity Theft Committed Against Businesses (Section 16)

Criminal Use of Personal Identification Information

Existing s. 817.568, F.S., sets forth criminal offenses involving the use of another's personal identification information. In particular, Subsections (2), (4), and (9), of s. 817.568, F.S., establish several criminal offenses that involve the illegal use of an individual's personal identification information.[11] Because s. 817.568(1)(d), F.S., defines an "individual" as "a single human being and does not mean a firm, association of individuals, corporation, partnership, joint venture, sole proprietorship, or any other entity," subsections (2), (4), and (9) *only apply to individuals*, not business entities. Therefore, if a person uses the personal identification information of a business, that person is not subject to the penalties set forth in the statute.

The bill amends s. 817.568, F.S., by replacing references to "individual" with "person." "Person" is defined in s. 817.568(1)(e), F.S., as having the same definition found in s. 1.01(3), F.S., which "includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations." Accordingly, the bill makes the criminal penalties in s. 817.568, F.S., applicable to those persons who unlawfully use the personal identification information of a business entity to commit certain fraudulent acts.

As under existing s. 816.568(2), F.S., the felony degree and penalties for the fraudulent use of identification information, which under the bill includes the fraudulent use of a business' identification information, increase with the magnitude of the fraud. At a minimum, the crime is a third degree felony.[12] Whoever fraudulently uses personal identification information commits:

- A second degree felony[13] if the financial amount involved is equal to or greater than $5,000 or the thief fraudulently uses the personal identification of 10 to 19 individuals, without their consent. The court must also sentence the defendant to a mandatory minimum sentence of 3 years. (s. 816.568(2)(b), F.S.)

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[11] Section 817.568(1)(f), F.S., states that "personal identification information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:
1. Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
2. Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
3. Unique electronic identification number, address, or routing code;
4. Medical records;
5. Telecommunication identifying information or access device; or
6. Other number or information that can be used to access a person's financial resources.

[12] A third degree felony is punishable by up to 5 years in state prison, a fine of up to $5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.

[13] A second degree felony is punishable by up to 15 years imprisonment, a fine of up to $10,000, or both. Sections 775.082 and 775.083, F.S.

- A first degree felony[14] if the financial amount involved is $50,000 or more or the personal identification of 20 to 29 individuals is used without their consent. The accompanying mandatory minimum sentence is 5 years. (s. 816.568(2)(c), F.S.)
- A first degree felony if the financial amount involved is $100,000 or more or the personal identification information of 30 or more people is used without their consent. The mandatory minimum sentence is 10 years. (s. 816.568(2)(c), F.S.)

Harassment by Use of Personal Identification Information

Existing s. 817.568(4), F.S., provides that it is a first degree misdemeanor[15] to willfully and without authorization possess, use, or attempt to use an individual's personal identification information without his or her consent and do so to harass that person. The bill replaces the term "individual" with the term "person." This change expands the application of this subsection to include someone who unlawfully uses the personal identification information of a business entity to harass someone.

Prohibited Use of Counterfeit or Fictitious Personal Identification Information

Existing s. 817.568(9), F.S., provides that it is a third degree felony to willfully and fraudulently create or use, or possess with the intent to fraudulently use, counterfeit or fictitious personal identification information concerning a fictitious individual, or concerning a real individual without that real individual's consent, with the intent to use that information to commit or facilitate a fraud on another person. The bill replaces the term "individual" with the term "person." This change expands the application of this subsection to include a person who unlawfully uses the personal identification information of a business entity.

Using the Personal Identification Information of Deceased Individuals or Dissolved Business Entities

Existing s. 817.568(8), F.S., currently prohibits the fraudulent use of a deceased individual's personal identification information. The bill expands the application of this subsection to include and prohibit the fraudulent use of a dissolved business entity's personal identification information. The severity of the offense, as discussed below, depends on the monetary amount and the number of individuals or business entities involved.

Section 817.568(8)(a) F.S., is amended and creates a third degree felony for a person to willfully and fraudulently use, or possess with the intent to fraudulently use, the personal identification information of a deceased individual or a dissolved business entity. Whoever fraudulently uses the personal identification information of a deceased individual or a dissolved business entity commits:

- A second degree felony, if the monetary amount involved is $5,000 or more or the person uses the personal identification information of 10 to 19 deceased individuals or dissolved business entities. The mandatory minimum sentence is 3 years. (s. 817.658(8)(b), F.S.)

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

[15] A first degree misdemeanor is punishable by a term not to exceed 1 year imprisonment, a fine of up to $1,000, or both. Sections 775.082 and 775.083, F.S.

- A first degree felony (aggravated fraudulent use of the personal identification information of multiple deceased individuals or dissolved business entities), if the monetary amount is \$50,000 or more, or the perpetrator fraudulently uses the personal identification of 20 to 29 deceased individuals or dissolved business entities. The accompanying mandatory minimum sentence is 5 years of imprisonment. If the monetary amount involved is \$100,000 or more, or the person fraudulently uses the personal identification information of 30 or more deceased individuals or business entities, the mandatory minimum sentence is 10 years. (s. 817.568(8)(c), F.S.)

Replacing the Term "Corporation" with the Term "Business Entity" (Sections 1, 5, 6, 10, and 12)

The bill creates s. 817.011, F.S., which defines a "business entity" for purposes of ch. 817, F.S., to mean "any corporation, partnership, limited partnership, company, limited liability company, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state." The bill also replaces references to a "corporation" with the word "business entity" in:
- s. 817.14, F.S. (procuring assignments of produce upon false representations);
- s. 817.15, F.S. (false entries);
- s. 817.39, F.S. (simulated forms of court or legal process); and
- s. 817.411, F.S. (false information in advertisements, etc.).

As a result of these changes, a broader spectrum of business organizations are now protected by the fraud provisions of those subsections and subject to criminal penalties for violations of these laws.

Unlawful Acts through Electronic Means (Sections 11, 12, and 13)

Existing s. 817.40, F.S., contains the definitions for use in construing the statutes involving false, misleading, and deceptive advertising and sales. The bill amends the definition of "misleading advertising" in s. 817.40(5), F.S., to include statements disseminated in "electronic" form.

Existing s. 817.411, F.S., prohibits false advertisements, announcements, or statements regarding certain items of value being covered by insurance guaranties where there is no insurance or the insurance does not insure against the risks covered. The statute lists a variety of methods used to disseminate this information before the public. The bill amends this section to cover the electronic dissemination of those false claims.

Section 817.412, F.S., currently provides that it is a first degree misdemeanor to sell goods that exceed \$100 and misrepresent them as being new or original when they are used, repossessed, or have been used for a sales demonstration. The bill amends this section to include goods that are misrepresented using an electronic medium.

Fraudulently Obtaining Goods or Services from a Health Care Provider (Section 15)

Section 817.50, F.S., currently provides that it is a second degree misdemeanor to willfully and with intent to defraud, obtain or attempt to obtain goods, products, merchandise, or services from a health care provider in this state. The bill increases the degree of this crime to a third degree felony.

Criminal Use of a Public Record or of Public Records Information (Section 17)

Section 817.569, F.S., currently provides that a person who knowingly uses a public record or knowingly used information obtainable only through that public record to facilitate or further the commission of:

- A first degree misdemeanor, commits a first degree misdemeanor; or
- A felony, commits, third degree felony.

The bill expands the elements of this offense to include knowingly using false information that becomes part of a public record.

Wrongful Use of a City Name and Wrongful Stamping, Marking, of a City Name (Sections 7 and 8)

Existing s. 817.17, F.S., prohibits a manufacturer in the state from marking certain articles or packages for the manufactured articles as though they originated in a certain "city" when they did not. This section does not prohibit the sale of those articles if there is no "manufactory of similar goods in the city." The statute does not contain a criminal penalty for its violation. The bill amends the statute to provide that a violation of the statute is a second degree misdemeanor.[16] It also amends the statute to prohibit falsely attributing the origin of a product to any "county or other political subdivision of the state."

Section 817.18, F.S., provides that it is a second degree misdemeanor to knowingly sell or offer for sale, within the state, manufactured articles that have printed, stamped, marked, engraved, or branded upon them or their packaging, the name of any city other than where the articles are manufactured. If there is no "manufactory of similar goods in the city," then the section does not apply. This section is similarly amended to include the name of any "county or other political subdivision" of the state.

Fraudulent Issue of Stock Certificate of Indicia of Membership Interest (Section 9)

Section 817.19, F.S., provides that it is a third degree felony for an officer, agent, clerk, or servant of a corporation or other person to fraudulently:

- Issue or transfer a certificate of stock of a corporation to a person not entitled to that stock; or
- Sign the certificate with the intent that it will be so issued or transferred.

This section is amended and expanded to include the fraudulent issue or transfer of any indicia of a membership interest in a limited liability company.

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[16] A second degree misdemeanor is punishable by a term of imprisonment not to exceed 60 days, a fine not to exceed $500, or both. Sections 775.082 and 775.083, F.S.

Criminal Punishment Code (Section 18)

The Criminal Punishment Code's offense severity ranking chart is amended to reflect the changes made in the titles of s. 817.569(2), and s. 817.568(2)(b), F.S., under this bill.

Effective Date (Section 19)

The bill takes effect October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to affect the spending, revenues, or tax authority of cities or counties and the bill relates to criminal law. As such, the bill does not appear to be a mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The requirement that businesses provide victims of identity theft with records involving their theft might actually allow victims to recover economic losses and have a positive fiscal impact on those who have been the victims of identity theft. The restitution provisions in this bill, assuming that the perpetrators of identity theft have any assets, might also allow victims of identity theft to recover expenses incurred in trying to resolve issues involved in the identity theft.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation estimates that the bill will have a positive indeterminate (unquantifiable) prison bed impact.[17]

[17] See http://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2013/sentinel-cy2013.pdf (last visited on March 4, 2015).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 817.02, 817.11, 817.14, 817.15, 817.17, 817.18, 817.19, 817.39, 817.40, 817.411, 817.412, 817.481, 817.50, 817.568, 817.569, and 921.0022.

This bill creates the following sections of the Florida Statutes: 817.011 and 817.032.

This bill transfers, renumbers, and amends the following sections of the Florida Statutes: 817.12 and 817.13.

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 30, 2015:

- Exempts third-party processors from the requirements to provide transaction information directly to a consumer.
- Requires a police report and an affidavit to be provided to a business entity when processing a request for information.
- Provides that a business entity is not required to disclose information if disclosure is prohibited by state or federal law.
- Provides that a business entity is not civilly liable for a good-faith disclosure or a non-disclosure when statutorily authorized.

CS by Judiciary on February 17, 2015:

The committee substitute makes several changes to the bill, most of which are technical changes that do not affect the meaning of the bill. One substantive change allows a sentencing court the discretion to order restitution for a victim's out-of-pocket costs incurred by his or her certified public accountant in restoring the victim's credit or to rectify other wrongs associated with identity theft. An additional substantive change is a change of the word "consumer" to "person." This change may entitle businesses that are identity theft victims to obtain records of a fraudulent transaction from other businesses.

B. Amendments:

None.

145370

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2015	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 117 - 137
and insert:

<u>(2) GENERALLY.—</u>

<u>(a) For the purpose of documenting fraudulent transactions resulting from identity theft, within 30 days after the date of receipt of a request from a victim in accordance with subsection (4), and subject to verification of the identity of the victim and the claim of identity theft in accordance with subsection</u>

145370

(3), a business entity that has provided credit to; provided for consideration products, goods, or services to; accepted payment from; or otherwise entered into a commercial transaction for consideration with, a person who has allegedly made unauthorized use of the means of identification of the victim, shall provide a copy of the application and business transaction records in the control of the business entity, whether maintained by the business entity or by another person on behalf of the business entity, evidencing any transaction alleged to be a result of identity theft to:

1. The victim;

2. A federal, state, or local governmental law enforcement agency, or officer specified by the victim in such a request; or

3. A law enforcement agency investigating the identity theft and authorized by the victim to take receipt of records provided under this section.

(b) This subsection does not apply to a third party providing a service to effect, administer, facilitate, process, or enforce a financial transaction initiated by an individual.

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

And the title is amended as follows:

Delete line 11

and insert:

certain circumstances; providing an exception;
providing for verification of a

488270

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2015	.	
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	.	
	.	

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

Senate Amendment

Delete line 158
and insert:
victim of identity theft; and

COMMITTEE AMENDMENT

538950

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 189 - 195
and insert:
information;

(d) The information requested is Internet navigational data or similar information about a person’s visit to a website or online service; or

(e) The disclosure is otherwise prohibited by state or federal law.

(7) LIMITATION ON CIVIL LIABILITY.—A business entity may not be held civilly liable in this state for a disclosure made in good faith pursuant to this section or a decision to decline to provide information as provided in subsection (6).

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

And the title is amended as follows:

Delete line 17

and insert:

for business entities that provide or decline to provide information in certain circumstances;

376766

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/30/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 382 and 383
insert:

Section 14. Section 817.414, Florida Statutes, is created to read:

817.414 Sale of counterfeit security signs and decals.—A person who willfully and knowingly sells or attempts to sell a counterfeit sign or decal in this state with the name or logo of a security company without the express written consent of the

376766

company commits:

(1) For the first offense, a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) For a second or subsequent offense, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

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

And the title is amended as follows:

Delete line 45

and insert:

representations of used goods as new; creating s. 817.414, F.S.; prohibiting the sale of counterfeit security company signs or decals; providing criminal penalties; amending s.

By the Committee on Judiciary; and Senator Richter

A bill to be entitled

An act relating to fraud; creating s. 817.011, F.S.; defining the term “business entity”; amending s. 817.02, F.S.; providing for restitution to victims for certain victim out-of-pocket costs; providing for a civil cause of action for certain victims; creating s. 817.032, F.S.; defining the term “victim”; requiring business entities to provide copies of business records of fraudulent transactions involving identity theft to victims and law enforcement agencies in certain circumstances; providing for verification of a victim’s identity and claim; providing procedures for claims; requiring that certain information be provided to victims without charge; specifying circumstances in which business entities may decline to provide information; providing a limitation on civil liability for business entities that provide information; specifying that no new record retention is required; providing an affirmative defense to business entities in actions seeking enforcement of provisions; amending s. 817.11, F.S.; making editorial changes; transferring, renumbering, and amending ss. 817.12 and 817.13, F.S.; combining offense, penalty, and evidence provisions and transferring such provisions to s. 817.11, F.S.; amending s. 817.14, F.S.; clarifying provisions; amending s. 817.15, F.S.; substituting the term “business entity” for the term “corporation”; amending ss. 817.17 and 817.18, F.S.; including counties and other political subdivisions in

provisions prohibiting the false marking of goods or packaging with a location of origin; reorganizing penalty provisions; amending s. 817.19, F.S.; prohibiting fraudulent issuance of indicia of membership interest in a limited liability company; amending s. 817.39, F.S.; substituting the term “business entity” for the term “corporation”; amending s. 817.40, F.S.; specifying that the term “misleading advertising” includes electronic forms of dissemination; amending s. 817.411, F.S.; substituting the term “business entity” for the term “corporation”; specifying that certain false statements made through electronic means are prohibited; amending s. 817.412, F.S.; specifying that electronic statements are included in provisions prohibiting false representations of used goods as new; amending s. 817.481, F.S.; clarifying provisions; amending s. 817.50, F.S.; revising criminal penalties for fraudulently obtaining goods or services from a health care provider; amending s. 817.568, F.S.; expanding specified identity theft offenses to include all persons rather than being limited to natural persons; including dissolved business entities within certain offenses involving fraudulent use of personal identification information of deceased persons; amending s. 817.569, F.S.; prohibiting a person from knowingly providing false information that becomes part of a public record to facilitate or further the commission of certain offenses; providing criminal penalties; amending s. 921.0022, 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 817.011, Florida Statutes, is created to read:

817.011 Definition.—As used in this chapter, the term "business entity" means any corporation, partnership, limited partnership, company, limited liability company, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.

Section 2. Section 817.02, Florida Statutes, is amended to read:

817.02 Obtaining property by false personation.—

(1) Whoever falsely personates or represents another person, and in such assumed character:

(a) Receives any property intended to be delivered to that person ~~the party so personated~~, with intent to convert the same to his or her own use; or

(b) To the extent not subject to s. 817.568, damages the credit history or rating of, or otherwise causes harm to, the person whose identity has been assumed through the taking of property from any person,

shall be punished as if he or she had been convicted of larceny.

(2)(a) In sentencing a defendant convicted of a violation

of this section, in addition to restitution to the victim under s. 775.089, the court may order restitution for the victim's out-of-pocket costs, including attorney fees and fees associated with services provided by certified public accountants licensed under chapter 473, incurred by the victim in clearing the victim's credit history or credit rating, or costs incurred in connection with a civil or administrative proceeding to satisfy a debt, lien, or other obligation of the victim arising as a result of the actions of the defendant.

(b) The sentencing court may issue such orders as are necessary to correct a public record that contains false information given in violation of this section.

(3)(a) A victim of the conduct subject to this section shall have a civil cause of action against a person who has engaged in the conduct prohibited by this section as provided in s. 772.11.

(b) For purposes of this subsection, the term "victim" includes, to the extent not already included within s. 817.568, a person whose identity was falsely personated or who suffers a loss of property as a result of the false personation.

Section 3. Section 817.032, Florida Statutes, is created to read:

817.032 Information available to identity theft victims.—

(1) DEFINITION.—As used in this section, the term "victim" means a person whose means of identification or financial information is used or transferred or is alleged to be used or transferred without the authority of that person with the intent to commit or to aid or abet an identity theft or a similar crime.

(2) GENERALLY.—For the purpose of documenting fraudulent transactions resulting from identity theft, within 30 days after the date of receipt of a request from a victim in accordance with subsection (4), and subject to verification of the identity of the victim and the claim of identity theft in accordance with subsection (3), a business entity that has provided credit to; provided for consideration products, goods, or services to; accepted payment from; or otherwise entered into a commercial transaction for consideration with, a person who has allegedly made unauthorized use of the means of identification of the victim, shall provide a copy of the application and business transaction records in the control of the business entity, whether maintained by the business entity or by another person on behalf of the business entity, evidencing any transaction alleged to be a result of identity theft to:

(a) The victim;

(b) A federal, state, or local government law enforcement agency or officer specified by the victim in such a request; or

(c) A law enforcement agency investigating the identity theft and authorized by the victim to take receipt of records provided under this section.

(3) VERIFICATION OF IDENTITY AND CLAIM.—Before a business entity provides any information under subsection (2), unless the business entity, at its discretion, has a high degree of confidence that it knows the identity of the victim making a request under subsection (2), the victim shall provide to the business entity:

(a) As proof of positive identification of the victim, at the election of the business entity:

1. The presentation of a government-issued identification card;

2. Personal identifying information of the same type as provided to the business entity by the unauthorized person; or

3. Personal identifying information that the business entity typically requests from new applicants or for new transactions, at the time of the victim's request for information, including any documentation described in subparagraphs 1. and 2.

(b) As proof of a claim of identity theft, at the election of the business entity:

1. A copy of a police report evidencing the claim of the victim of identity theft; or

2. A properly completed affidavit of fact which is acceptable to the business entity for that purpose.

(4) PROCEDURES.—The request of a victim under subsection (2) must:

(a) Be in writing;

(b) Be mailed or delivered to an address specified by the business entity, if any; and

(c) If asked by the business entity, include relevant information about any transaction alleged to be a result of identity theft to facilitate compliance with this section, including:

1. If known by the victim or readily obtainable by the victim, the date of the application or transaction.

2. If known by the victim or readily obtainable by the victim, any other identifying information such as an account number or transaction number.

(5) NO CHARGE TO VICTIM.—Information required to be provided under subsection (2) shall be provided without charge.

(6) AUTHORITY TO DECLINE TO PROVIDE INFORMATION.—A business entity may decline to provide information under subsection (2) if, in the exercise of good faith, the business entity determines that:

(a) This section does not require disclosure of the information;

(b) After reviewing the information provided pursuant to subsection (3), the business entity does not have a high degree of confidence in knowing the true identity of the individual requesting the information;

(c) The request for the information is based on a misrepresentation of fact by the individual requesting the information; or

(d) The information requested is Internet navigational data or similar information about a person's visit to a website or online service.

(7) LIMITATION ON CIVIL LIABILITY.—A business entity may not be held civilly liable in this state for disclosure made in good faith pursuant to this section.

(8) NO NEW RECORDKEEPING OBLIGATION.—This section does not create an obligation on the part of a business entity to obtain, retain, or maintain information or records that are not otherwise required to be obtained, retained, or maintained in the ordinary course of its business or under other applicable law.

(9) AFFIRMATIVE DEFENSE.—In any civil action brought to enforce this section, it is an affirmative defense, which the

defendant must establish by a preponderance of the evidence, for a business entity to file an affidavit or answer stating that:

(a) The business entity has made a reasonably diligent search of its available business records.

(b) The records requested under this section do not exist or are not reasonably available.

Section 4. Section 817.11, Florida Statutes, is amended, and sections 817.12 and 817.13, Florida Statutes, are transferred and renumbered as subsections (2) and (3), respectively, of section 817.11, Florida Statutes, and amended, to read:

817.11 Obtaining property by fraudulent promise to furnish inside information.—

(1) A ~~No~~ person may not ~~shall~~ defraud or attempt to defraud any individual out of anything ~~any thing~~ of value by assuming to have or be able to obtain any secret, advance or inside information regarding any person, transaction, act or thing, whether such person, transaction, act or thing exists or not.

(2) ~~817.12~~ A person who violates this section commits ~~Penalty for violation of s. 817.11.—Any person guilty of violating the provisions of s. 817.11 shall be deemed guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) ~~817.13 Paraphernalia as evidence of violation of s. 817.11.—~~All paraphernalia of whatsoever kind in possession of any person and used in defrauding or attempting to defraud as specified in this section ~~s. 817.11~~ shall be held and accepted by any court of competent jurisdiction in this state as prima facie evidence of guilt.

Section 5. Section 817.14, Florida Statutes, is amended to read:

817.14 Procuring assignments of produce upon false representations.—A ~~Any~~ person acting for himself or herself or another person, who shall procure any consignment of produce grown in this state, to himself or herself or such other, for sale on commission or for other compensation by any knowingly false representation as to the prevailing market price at such time for such produce at the point to which it is consigned, or as to the price which such person for whom he or she is acting is at said time paying to other consignors for like produce at said place, or as to the condition of the market for such produce at such time and place, and any such person acting for another who shall procure any consignment for sale as aforesaid by false representation of authority to him or her by such other to make a guaranteed price to the consignor, commits ~~shall be guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 6. Section 817.15, Florida Statutes, is amended to read:

817.15 ~~Making~~ False entries in~~, etc., on~~ books of business entity ~~corporation~~.—Any officer, agent, clerk or servant of a business entity ~~corporation~~ who makes a false entry in the books thereof, with intent to defraud, and any person whose duty it is to make in such books a record or entry of the transfer of stock, or of the issuing and canceling of certificates thereof, or of the amount of stock issued by such business entity ~~corporation~~, who omits to make a true record or entry thereof, with intent to defraud, commits ~~shall be guilty of~~ a felony of

the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 7. Section 817.17, Florida Statutes, is amended to read:

817.17 Wrongful use of city, county, or other political subdivision name.—

(1) A ~~No~~ person or persons engaged in manufacturing in this state, may not ~~shall~~ cause to be printed, stamped, marked, engraved or branded, upon any of the articles manufactured by them, or on any of the boxes, packages, or bands containing such manufactured articles, the name of any city, county, or other political subdivision of ~~in~~ the state, other than that in which said articles are manufactured; provided, that ~~nothing in~~ this section does not ~~shall~~ prohibit any person from offering for sale any goods having marked thereon the name of any city, county, or other political subdivision of the state ~~in Florida~~ other than that in which said goods were manufactured, if there be no manufactory of similar goods in the city, county, or other political subdivision the name of which is used.

(2) A person violating this section commits a misdemeanor of the second degree, punishable as provided in s. 775.083.

Section 8. Section 817.18, Florida Statutes, is amended to read:

817.18 Wrongful marking with a city, county, or other political subdivision name ~~stamping, marking, etc.; penalty~~.—

(1) A ~~No~~ person may not ~~shall~~ knowingly sell or offer for sale, within the state, any manufactured articles which shall have printed, stamped, marked, engraved, or branded upon them, or upon the boxes, packages, or bands containing said

manufactured articles, the name of any city, county, or other political subdivision of ~~in~~ the state, other than that in which such articles were manufactured; provided, that ~~nothing in~~ this section does not ~~shall~~ prohibit any person from offering for sale any goods, having marked thereon the name of any city, county, or other political subdivision of the state ~~in Florida~~, other than that in which said goods are manufactured, if there be no manufactory of similar goods in the city, county, or other political subdivision the name of which is used.

(2) A ~~Any~~ person violating ~~the provisions of~~ this ~~or the preceding~~ section commits ~~shall be guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.083.

Section 9. Section 817.19, Florida Statutes, is amended to read:

817.19 Fraudulent issue of stock certificate or indicia of membership interest ~~of stock of corporation~~.—Any officer, agent, clerk or servant of a corporation, or any other person, who fraudulently issues or transfers a certificate of stock of a corporation or indicia of a membership interest in a limited liability company to any person not entitled thereto, or fraudulently signs such certificate or other indicia of membership interest, in blank or otherwise, with the intent that it shall be so issued or transferred by himself or herself or any other person, commits ~~shall be guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 10. Subsections (1) and (3) of section 817.39, Florida Statutes, are amended to read:

817.39 Simulated forms of court or legal process, or

official seal or stationery; publication, sale or circulation unlawful; penalty.—

(1) Any person~~, firm,~~ or business entity ~~corporation~~ who prints ~~shall print~~, for the purpose of sale or distribution and for use in the state, or who circulates, publishes, or offers ~~shall circulate, publish, or offer~~ for sale any letter, paper, document, notice of intent to bring suit, or other notice or demand, which simulates a form of court or legal process, or any person who without authority of the state prints ~~shall print~~, for the purpose of sale or distribution for use in the state, or who without authority of the state circulates, publishes, or offers ~~shall circulate, publish, use, or offer~~ for sale any letters, papers, or documents which simulate the seal of the state, or the stationery of a state agency or fictitious state agency commits ~~is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) ~~Nothing in~~ This section does not ~~shall~~ prevent the printing, publication, sale, or distribution of genuine legal forms for the use of attorneys or clerks of courts.

Section 11. Subsection (5) of section 817.40, Florida Statutes, is amended to read:

817.40 False, misleading and deceptive advertising and sales; definitions.—When construing ss. 817.40, 817.41, 817.43-817.47, and each and every word, phrase or part thereof, where the context will permit:

(5) The phrase “misleading advertising” includes any statements made, or disseminated, in oral, written, electronic, or printed form or otherwise, to or before the public, or any portion thereof, which are known, or through the exercise of

reasonable care or investigation could or might have been ascertained, to be untrue or misleading, and which are or were so made or disseminated with the intent or purpose, either directly or indirectly, of selling or disposing of real or personal property, services of any nature whatever, professional or otherwise, or to induce the public to enter into any obligation relating to such property or services.

Section 12. Section 817.411, Florida Statutes, is amended to read:

817.411 False information; advertising.—A ~~No~~ person~~, firm~~ or business entity may not ~~corporation shall~~ knowingly publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, electronically, or in any other way, any advertisement, announcement, or statement containing any assertion, representation, or statement that commodities, mortgages, promissory notes, securities, or other things of value offered for sale are covered by insurance guaranties where such insurance is nonexistent or does not in fact insure against the risks covered.

Section 13. Section 817.412, Florida Statutes, is amended to read:

817.412 Sale of used goods as new; penalty.—

(1) It is unlawful for a seller in a transaction where the purchase price of goods exceeds $100 to misrepresent orally, in writing, electronically, or by failure to speak that the goods

are new or original when they are used or repossessed or where they have been used for sales demonstration.

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

Section 14. Subsection (1) of section 817.481, Florida Statutes, is amended to read:

817.481 Credit or purchases ~~cards~~; obtaining illicitly ~~goods by use of false, expired, etc.; penalty~~.—

(1) It shall be unlawful for any person knowingly to obtain or attempt to obtain credit, or to purchase or attempt to purchase any goods, property, or service, by the use of any false, fictitious, counterfeit, or expired credit card, telephone number, credit number, or other credit device, or by the use of any credit card, telephone number, credit number, or other credit device of another person without the authority of the person to whom such card, number or device was issued, or by the use of any credit card, telephone number, credit number, or other credit device in any case where such card, number or device has been revoked and notice of revocation has been given to the person to whom issued.

Section 15. Section 817.50, Florida Statutes, is amended to read:

817.50 Fraudulently obtaining goods or~~,~~ services~~, etc.,~~ from a health care provider.—

(1) Whoever shall, willfully and with intent to defraud, obtain or attempt to obtain goods, products, merchandise, or services from any health care provider in this state, as defined in s. 641.19(14), commits a felony ~~misdemeanor~~ of the third

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

(2) If any person gives to any health care provider in this state a false or fictitious name or a false or fictitious address or assigns to any health care provider the proceeds of any health maintenance contract or insurance contract, then knowing that such contract is no longer in force, is invalid, or is void for any reason, such action shall be prima facie evidence of the intent of such person to defraud the health care provider. However, this subsection does not apply to investigative actions taken by law enforcement officers for law enforcement purposes in the course of their official duties.

Section 16. Paragraph (f) of subsection (1) and subsections (2), (4), (8), and (9) of section 817.568, Florida Statutes, are amended to read:

817.568 Criminal use of personal identification information.—

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

(f) “Personal identification information” means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person ~~individual~~, including any:

1. Name, postal or electronic mail address, telephone number, social security number, date of birth, mother’s maiden name, official state-issued or United States-issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification

number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;

2. Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

3. Unique electronic identification number, address, or routing code;

4. Medical records;

5. Telecommunication identifying information or access device; or

6. Other number or information that can be used to access a person’s financial resources.

(2)(a) Any person who willfully and without authorization fraudulently uses, or possesses with intent to fraudulently use, personal identification information concerning another person ~~an individual~~ without first obtaining that person’s ~~individual’s~~ consent, commits the offense of fraudulent use of personal identification information, which is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person who willfully and without authorization fraudulently uses personal identification information concerning a person ~~an individual~~ without first obtaining that person’s ~~individual’s~~ consent commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is $5,000 or more or if the person fraudulently uses the personal identification information of 10 or more persons ~~individuals~~, but fewer than 20 persons

~~individuals~~, without their consent. Notwithstanding any other provision of law, the court shall sentence any person convicted of committing the offense described in this paragraph to a mandatory minimum sentence of 3 years' imprisonment.

(c) Any person who willfully and without authorization fraudulently uses personal identification information concerning a person ~~an individual~~ without first obtaining that person's ~~individual's~~ consent commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is $50,000 or more or if the person fraudulently uses the personal identification information of 20 or more persons ~~individuals~~, but fewer than 30 persons ~~individuals~~, without their consent. Notwithstanding any other provision of law, the court shall sentence any person convicted of committing the offense described in this paragraph to a mandatory minimum sentence of 5 years' imprisonment. If the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is $100,000 or more, or if the person fraudulently uses the personal identification information of 30 or more persons ~~individuals~~ without their consent, notwithstanding any other provision of law, the court shall sentence any person convicted of committing the offense described in this paragraph to a mandatory minimum sentence of 10 years' imprisonment.

(4) Any person who willfully and without authorization possesses, uses, or attempts to use personal identification

information concerning a person ~~an individual~~ without first obtaining that person's ~~individual's~~ consent, and who does so for the purpose of harassing that person ~~individual~~, commits the offense of harassment by use of personal identification information, which is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(8)(a) Any person who willfully and fraudulently uses, or possesses with intent to fraudulently use, personal identification information concerning a deceased individual or dissolved business entity commits the offense of fraudulent use or possession with intent to use personal identification information of a deceased individual or dissolved business entity, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person who willfully and fraudulently uses personal identification information concerning a deceased individual or dissolved business entity commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of injury or fraud perpetrated is $5,000 or more, or if the person fraudulently uses the personal identification information of 10 or more but fewer than 20 deceased individuals or dissolved business entities. Notwithstanding any other provision of law, the court shall sentence any person convicted of committing the offense described in this paragraph to a mandatory minimum sentence of 3 years' imprisonment.

(c) Any person who willfully and fraudulently uses personal identification information concerning a deceased individual or

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dissolved business entity commits the offense of aggravated fraudulent use of the personal identification information of multiple deceased individuals or dissolved business entities, a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of injury or fraud perpetrated is $50,000 or more, or if the person fraudulently uses the personal identification information of 20 or more but fewer than 30 deceased individuals or dissolved business entities. Notwithstanding any other provision of law, the court shall sentence any person convicted of the offense described in this paragraph to a minimum mandatory sentence of 5 years' imprisonment. If the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is $100,000 or more, or if the person fraudulently uses the personal identification information of 30 or more deceased individuals or dissolved business entities, notwithstanding any other provision of law, the court shall sentence any person convicted of an offense described in this paragraph to a mandatory minimum sentence of 10 years' imprisonment.

(9) Any person who willfully and fraudulently creates or uses, or possesses with intent to fraudulently use, counterfeit or fictitious personal identification information concerning a fictitious person ~~individual~~, or concerning a real person ~~individual~~ without first obtaining that real person's ~~individual's~~ consent, with intent to use such counterfeit or fictitious personal identification information for the purpose

of committing or facilitating the commission of a fraud on another person, commits the offense of fraudulent creation or use, or possession with intent to fraudulently use, counterfeit or fictitious personal identification information, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 17. Section 817.569, Florida Statutes, is amended to read:

817.569 Criminal use of a public record or public records information; providing false information; penalties.—A person who knowingly uses any public record, as defined in s. 119.011, ~~or~~ who knowingly uses information obtainable only through such public record, or who knowingly provides false information that becomes part of a public record to facilitate or further the commission of:

(1) A misdemeanor of the first degree, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A felony, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 18. Paragraphs (a) and (e) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(a) LEVEL 1

Florida	Felony	Description

Statute	Degree	
24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than $300 but less than $20,000.
316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
322.212 (1)(a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.
322.212(4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.
322.212(5)(a)	3rd	False application for driver license or identification card.
414.39(2)	3rd	Unauthorized use, possession, forgery, or alteration of food assistance program, Medicaid ID, value greater than $200.
414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than $200.
443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than $300.

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517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
562.27(1)	3rd	Possess still or still apparatus.
713.69	3rd	Tenant removes property upon which lien has accrued, value more than $50.
812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
815.04(5)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
817.569(2)	3rd	Use of public record or public records information or

		providing false information to facilitate commission of a felony.
826.01	3rd	Bigamy.
828.122(3)	3rd	Fighting or baiting animals.
831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
832.041(1)	3rd	Stopping payment with intent to defraud $150 or more.
832.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks $150 or more or obtaining property in return for worthless check $150 or more.
838.15(2)	3rd	Commercial bribe receiving.

838.16	3rd	Commercial bribery.
843.18	3rd	Fleeing by boat to elude a law enforcement officer.
847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
849.01	3rd	Keeping gambling house.
849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.
849.23	3rd	Gambling-related machines; “common offender” as to property rights.
849.25(2)	3rd	Engaging in bookmaking.
860.08	3rd	Interfere with a railroad signal.
860.13(1)(a)	3rd	Operate aircraft while under the influence.

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893.13(2)(a)2.	3rd	Purchase of cannabis.
893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.

(e) LEVEL 5

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

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379.367(4)	3rd	Willful molestation of a commercial harvester’s spiny lobster trap, line, or buoy.
379.3671 (2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester’s trap contents or trap gear by another harvester.
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
440.10(1)(g)	2nd	Failure to obtain workers’ compensation coverage.
440.105(5)	2nd	Unlawful solicitation for the purpose of making workers’ compensation claims.
440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers’ compensation premiums.
624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected $20,000 or

		more but less than $100,000.
626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
790.01(2)	3rd	Carrying a concealed firearm.
790.162	2nd	Threat to throw or discharge destructive device.
790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
800.04(7)(b)	2nd	Lewd or lascivious exhibition;

		offender 18 years of age or older.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145(2)(b)	2nd	Theft from person 65 years of age or older; $10,000 or more but less than $50,000.
812.015(8)	3rd	Retail theft; property stolen is valued at $300 or more and one or more specified acts.
812.019(1)	2nd	Stolen property; dealing in or trafficking in.
812.131(2)(b)	3rd	Robbery by sudden snatching.
812.16(2)	3rd	Owning, operating, or conducting a chop shop.
817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.
817.234(11)(b)	2nd	Insurance fraud; property value $20,000 or more but less than

		$100,000.
817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, $5,000 or more or use of personal identification information of 10 or more <u>persons</u> ~~individuals~~.
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.
839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
843.01	3rd	Resist officer with violence to person; resist arrest with violence.
847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by

		electronic device or equipment.
874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)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.

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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.
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.
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.
893.13(4)(b)	2nd	Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3.,

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		(2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

Section 19. This act shall take effect October 1, 2015.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Banking and Insurance, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Commerce and Tourism
Regulated Industries
Rules

SENATOR GARRETT RICHTER
President Pro Tempore
23rd District

February 19, 2015

The Honorable Greg Evers, Chair
Senate Committee on Criminal Justice
510 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Evers:

CS for Senate Bill 390, relating to Fraud/Business Identity Theft, has been referred to the Committee on Criminal Justice. I would appreciate the placing of this bill on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

Garrett Richter

cc: Amanda Cannon, Staff Director

THE FLORIDA SENATE

APPEARANCE RECORD

3/30/2015 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 390

Meeting Date

Bill Number (if applicable)

Topic Fraud

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe St

Street

Tallahassee, FL 32301

City State Zip

Phone (850) 681-0024

Email jorge@flapartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ADT

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)

3-30-15
Meeting Date

390
Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Matt Dunagan

Job Title Assistant Executive Director

Address 2617 Mahan Drive
Street

Phone 850 274 3599

Tallahassee FL 32308
City State Zip

Email

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

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

Representing Florida Sheriffs Association

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Banking and Insurance, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Commerce and Tourism
Regulated Industries
Rules

SENATOR GARRETT RICHTER
President Pro Tempore
23rd District

March 30, 2015

The Honorable Greg Evers, Chair
The Committee on Criminal Justice
510 Knott Building
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Evers,

Committee Substitute for Senate Bill 390 relating Fraud is scheduled to be heard in the Committee on Criminal Justice today, March 30th at 4 p.m. Due to conflicts in my schedule, I will be sending my Legislative Assistant, Becky Kokkinos, as a representative to present the bill for your committee's consideration.

Thank you in advance for your consideration.

Sincerely,

Garrett Richter

cc: Amanda Cannon, Staff Director
Sue Arnold, Committee Administrative Assistant

REPLY TO:
- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: *www.flsenate.gov*

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 440

INTRODUCER: Criminal Justice Committee and Senator Bean

SUBJECT: Contraband Forfeiture

DATE: March 31, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	**Fav/CS**
2.			ACJ	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 440 amends the Contraband Forfeiture Act by adding the following requirements:

- The seizing agency must perform a specified periodic review of its seizures, settlements, and forfeitures at least annually and if there are deficiencies, it must move promptly to ensure compliance with the act;
- The seizing agency must ensure compliance with applicable legal requirements regarding seizing, maintaining, and forfeiting property;
- The seizing agency's legal counsel must be notified promptly of all seizures and review them for legal sufficiency, as well as supervisory personnel must promptly review all seizures for probable cause;
- The seizing agency must have written policies and procedures promoting the prompt release of seized property when there is no legitimate basis for holding it, as well as written policies and procedures ensuring that all asserted claims of interest are promptly reviewed;
- The seizing agency must maintain records showing every law enforcement officer's compliance with the required forfeiture training, including the legal aspects of forfeiture, search and seizure, and other constitutional considerations;
- The seizing agency must complete a detailed annual report indicating whether it has received or forfeited property, to be kept on file and accessible to the public;
- Any forfeiture action settlement must be consistent with the mandates of the act and in compliance with agency policy or directives; and
- The employment, salary, or other compensation of a law enforcement officer may not be dependent upon seizure quotas.

II. Present Situation:

The Contraband Forfeiture Act, ss. 932.701-932.706, F.S., prescribes procedures for law enforcement agencies to follow when seizing, forfeiting, and disposing of property under the act. Currently, under s. 932.703, F.S., any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of the act, or in, upon, or by means of which any violation of the act has taken or is taking place, may be seized and shall be forfeited subject to the provisions of the act.[1]

Section 932.704, F.S., provides that the Department of Law Enforcement (FDLE), in consultation with the Florida Sheriffs Association and the Florida Police Chiefs Association, shall develop guidelines and training procedures to be used by state and local law enforcement agencies and state attorneys in implementing the act. Each agency that seizes property shall periodically review its seizures, settlements, and forfeiture proceedings to determine whether they comply with the act and the adopted guidelines. The determination of whether an agency will file a forfeiture action must be the sole responsibility of the head of the agency or his or her designee. The determination of whether to seize currency must be made by supervisory personnel. The agency's legal counsel must be notified as soon as possible.[2]

Section 932.7055, F.S., provides for the disposition of liens and forfeited property under the act. The seizing agency may do any of the following when a final judgment of forfeiture is granted:

- Retain the property for the agency's use;
- Sell the property at a public auction or by sealed bid to the highest bidder; or
- Salvage, trade, or transfer the property to any public or nonprofit organization.[3]

If the property has a lien attached and the agency sells the property, the proceeds of the sale are to be distributed in this order:

- Payment of the balance due on any lien preserved by the court in the forfeiture proceedings.
- Payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property.
- Payment of court costs incurred in the forfeiture proceeding.[4]

The proceeds which remain after all liens and debts against the forfeited property are paid are then deposited into a special law enforcement trust fund and may be used to fund school resource officers, crime prevention, safe neighborhood, drug abuse education and prevention programs, or other law enforcement purposes, including defraying the cost of protracted or complex investigations, providing additional equipment or expertise, purchasing automated external defibrillators for law enforcement vehicles, and providing matching funds to obtain federal grants. These proceeds and interest may not be used to meet normal operation expenses.[5]

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[1] Section 932.703(1), F.S. The constitutionality of the act was upheld by the Florida Supreme Court in *Department of Law Enforcement v. Real Property,* 588 So.2d 957 (Fla. 1991).
[2] Section 932.704(11), F.S.
[3] Section 932.7055(1), F.S.
[4] Sections 932.7055(3) and (4), F.S.
[5] Section 932.7055(5), F.S.

Additionally, any local law enforcement agency that acquires at least $15,000 under the act within a fiscal year must expend or donate no less than 15 percent of these proceeds for the support or operation of any drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer program. The agency has discretion to determine which program receives the funds.[6]

An agency or organization, other than the seizing agency, that wishes to receive such funds shall apply to the sheriff or chief of police for an appropriation. If the agency or organization receives funding under the act, it must provide an accounting, indicating that the funds were only used for the above stated purposes.[7]

If the seizing agency is a local law enforcement agency, the proceeds are deposited into a special law enforcement trust fund established by the governing body of a county or municipality. The funds may be appropriated only to the sheriff's office by the board of county commissioners or to the police department by the governing body of the municipality when the sheriff or police chief has certified that the request for funds will be used in compliance with the act.[8]

If the seizing agency is a state agency, the remaining proceeds are deposited into the General Revenue Fund, except that some agencies have their own forfeiture trust fund, including:
- FDLE;
- Division of Alcoholic Beverages and Tobacco;
- Department of Highway Safety and Motor Vehicles;
- Fish and Wildlife Conservation Commission;
- State Attorney Offices;
- School Board Security Agencies;
- State University System Police Departments;
- Department of Agriculture and Consumer Services;
- Department of Military Affairs;
- Medicaid Fraud Control Unit of the Department of Legal Affairs;
- Division of State Fire Marshal of the Department of Financial Services; and
- Division of Insurance Fraud of the Department of Financial Services.[9]

Section 932.706, F.S., requires the Criminal Justice Standards and Training Commission to develop a standardized course of training which is designed to develop proficiency in the seizure and forfeiture of property under the act. The curriculum must include racial and ethnic sensitivity, search and seizure case law, the use of drug-courier profiles, and the use of an order to stop based on a pretext.

III. Effect of Proposed Changes:

The bill amends s. 932.703, F.S., by adding the following requirements:

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[6] Section 932.7055(5)(c)3., F.S.
[7] Section 932.7055(5)(c), F.S.
[8] Section 932.7055(5), F.S.
[9] Section 932.7055(6), F.S.

- The seizing agency must perform a specified periodic review of its seizures, settlements, and forfeitures at least annually and if there are deficiencies, it must move promptly to ensure compliance with the act;
- The seizing agency must ensure compliance with applicable legal requirements regarding seizing, maintaining, and forfeiting property;
- The seizing agency's legal counsel must be notified promptly of all seizures and review them for legal sufficiency, as well as supervisory personnel must promptly review all seizures for probable cause;
- The seizing agency must have written policies and procedures promoting the prompt release of seized property when there is no legitimate basis for holding it, as well as written policies and procedures ensuring that all asserted claims of interest are promptly reviewed;
- The seizing agency must maintain records showing every law enforcement officer's compliance with the required forfeiture training, including the legal aspects of forfeiture, search and seizure, and other constitutional considerations;
- Any forfeiture action settlement must be consistent with the mandates of the act and in compliance with agency policy or directives; and
- The employment, salary, or other compensation of a law enforcement officer may not be dependent upon seizure quotas.

The bill also creates s. 932.7061, F.S., requiring every seizing agency to complete an annual report indicating whether it has received or forfeited property. The report must be kept on file with the seizing agency for public access. The report must specify the following:

- The type of property;
- The property's approximate value;
- The court case number;
- The type of offense for which the property was seized;
- The disposition of the property, and
- The dollar amount of the proceeds received or expended.

The effective date of the bill is July 1, 2015.

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:

Any fiscal impact upon a seizing agency because of the bill's new requirements is unknown but likely minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 932.704 of the Florida Statutes.

This bill creates section 932.7061 of the Florida Statutes.

This bill makes technical and conforming changes to the following sections of the Florida Statutes: 932.701, 322.34, 323.001, 328.07, 817.625, 27.3451, and 874.08.

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 30, 2015:
- Deletes the requirement that the seizure or forfeiture of property is incidental to an arrest of the person involved in the criminal activity in violation of the act.
- Adds the following requirements:
  - The seizing agency must perform a specified periodic review of its seizures, settlements, and forfeitures at least annually and if there are deficiencies, it must move promptly to ensure compliance with the act;
  - The seizing agency must ensure compliance with applicable legal requirements regarding seizing, maintaining, and forfeiting property;
  - The seizing agency's legal counsel must be notified promptly of all seizures and review them for legal sufficiency, as well as supervisory personnel must promptly review all seizures for probable cause;

- The seizing agency must have written policies and procedures promoting the prompt release of seized property when there is no legitimate basis for holding it, as well as written policies and procedures ensuring that all asserted claims of interest are promptly reviewed;
- The seizing agency must maintain records showing every law enforcement officer's compliance with the required forfeiture training, including the legal aspects of forfeiture, search and seizure, and other constitutional considerations;
- The seizing agency must complete a detailed annual report indicating whether it has received or forfeited property, to be kept on file and accessible to the public;
- Any forfeiture action settlement must be consistent with the mandates of the act and in compliance with agency policy or directives; and
- The employment, salary, or other compensation of a law enforcement officer may not be dependent upon seizure quotas.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2015	.	
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The Committee on Criminal Justice (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (1) of section 932.701, Florida Statutes, is amended to read:

932.701 Short title; definitions.—

(1) Sections 932.701-932.7061 ~~932.706~~ shall be known and may be cited as the “Florida Contraband Forfeiture Act.”

Section 2. Subsection (11) of section 932.704, Florida

757076

Statutes, is amended to read:

932.704 Forfeiture proceedings.—

(11)(a) The Department of Law Enforcement, in consultation with the Florida Sheriffs Association and the Florida Police Chiefs Association, shall develop guidelines and training procedures to be used by state and local law enforcement agencies and state attorneys in implementing the Florida Contraband Forfeiture Act. Each state or local law enforcement agency that seizes property for the purpose of forfeiture shall periodically review seizures of assets made by the agency's law enforcement officers, settlements, and forfeiture proceedings initiated by the agency, to determine whether such seizures, settlements, and forfeitures comply with the Florida Contraband Forfeiture Act and the guidelines adopted under this subsection. <u>Such review must occur at least annually. If the review suggests deficiencies, the state or local law enforcement agency shall promptly move to ensure the agency's compliance with this act.</u>

<u>(b)</u> The determination of whether an agency will file a civil forfeiture action must be the sole responsibility of the head of the agency or his or her designee.

<u>(c)</u>~~(b)~~ The determination of whether to seize currency must be made by supervisory personnel. The agency's legal counsel must be notified as soon as possible.

<u>(d) The employment, salary, promotion, or other compensation of any law enforcement officer may not depend on obtaining a quota of seizures.</u>

<u>(e) A seizing agency must ensure, through the use of written policies, procedures, and training, compliance with all applicable legal requirements regarding seizing, maintaining,</u>

757076

and forfeiting property under this act.

(f) When property is seized for forfeiture, the probable cause supporting the seizure must be promptly reviewed by supervisory personnel. The seizing agency’s legal counsel must be notified as soon as possible of all seizures and conduct a review to determine whether there is legal sufficiency to proceed with a forfeiture action.

(g) Each seizing agency must have written policies and procedures promoting, when there is no other legitimate basis for holding seized property, the prompt release of such property as may be required by the act or by agency determination. To help assure that property is not wrongfully held after seizure, every law enforcement agency must have written policies and procedures ensuring that all asserted claims of interest in seized property are promptly reviewed for potential validity.

(h) The settlement of any forfeiture action must be consistent with the mandates of this act and in compliance with agency policy or directives.

(i) Law enforcement agency personnel involved in the seizure of property for forfeiture shall receive basic training and continuing education as required by this act. Each agency shall maintain records demonstrating every law enforcement officer’s compliance with these training requirements. A portion of such training must address the legal aspects of forfeiture, including, but not limited to, search and seizure and other constitutional considerations.

Section 3. Section 932.7061, Florida Statutes, is created to read:

932.7061 Each state or local law enforcement agency that seizes property for the purpose of forfeiture must complete an annual report indicating whether that agency has received or forfeited property under this act. The report, to be submitted on a form designed by the law enforcement agency, must, at a minimum, specify the type of property, its approximate value, the court case number, the type of offense for which the property was seized, disposition of the property, and the dollar amount of the proceeds received or expended in seizing the property. This report must be kept on file with the seizing agency for public access.

Section 4. Paragraph (a) of subsection (9) of section 322.34, Florida Statutes, is amended to read:

322.34 Driving while license suspended, revoked, canceled, or disqualified.—

(9)(a) A motor vehicle that is driven by a person under the influence of alcohol or drugs in violation of s. 316.193 is subject to seizure and forfeiture under ss. 932.701-932.7061 ~~932.706~~ and is subject to liens for recovering, towing, or storing vehicles under s. 713.78 if, at the time of the offense, the person's driver license is suspended, revoked, or canceled as a result of a prior conviction for driving under the influence.

Section 5. Subsection (4) of section 323.001, Florida Statutes, is amended to read:

323.001 Wrecker operator storage facilities; vehicle holds.—

(4) The requirements for a written hold apply when the following conditions are present:

(a) The officer has probable cause to believe the vehicle should be seized and forfeited under the Florida Contraband Forfeiture Act, ss. 932.701-932.7061 ~~932.706~~;

(b) The officer has probable cause to believe the vehicle should be seized and forfeited under chapter 379;

(c) The officer has probable cause to believe the vehicle was used as the means of committing a crime;

(d) The officer has probable cause to believe that the vehicle is itself evidence that tends to show that a crime has been committed or that the vehicle contains evidence, which cannot readily be removed, which tends to show that a crime has been committed;

(e) The officer has probable cause to believe the vehicle was involved in a traffic accident resulting in death or personal injury and should be sealed for investigation and collection of evidence by a vehicular homicide investigator;

(f) The vehicle is impounded or immobilized pursuant to s. 316.193 or s. 322.34; or

(g) The officer is complying with a court order.

Section 6. Paragraph (b) of subsection (3) of section 328.07, Florida Statutes, is amended to read:

328.07 Hull identification number required.—

(3)

(b) If any of the hull identification numbers required by the United States Coast Guard for a vessel manufactured after October 31, 1972, do not exist or have been altered, removed, destroyed, covered, or defaced or the real identity of the vessel cannot be determined, the vessel may be seized as contraband property by a law enforcement agency or the division, and shall be subject to forfeiture pursuant to ss. 932.701-

932.7061 ~~932.706~~. Such vessel may not be sold or operated on the waters of the state unless the division receives a request from a law enforcement agency providing adequate documentation or is directed by written order of a court of competent jurisdiction to issue to the vessel a replacement hull identification number which shall thereafter be used for identification purposes. No vessel shall be forfeited under the Florida Contraband Forfeiture Act when the owner unknowingly, inadvertently, or neglectfully altered, removed, destroyed, covered, or defaced the vessel hull identification number.

Section 7. Paragraph (c) of subsection (2) of section 817.625, Florida Statutes, is amended to read:

817.625 Use of scanning device or reencoder to defraud; penalties.—

(2)

(c) Any person who violates subparagraph (a)1. or subparagraph (a)2. shall also be subject to the provisions of ss. 932.701-932.7061 ~~932.706~~.

Section 8. For the purpose of incorporating the amendment made by this act to section 932.704, Florida Statutes, in a reference thereto, section 27.3451, Florida Statutes, is reenacted to read:

27.3451 State Attorney's Forfeiture and Investigative Support Trust Fund.—There is created for each of the several state attorneys a trust fund to be known as the State Attorney's Forfeiture and Investigative Support Trust Fund. Revenues received by a state attorney as a result of forfeiture proceedings, as provided under s. 932.704, shall be deposited in such trust fund and shall be used, when authorized by

757076

appropriation or action of the Executive Office of the Governor pursuant to s. 216.181(11), for the investigation of crime, prosecution of criminals, or other law enforcement purposes.

Section 9. For the purpose of incorporating the amendment made by this act to section 932.704, Florida Statutes, in a reference thereto, section 874.08, Florida Statutes, is reenacted to read:

874.08 Criminal gang activity and recruitment; forfeiture.—All profits, proceeds, and instrumentalities of criminal gang activity and all property used or intended or attempted to be used to facilitate the criminal activity of any criminal gang or of any criminal gang member; and all profits, proceeds, and instrumentalities of criminal gang recruitment and all property used or intended or attempted to be used to facilitate criminal gang recruitment are subject to seizure and forfeiture under the Florida Contraband Forfeiture Act, s. 932.704.

Section 10. This act shall take effect July 1, 2015.

================= 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 contraband forfeiture; amending s. 932.701, F.S.; conforming a cross-reference to changes made by the act; amending s. 932.704, F.S.; requiring each state or local law enforcement agency that seizes property for the purpose of forfeiture to perform a specified periodic review at least annually; prohibiting certain compensation or benefit to any law

757076

enforcement officer from being dependent upon attaining a quota of seizures; requiring a seizing agency to have certain written policies, procedures, and training to comply with specified legal requirements; requiring the probable cause for seizure to be promptly reviewed by supervisory personnel; requiring the seizing agency’s legal counsel to be timely notified and conduct a specified review; requiring each seizing agency to have specified written policies and procedures for the prompt release of seized property under certain circumstances; requiring that settlement of any forfeiture actions be consistent with certain mandates and with the seizing agency’s policy or directives; requiring specified training and maintenance of records for such training; creating s. 932.7061, F.S.; requiring each state or local law enforcement agency that seizes property for the purpose of forfeiture to complete an annual report; requiring certain information to be included in the annual report; requiring the report to be kept on file with the seizing agency for public access; amending ss. 322.34, 323.001, 328.07, and 817.625, F.S.; conforming cross-references; reenacting ss. 27.3451 and 874.08, F.S., relating to the State Attorney’s Forfeiture and Investigative Support Trust Fund, and criminal gang activity, recruitment, and forfeiture, respectively, to incorporate the amendment made to s. 932.704, F.S., in references thereto; providing an effective date.

323508

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/30/2015	.	
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The Committee on Criminal Justice (Brandes) recommended the following:

Senate Substitute for Amendment (757076) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (1) of section 932.701, Florida Statutes, is amended to read:

932.701 Short title; definitions.—

(1) Sections 932.701-932.7061 ~~932.706~~ shall be known and may be cited as the "Florida Contraband Forfeiture Act."

323508

Section 2. Subsection (11) of section 932.704, Florida Statutes, is amended to read:

932.704 Forfeiture proceedings.—

(11)(a) The Department of Law Enforcement, in consultation with the Florida Sheriffs Association and the Florida Police Chiefs Association, shall develop guidelines and training procedures to be used by state and local law enforcement agencies and state attorneys in implementing the Florida Contraband Forfeiture Act. Each state or local law enforcement agency that seizes property for the purpose of forfeiture shall periodically review seizures of assets made by the agency's law enforcement officers, settlements, and forfeiture proceedings initiated by the agency, to determine whether such seizures, settlements, and forfeitures comply with the Florida Contraband Forfeiture Act and the guidelines adopted under this subsection. <u>Such review must occur at least annually. If the review suggests deficiencies, the state or local law enforcement agency shall promptly move to ensure the agency's compliance with this act.</u>

<u>(b)</u> The determination of whether an agency will file a civil forfeiture action must be the sole responsibility of the head of the agency or his or her designee.

<u>(c)</u> ~~(b)~~ The determination of whether to seize currency must be made by supervisory personnel. The agency's legal counsel must be notified as soon as possible.

<u>(d) The employment, salary, promotion, or other compensation of any law enforcement officer may not depend on obtaining a quota of seizures.</u>

<u>(e) A seizing agency must ensure, through the use of written policies, procedures, and training, compliance with all</u>

applicable legal requirements regarding seizing, maintaining, and forfeiting property under this act.

(f) When property is seized for forfeiture, the probable cause supporting the seizure must be promptly reviewed by supervisory personnel. The seizing agency's legal counsel must be notified as soon as possible of all seizures and conduct a review to determine whether there is legal sufficiency to proceed with a forfeiture action.

(g) Each seizing agency must have written policies and procedures promoting, when there is no other legitimate basis for holding seized property, the prompt release of such property as may be required by the act or by agency determination. To help ensure that property is not wrongfully held after seizure, each law enforcement agency must have written policies and procedures ensuring that all asserted claims of interest in seized property are promptly reviewed for potential validity.

(h) The settlement of any forfeiture action must be consistent with the mandates of this act and in compliance with agency policy or directives.

(i) Law enforcement agency personnel involved in the seizure of property for forfeiture shall receive basic training and continuing education as required by this act. Each agency shall maintain records demonstrating every law enforcement officer's compliance with these training requirements. A portion of such training must address the legal aspects of forfeiture, including, but not limited to, search and seizure and other constitutional considerations.

Section 3. Section 932.7055, Florida Statutes, is amended to read:

932.7055 Disposition of liens and forfeited property.—

(1) When a seizing agency obtains a final judgment granting forfeiture of real property or personal property, it may elect to:

~~(a) Retain the property for the agency’s use;~~

(a) ~~(b)~~ Sell the property at public auction or by sealed bid to the highest bidder, except for real property, which must ~~should~~ be sold in a commercially reasonable manner after appraisal by listing on the market; or

(b) ~~(c)~~ ~~Salvage,~~ Trade~~,~~ or transfer the property to any ~~public or~~ nonprofit organization.

(2) Notwithstanding subsection (1), a seizing agency must destroy any image and the medium on which the image is recorded, including, but not limited to, a photograph, video tape, diskette, compact disc, or fixed disk made in violation of s. 810.145 when the image and the medium on which it is recorded is no longer needed for an official purpose. The agency may not sell or retain any image.

(3) If the forfeited property is subject to a lien preserved by the court as provided in s. 932.703(6)(b), the agency shall:

(a) Sell the property with the proceeds being used towards satisfaction of any liens; or

(b) Have the lien satisfied prior to taking any action authorized by subsection (1).

(4) The proceeds from the sale of forfeited property shall be disbursed in the following priority:

(a) Payment of the balance due on any lien preserved by the court in the forfeiture proceedings.

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(b) Payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property.

(c) Payment of court costs incurred in the forfeiture proceeding.

~~(d) Notwithstanding any other provision of this subsection, and for the 2014-2015 fiscal year only, the funds in a special law enforcement trust fund established by the governing body of a municipality may be expended to reimburse the general fund of the municipality for moneys advanced from the general fund to the special law enforcement trust fund before October 1, 2001. This paragraph expires July 1, 2015.~~

(5)(a) If the seizing agency is a county or municipal agency, 50 percent of the ~~remaining~~ proceeds shall be deposited into ~~in~~ a special law enforcement trust fund established by the board of county commissioners or the governing body of the municipality. Such proceeds and interest earned therefrom shall be used for school resource officer, crime prevention, safe neighborhood, or drug abuse education and prevention programs. The remaining 50 percent of the proceeds shall be deposited into the Crimes Compensation Trust Fund~~, or for other law enforcement purposes, which include defraying the cost of protracted or complex investigations, providing additional equipment or expertise, purchasing automated external defibrillators for use in law enforcement vehicles, and providing matching funds to obtain federal grants~~. ~~The proceeds and interest may not be used to meet normal operating expenses of the law enforcement agency.~~

(b) These funds may be expended upon request by the sheriff to the board of county commissioners or by the chief of police

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to the governing body of the municipality, accompanied by a written certification that the request complies with the provisions of this subsection, and only upon appropriation to the sheriff's office or police department by the board of county commissioners or the governing body of the municipality.

(c) An agency or organization, other than the seizing agency, which ~~that~~ wishes to receive such funds shall apply to the sheriff or chief of police for an appropriation. The ~~and its~~ application shall be accompanied by a written certification that the moneys will be used for an authorized purpose. Such requests for expenditures shall include a statement describing anticipated recurring costs for the agency for subsequent fiscal years. An agency or organization that receives money pursuant to this subsection shall provide an accounting for such moneys and shall furnish the same reports as an agency of the county or municipality that receives public funds. Such funds may be ~~expended in accordance with the following procedures:~~

~~1. Such funds may be~~ used only for school resource officer, crime prevention, safe neighborhood, drug abuse education, or drug prevention programs ~~or such other law enforcement purposes as the board of county commissioners or governing body of the municipality deems appropriate~~.

~~2. Such funds shall not be a source of revenue to meet normal operating needs of the law enforcement agency.~~

(d)~~3. After July 1, 1992, and~~ During each ~~every~~ fiscal year ~~thereafter~~, each ~~any~~ local law enforcement agency ~~that acquires at least $15,000 pursuant to the Florida Contraband Forfeiture Act within a fiscal year~~ must expend or donate 50 ~~no less than 15~~ percent of ~~such~~ proceeds pursuant to the Florida Contraband

Forfeiture Act for the support or operation of ~~any~~ drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer programs ~~program(s)~~. An agency or organization, other than the seizing agency, which wishes to receive such funds must apply to the seizing local law enforcement agency for an appropriation. Funding requests by such agencies or organizations must be accompanied by a written certification stating that the moneys will be used for an authorized purpose, detailing how the funds will be used, and affirming that the expenditure will be used for only the support of drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer programs. Such requests are public records as defined in chapter 119. The local law enforcement agency has the discretion to determine which programs ~~program(s)~~ will receive the designated proceeds.

(e) Notwithstanding the drug abuse education, drug treatment, drug prevention, crime prevention, safe neighborhood, or school resource officer programs minimum expenditures or donations, the sheriff and the board of county commissioners or the chief of police and the governing body of the municipality may agree to expend or donate such funds over a period of years if the expenditure or donation of the ~~such~~ minimum amount in any given fiscal year would exceed the needs of the county or municipality for such programs ~~program(s)~~. ~~Nothing in this section precludes the expenditure or donation of forfeiture proceeds in excess of the minimum amounts established herein.~~

(6) If the seizing agency is a state agency, all remaining proceeds shall be deposited into the Crimes Compensation Trust

Fund ~~General Revenue Fund~~. ~~However, if the seizing agency is:~~

~~(a) The Department of Law Enforcement, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into the Forfeiture and Investigative Support Trust Fund as provided in s. 943.362 or into the department's Federal Law Enforcement Trust Fund as provided in s. 943.365, as applicable.~~

~~(b) The Division of Alcoholic Beverages and Tobacco, the proceeds accrued pursuant to the Florida Contraband Forfeiture Act shall be deposited into the Alcoholic Beverage and Tobacco Trust Fund or into the department's Federal Law Enforcement Trust Fund as provided in s. 561.027, as applicable.~~

~~(c) The Department of Highway Safety and Motor Vehicles, the proceeds accrued pursuant to the Florida Contraband Forfeiture Act shall be deposited into the Department of Highway Safety and Motor Vehicles Law Enforcement Trust Fund as provided in s. 932.705(1)(a) or into the department's Federal Law Enforcement Trust Fund as provided in s. 932.705(1)(b), as applicable.~~

~~(d) The Fish and Wildlife Conservation Commission, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into the State Game Trust Fund as provided in ss. 379.338, 379.339, and 379.3395 or into the Marine Resources Conservation Trust Fund as provided in s. 379.337.~~

~~(e) A state attorney's office acting within its judicial circuit, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into the State Attorney's Forfeiture and Investigative Support Trust Fund~~

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~~to be used for the investigation of crime and prosecution of criminals within the judicial circuit.~~

~~(f) A school board security agency employing law enforcement officers, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into the School Board Law Enforcement Trust Fund.~~

~~(g) One of the State University System police departments acting within the jurisdiction of its employing state university, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into that state university's special law enforcement trust fund.~~

~~(h) The Department of Agriculture and Consumer Services, the proceeds accrued pursuant to the Florida Contraband Forfeiture Act shall be deposited into the General Inspection Trust Fund or into the department's Federal Law Enforcement Trust Fund as provided in s. 570.205, as applicable.~~

~~(i) The Department of Military Affairs, the proceeds accrued from federal forfeiture sharing pursuant to 21 U.S.C. ss. 881(e)(1)(A) and (3), 18 U.S.C. s. 981(e)(2), and 19 U.S.C. s. 1616a shall be deposited into the Armory Board Trust Fund and used for purposes authorized by such federal provisions based on the department's budgetary authority or into the department's Federal Law Enforcement Trust Fund as provided in s. 250.175, as applicable.~~

~~(j) The Medicaid Fraud Control Unit of the Department of Legal Affairs, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into the Department of Legal Affairs Grants and Donations Trust Fund to be used for investigation and prosecution of Medicaid fraud,~~

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~~abuse, neglect, and other related cases by the Medicaid Fraud Control Unit.~~

~~(k) The Division of State Fire Marshal in the Department of Financial Services, the proceeds accrued under the Florida Contraband Forfeiture Act shall be deposited into the Insurance Regulatory Trust Fund to be used for the purposes of arson suppression, arson investigation, and the funding of anti-arson rewards.~~

~~(l) The Division of Insurance Fraud of the Department of Financial Services, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into the Insurance Regulatory Trust Fund as provided in s. 626.9893 or into the Department of Financial Services' Federal Law Enforcement Trust Fund as provided in s. 17.43, as applicable.~~

(7) If more than one law enforcement agency is acting substantially to effect the forfeiture, the court having jurisdiction over the forfeiture proceedings shall, upon motion, equitably distribute all proceeds and other property among the seizing agencies.

(8) Upon the sale of any motor vehicle, vessel, aircraft, real property, or other property requiring a title, the appropriate agency shall issue a title certificate to the purchaser. Upon the request of any law enforcement agency which elects to retain titled property after forfeiture, the appropriate state agency shall issue a title certificate for such property to said law enforcement agency.

(9) A ~~Neither the~~ law enforcement agency, or ~~nor~~ the entity having budgetary control over the law enforcement agency, may

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not ~~shall~~ anticipate future forfeitures or the proceeds from those forfeitures ~~therefrom~~ in the adoption and approval of the agency's budget ~~for the law enforcement agency~~.

Section 4. Section 932.7061, Florida Statutes, is created to read:

932.7061 Each state or local law enforcement agency that seizes property for the purpose of forfeiture must complete an annual report indicating whether that agency has received or forfeited property under this act. The report, to be submitted on a form designed by the law enforcement agency, must, at a minimum, specify the type of property, its approximate value, the court case number, the type of offense for which the property was seized, disposition of the property, and the dollar amount of the proceeds received or expended in seizing the property. This report must be kept on file with the seizing agency for public access.

Section 5. Paragraph (a) of subsection (9) of section 322.34, Florida Statutes, is amended to read:

322.34 Driving while license suspended, revoked, canceled, or disqualified.—

(9)(a) A motor vehicle that is driven by a person under the influence of alcohol or drugs in violation of s. 316.193 is subject to seizure and forfeiture under ss. 932.701-932.7061 ~~932.706~~ and is subject to liens for recovering, towing, or storing vehicles under s. 713.78 if, at the time of the offense, the person's driver license is suspended, revoked, or canceled as a result of a prior conviction for driving under the influence.

Section 6. Subsection (4) of section 323.001, Florida

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Statutes, is amended to read:

323.001 Wrecker operator storage facilities; vehicle holds.—

(4) The requirements for a written hold apply when the following conditions are present:

(a) The officer has probable cause to believe the vehicle should be seized and forfeited under the Florida Contraband Forfeiture Act, ss. 932.701-932.7061 ~~932.706~~;

(b) The officer has probable cause to believe the vehicle should be seized and forfeited under chapter 379;

(c) The officer has probable cause to believe the vehicle was used as the means of committing a crime;

(d) The officer has probable cause to believe that the vehicle is itself evidence that tends to show that a crime has been committed or that the vehicle contains evidence, which cannot readily be removed, which tends to show that a crime has been committed;

(e) The officer has probable cause to believe the vehicle was involved in a traffic accident resulting in death or personal injury and should be sealed for investigation and collection of evidence by a vehicular homicide investigator;

(f) The vehicle is impounded or immobilized pursuant to s. 316.193 or s. 322.34; or

(g) The officer is complying with a court order.

Section 7. Paragraph (b) of subsection (3) of section 328.07, Florida Statutes, is amended to read:

328.07 Hull identification number required.—

(3)

(b) If any of the hull identification numbers required by the United States Coast Guard for a vessel manufactured after October 31, 1972, do not exist or have been altered, removed, destroyed, covered, or defaced or the real identity of the vessel cannot be determined, the vessel may be seized as contraband property by a law enforcement agency or the division, and shall be subject to forfeiture pursuant to ss. 932.701-932.7061 ~~932.706~~. Such vessel may not be sold or operated on the waters of the state unless the division receives a request from a law enforcement agency providing adequate documentation or is directed by written order of a court of competent jurisdiction to issue to the vessel a replacement hull identification number which shall thereafter be used for identification purposes. No vessel shall be forfeited under the Florida Contraband Forfeiture Act when the owner unknowingly, inadvertently, or neglectfully altered, removed, destroyed, covered, or defaced the vessel hull identification number.

Section 8. Paragraph (c) of subsection (2) of section 817.625, Florida Statutes, is amended to read:

817.625 Use of scanning device or reencoder to defraud; penalties.—

(2)

(c) Any person who violates subparagraph (a)1. or subparagraph (a)2. shall also be subject to the provisions of ss. 932.701-932.7061 ~~932.706~~.

Section 9. For the purpose of incorporating the amendment made by this act to section 932.704, Florida Statutes, in a reference thereto, section 27.3451, Florida Statutes, is reenacted to read:

27.3451 State Attorney’s Forfeiture and Investigative

Support Trust Fund.—There is created for each of the several state attorneys a trust fund to be known as the State Attorney's Forfeiture and Investigative Support Trust Fund. Revenues received by a state attorney as a result of forfeiture proceedings, as provided under s. 932.704, shall be deposited in such trust fund and shall be used, when authorized by appropriation or action of the Executive Office of the Governor pursuant to s. 216.181(11), for the investigation of crime, prosecution of criminals, or other law enforcement purposes.

Section 10. For the purpose of incorporating the amendment made by this act to section 932.704, Florida Statutes, in a reference thereto, section 874.08, Florida Statutes, is reenacted to read:

874.08 Criminal gang activity and recruitment; forfeiture.—All profits, proceeds, and instrumentalities of criminal gang activity and all property used or intended or attempted to be used to facilitate the criminal activity of any criminal gang or of any criminal gang member; and all profits, proceeds, and instrumentalities of criminal gang recruitment and all property used or intended or attempted to be used to facilitate criminal gang recruitment are subject to seizure and forfeiture under the Florida Contraband Forfeiture Act, s. 932.704.

Section 11. For the purpose of incorporating the amendment made by this act to section 932.7055, Florida Statutes, in a reference thereto, paragraph (c) of subsection (2) of section 895.09, Florida Statutes, is reenacted and amended to read:

895.09 Disposition of funds obtained through forfeiture proceedings.—

(2)

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(c) Any funds distributed to an investigating law enforcement agency under paragraph (a) shall be deposited in the applicable ~~law enforcement~~ trust fund established ~~for that agency~~ pursuant to s. 932.7055 and expended for the purposes and in the manner authorized in that section. In addition, any funds distributed to an investigating law enforcement agency pursuant to this section may be used to pay the costs of investigations of violations of this chapter and the criminal prosecutions and civil actions related thereto, pursuant to s. 932.7055. Such costs may include all taxable costs; costs of protecting, maintaining, and forfeiting the property; employees' base salaries and compensation for overtime; and such other costs directly attributable to the investigation, prosecution, or civil action.

Section 12. For the purpose of incorporating the amendment made by this act to section 932.7055, Florida Statutes, in a reference thereto, paragraph (b) of subsection (5) of section 381.0081, Florida Statutes, is reenacted to read:

381.0081 Permit required to operate a migrant labor camp or residential migrant housing; penalties for unlawful establishment or operation; allocation of proceeds.—

(5) SEIZURE.—

(b) After satisfying any liens on the property, the remaining proceeds from the sale of the property seized under this section shall be allocated as follows if the department participated in the inspection or investigation leading to seizure and forfeiture under this section:

1. One-third of the proceeds shall be allocated to the law enforcement agency involved in the seizure, to be used as

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provided in s. 932.7055.

2. One-third of the proceeds shall be allocated to the department, to be used for purposes of enforcing the provisions of this section.

3. One-third of the proceeds shall be deposited in the State Apartment Incentive Loan Fund, to be used for the purpose of providing funds to sponsors who provide housing for farmworkers.

Section 13. For the purpose of incorporating the amendment made by this act to section 932.7055, Florida Statutes, in a reference thereto, paragraph (b) of subsection (6) of section 932.703, Florida Statutes, is reenacted to read:

932.703 Forfeiture of contraband article; exceptions.—

(6)

(b) A bona fide lienholder's interest that has been perfected in the manner prescribed by law prior to the seizure may not be forfeited under the Florida Contraband Forfeiture Act unless the seizing agency establishes by a preponderance of the evidence that the lienholder had actual knowledge, at the time the lien was made, that the property was being employed or was likely to be employed in criminal activity. If a lienholder's interest is not subject to forfeiture under the requirements of this section, such interest shall be preserved by the court by ordering the lienholder's interest to be paid as provided in s. 932.7055.

Section 14. This act shall take effect July 1, 2015.

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

And the title is amended as follows:

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Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to contraband forfeiture; amending s. 932.701, F.S.; conforming a cross-reference to changes made by the act; amending s. 932.704, F.S.; requiring each state or local law enforcement agency that seizes property for the purpose of forfeiture to perform a specified periodic review at least annually; prohibiting certain compensation or benefit to any law enforcement officer from being dependent upon attaining a quota of seizures; requiring a seizing agency to have certain written policies, procedures, and training to comply with specified legal requirements; requiring the probable cause for seizure to be promptly reviewed by supervisory personnel; requiring the seizing agency's legal counsel to be timely notified and conduct a specified review; requiring each seizing agency to have specified written policies and procedures for the prompt release of seized property under certain circumstances; requiring that settlement of any forfeiture actions be consistent with certain mandates and with the seizing agency's policy or directives; requiring specified training and maintenance of records for such training; amending s. 932.7055, F.S.; revising the options a seizing agency may elect after obtaining a final judgment granting forfeiture of property; deleting an obsolete provision; revising the distribution and the

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use of proceeds from the sales of forfeited property seized by a county or municipal agency; authorizing an agency or organization, other than a seizing agency, to apply for funds from specified proceeds; requiring that funding requests be made in writing and include a certification that the expenditure meets certain requirements; specifying that such requests are public records; deleting a provision relating to certain expenditure or donation of forfeiture proceeds; requiring certain proceeds to be deposited into the Crimes Compensation Trust Fund, rather than the General Revenue Fund; deleting provisions that exempt certain agencies of the state from depositing proceeds from seizures into the General Revenue Fund; making technical changes; creating s. 932.7061, F.S.; requiring each state or local law enforcement agency that seizes property for the purpose of forfeiture to complete an annual report; requiring certain information to be included in the annual report; requiring the report to be kept on file with the seizing agency for public access; amending ss. 322.34, 323.001, 328.07, and 817.625, F.S.; conforming cross-references to changes made by the act; reenacting ss. 27.3451 and 874.08, F.S., relating to the State Attorney’s Forfeiture and Investigative Support Trust Fund and criminal gang activity, recruitment, and forfeiture, respectively, to incorporate the amendment made to s. 932.704, F.S., in references thereto; reenacting and amending 895.09(2)(c), F.S., relating to the disposition of funds obtained through forfeiture proceedings, to incorporate the amendment made to s. 932.7055, F.S., in a reference thereto; reenacting ss. 381.0081(5)(b) and 932.703(6)(b), F.S., relating to the allocations of proceeds from the sales of property in a migrant labor camp or residential migrant housing and the forfeiture of contraband articles, respectively, to incorporate the amendment made to s. 932.7055, F.S., in references thereto; providing an effective date.

By Senator Bean

4-00273-15 2015440__

A bill to be entitled

An act relating to contraband forfeiture; amending s. 932.703, F.S.; requiring that seizure or forfeiture of property be incidental to an arrest under the Florida Contraband Forfeiture Act; providing an effective date.

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

Section 1. Subsection (1) of section 932.703, Florida Statutes, is amended to read:

932.703 Forfeiture of contraband article; exceptions.—

(1)(a) Any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, may be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act. <u>For a seizure or forfeiture to be lawful under the Florida Contraband Forfeiture Act, the seizure or forfeiture must be incidental to an arrest of the person involved in the criminal activity in violation of the act.</u>

(b) Notwithstanding any other provision of the Florida Contraband Forfeiture Act, except the provisions of paragraph (a), contraband articles set forth in s. 932.701(2)(a)7. used in violation of any provision of the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place,

4-00273-15 2015440__

shall be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act.

(c) All rights to, interest in, and title to contraband articles used in violation of s. 932.702 shall immediately vest in the seizing law enforcement agency upon seizure.

(d) The seizing agency may not use the seized property for any purpose until the rights to, interest in, and title to the seized property are perfected in accordance with the Florida Contraband Forfeiture Act. This section does not prohibit use or operation necessary for reasonable maintenance of seized property. Reasonable efforts shall be made to maintain seized property in such a manner as to minimize loss of value.

Section 2. This act shall take effect July 1, 2015.

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

The Florida Senate

Committee Agenda Request

To: Senator Greg Evers, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 28, 2015

I respectfully request that **Senate Bill #440**, relating to Contraband Forfeiture, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/30/2015
Meeting Date

SB 440
Bill Number (if applicable)

*757076
Amendment Barcode (if applicable)

Topic: Contraband Forfeiture

Name: Frank Fabrizio

Job Title: Police Chief

Address: 4301 S. Peninsula Drive
Street

Ponce Inlet FL 32127
City State Zip

Phone: #386-275-9377

Email: ffabrizio@ponce-inlet.org

Speaking: [ ] For [ ] Against [ ] Information

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

Representing: The Florida Police Chiefs Association

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

30 MAR 2015
Meeting Date

(440)
Bill Number (if applicable)

757076
Amendment Barcode (if applicable)

Topic CONTRABAND FORFEITURE

Name LAURA YOUMANS (YO-MANS)

Job Title LEGISLATIVE ADVOCATE

Address 100 N. MONROE ST
Street

TAL. FL 32301
City State Zip

Phone

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FLORIDA ASSOCIATION OF 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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/30/2015
Meeting Date

SB 440
Bill Number (if applicable)

A 323508
Amendment Barcode (if applicable)

Topic Contraband Forfeiture

Name Frank Fabrizio

Job Title Police Chief

Address 4301 S. Peninsula Drive
Street

Phone #386-275-9377

Ponce Inlet FL 32127
City State Zip

Email ffabrizio@ponce-inlet.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/30/2015 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 440

Meeting Date

Bill Number (if applicable)

Topic Contraband Forfeiture

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Street

Tallahassee, FL

City State Zip

Phone (850) 681-0024

Email jorge@flapartners.com

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [x] In Support [ ] Against

(The Chair will read this information into the record.)

Representing Florida Association of Criminal Defense Lawyers

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/30/15
Meeting Date

440
Bill Number (if applicable)

323508
Amendment Barcode (if applicable)

Topic Forfeiture

Name Sheriff Bob Gualtieri

Job Title Pinellas County Sheriff

Address 10750 Ulmerton Rd
Street

Phone 727-582-6206

Largo FL 33778
City State Zip

Email [illegible].com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Sheriff's Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/30/15
Meeting Date

440
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Forfeiture

Name Sheriff Bob Gualtieri

Job Title Pinellas County Sheriff

Address 10750 Ulmerton Road
Street

Largo FL 34677
City State Zip

Phone 727-582-6206

Email [illegible]

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Sheriff's Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

The Florida Senate

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 464

INTRODUCER: Senator Joyner

SUBJECT: Controlled Substances

DATE: March 27, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	**Favorable**
2.			ACJ	
3.			FP	
4.			RC	

I. Summary:

SB 464 authorizes a court to grant a defendant's motion to depart from a 3-year mandatory minimum term and mandatory fine for trafficking in cocaine, hydrocodone, oxycodone, opiates or opioids, phencyclidine, amphetamine, methamphetamine, flunitrazepam, phenethylamines, or lysergic acid diethylamide (LSD) if the court finds all of the following criteria are met:

- The defendant has not previously moved for a departure.
- The offense would be subject to a 3-year mandatory minimum term absent the departure.
- The offense involves simple possession of any of the noted controlled substances (or a mixture containing the substance) in a specified quantity.
- The offense does not involve use of a minor, a firearm, a deadly weapon, or the threat to use or use of physical force.
- The defendant does not have a previous conviction, adjudication of delinquency, or withhold or adjudication of guilt for drug trafficking or any other offense specified in the bill.
- The defendant is amenable to substance abuse treatment if the court determines that he or she is in need of such treatment.

The state attorney may object to the motion to depart.

II. Present Situation:

Drug Trafficking

Unlawful activities involving controlled substances (e.g., possession or sale of controlled substances) are punishable under s. 893.13, F.S. (prohibited acts involving controlled substances), and s. 893.135, F.S. (drug trafficking). "Drug trafficking" consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state, or knowingly being in actual or constructive possession[1] of, certain controlled substances in a statutorily-specified quantity.

Whether a person is charged with drug trafficking depends, in part, on the type of controlled substance possessed, sold, etc. Only a limited number of controlled substances are covered under s. 893.135, F.S. Relevant to the bill, s. 893.135, F.S., covers cocaine, hydrocodone, oxycodone, opiates[2] or opioids,[3] phencyclidine, amphetamine, methamphetamine, flunitrazepam, phenethylamines,[4] and lysergic acid diethylamide (LSD).

The quantity of a covered controlled substance must also meet a minimum weight threshold prescribed in s. 893.135, F.S. Most drug trafficking offenses are first degree felonies[5] and are subject to mandatory minimum terms.[6] Section 893.135, F.S., establishes escalating weight ranges. The mandatory minimum term applicable to a drug trafficking act depends upon which weight range is applicable to the quantity of the controlled substance possessed, sold, etc. In some cases, possession, sale, etc., of a relatively small quantity of a covered controlled substance will trigger drug trafficking penalties.

Relevant to the bill, the shortest mandatory minimum term available under s. 893.135, F.S., is a 3-year mandatory minimum term. Provided are the threshold weights that trigger drug trafficking penalties and the weight ranges applicable to a 3-year mandatory minimum term for each of the controlled substances or controlled substance categories addressed by the bill.

Statutory Reference	Covered Substance	Threshold Weight	Weight Range Applicable to 3-Year Mandatory Minimum Term
s. 893.13(1)(b), F.S.	Cocaine	28 grams	28 grams or more but less than 200 grams
s. 893.13(1)(c), F.S.	Hydrocodone, oxycodone, opiates and opioids	14 grams (hydrocodone), 7 grams (oxycodone), 4 grams opiates and opioids)	14 grams or more but less than 28 grams (hydrocodone), 7 grams or more but less than 14 grams (oxycodone), 4 grams or more but less than 14 grams (opiates and opioids)

[1] One important and unique feature of the drug trafficking statute is that the prosecutor is not required to prove that the possession of the controlled substance was with the intent to sell, deliver, manufacture, etc., the substance.
[2] Examples of opiates are opium and morphine.
[3] Examples of opioids are heroin, oxycodone, hydrocodone, and hydromorphone.
[4] “Phenethylamines” is a broad category of “psychoactive substances.” Sanders B., Lankenau S.E., Bloom J.J., Hathazi D. “‘Research chemicals’: Tryptamine and Phenethylamine Use Among High Risk Youth,” *Substance Use & Misuse* (2008), Vol. 43, No. 3-4, Pages 389-402, available at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2536767/ (last viewed on March 26, 2015).
[5] A first degree felony is generally punishable by up to 30 years in state prison, a fine of up to $10,000, or both. Sections 775.082 and 775.083, F.S.
[6] Most drug offenses under s. 893.13, F.S., are not subject to mandatory minimum terms.

Statutory Reference	Covered Substance	Threshold Weight	Weight Range Applicable to 3-Year Mandatory Minimum Term
s. 893.13(1)(d), F.S.	Phencyclidine	28 grams	28 grams or more but less than 200 grams
s. 893.13(1)(f), F.S.	Amphetamines	14 grams	14 grams or more but less than 28 grams
s. 893.13(1)(g), F.S.	Flunitrazepam	4 grams	4 grams or more but less than 14 grams
s. 893.13(1)(k), F.S.	Phenethylamines	10 grams	10 grams or more but less 200 grams
s. 893.13(1)(l), F.S.	Lysergic acid diethylamide (LSD)	1 gram	1 gram or more but less than 5 grams

The Criminal Punishment Code and Mandatory Minimum Terms

The Criminal Punishment Code (Code)[7] is Florida's framework or mechanism for determining permissible sentencing ranges for noncapital felonies. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10). Points are assigned and accrue based upon the level ranking (sentence points escalate as the level escalates) assigned to the primary offense, additional offenses, and prior offenses. Points may be added or multiplied for other factors. For example, if the primary offense is drug trafficking, the subtotal sentence points are multiplied by 1.5, at the discretion of the court, for a Level 7 or Level 8 trafficking offense.[8]

Total sentence points are entered into a mathematical calculation (specified in statute) to determine the lowest permissible sentence. The permissible sentencing range for the primary offense is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S., for the primary offense.

The Code includes a list of mitigating factors. Generally, if a mitigating factor is found by the sentencing court, the court may decrease an offender's sentence below the lowest permissible sentence (a "downward departure"). However, a mandatory minimum term is not subject to mitigation.[9]

[7] Sections 921.002-921.0027, F.S.
[8] Section 921.0024(1)(b), F.S.
[9] *See State v. Vanderhoff*, 14 So.3d 1185 (Fla. 5th DCA 2009).

Most of the mandatory minimum terms found in Florida law involve drug trafficking offenses. Mandatory minimum terms impact Code sentencing. "If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence."[10]

A mandatory minimum sentence is often longer than a prison sentence scored as the lowest permissible sentence under the Code, so the sentencing range is narrowed. Further, with few exceptions, the sentencing court must impose the mandatory minimum term.[11]

III. Effect of Proposed Changes:

The bill amends s. 893.135, F.S., to provide that if a defendant is convicted of a violation of this section, the defendant may move the sentencing court to depart from the 3-year mandatory minimum term of imprisonment and mandatory fine that would apply to the conviction absent a departure. The state attorney may file an objection to the motion.

The court may grant the motion if the court finds that the defendant has demonstrated by a preponderance of the evidence[12] that all of the following criteria are met:

- The defendant has not previously moved to depart from a 3-year mandatory minimum term and mandatory fine.
- The defendant's violation of s. 893.135, F.S., would be subject to a 3-year mandatory minimum term and mandatory fine absent a departure.
- The defendant's violation of s. 893.135, F.S., involves possession of one of the following controlled substances (or a mixture that contains the substance) the quantity specified:
  - Not more than 34 grams of cocaine;
  - Not more than 17 grams of hydrocodone;
  - Not more than 8 grams of oxycodone;
  - Not more than 6 grams of a controlled substance described in s. 893.135(1)(c), F.S. (opiates and opioids);[13]
  - Not more than 34 grams of phencyclidine;
  - Not more than 17 grams of amphetamine or methamphetamine;
  - Not more than 6 grams of flunitrazepam;
  - Not more than 20 grams of a phenethylamine described in s. 893.135(1)(k)1., F.S.; or
  - Not more than 2 grams of lysergic acid diethylamide (LSD).

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[10] Rule 3.704(26) ("The Criminal Punishment Code"), Florida Rules of Criminal Procedure.

[11] Staff is aware of two circumstances in which a sentencing court is authorized to impose a sentence below the mandatory minimum term. The first circumstance is when the court sentences a defendant as a youthful offender. Section 958.04, F.S. *See Christian v. State*, 84 So.3d 437 (Fla. 5th DCA 2012). The second circumstance is when the court grants a motion from the state attorney to reduce or suspend a sentence based upon substantial assistance rendered by the defendant. Section 893.135(4), F.S.

[12] "Preponderance of the evidence" is the same level of proof necessary to establish facts supporting the mitigation of a sentence under the Criminal Punishment Code. Section 921.002(1)(f), F.S. Similarly, each of the findings required as the basis for a habitual offender sentence must be found to exist by a preponderance of the evidence. Section 775.084(3)(a)4., F.S.

[13] Hydrocodone and oxycodone are also described in s. 893.135(1)(c), F.S. However, because different quantities are specified for these substance; the specific quantities for these substances would presumably control over the quantity specified for the category of opiates and opioids in s. 893.135(1)(c), F.S. *See* "Technical Deficiencies" section of this analysis.

- The defendant did not possess the controlled substance or mixture containing the controlled substance with the intent to sell, manufacture, or deliver the substance or mixture.
- The defendant did not obtain the controlled substance or mixture containing the controlled substance by using a minor to obtain the substance or mixture.
- In committing the violation of s. 893.135, F.S., the defendant did not possess or threaten to use a firearm or deadly weapon, or threaten to use or use physical force against another person.
- The defendant does not have a previous conviction, adjudication of delinquency, or withhold of adjudication of guilt for:
  - Drug trafficking;
  - Sale, manufacture, or delivery of a controlled substance, or the possession with intent to sell, manufacture, or deliver a controlled substance;
  - Sexual misconduct with an individual with a developmental disability;
  - Sexual misconduct with a patient;
  - Kidnapping, false imprisonment, or luring, if the victim is a minor and the defendant is not the victim's parent or guardian;
  - Human trafficking;
  - Sexual battery;
  - The former offense of procuring a minor for prostitution;
  - The former offense of selling or buying a minor into prostitution;
  - Unlawful sexual activity with a 16 or 17-year-old;
  - A lewd offense committed against certain minors;
  - Video voyeurism;
  - A lewd offense committed against an elderly person or disabled person;
  - An unlawful act relating to sexual performance by a child;
  - An unlawful act relating to providing obscene materials to a minor;
  - An unlawful act relating to computer pornography;
  - Electronic transmission of child pornography;
  - Electronic transmission of materials harmful to a minor;
  - Selling or buying of a minor to promote, etc., sexually explicit conduct by the minor;
  - Sexual misconduct with a forensic client;
  - Sexual misconduct with a juvenile offender; or
  - Any offense similar to an offense previously described which was committed in this state and which has been redesignated from a former statute number to one of the described offenses.
- The defendant is amenable to substance abuse treatment if the court determines that he or she is in need of such treatment.

The court's decision on how to dispose of the motion is completely discretionary. Therefore, the bill does not compel the court to grant the motion to depart even if the court finds that all of the criteria are met.

The bill takes effect on July 1, 2015.

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, which provides the final, official estimate of the prison bed impact, if any, of legislation estimates that the bill will have a negative indeterminate (unquantifiable) prison bed impact.

VI. Technical Deficiencies:

The bill provides that if the drug trafficking offense is trafficking in hydrocodone, the hydrocodone possessed cannot be more than 17 grams. If the drug trafficking offense is trafficking in oxycodone, the oxycodone possessed cannot be more than 8 grams. If the drug trafficking offense is trafficking in a controlled substance described in s. 893.135(1)(c), F.S. (opiates and opioids), the substance possessed cannot be more than 6 grams.

The trafficking provisions relevant to hydrocodone, oxycodone, and a more general category of opiates or opioids are all contained within s. 893.135(1)(c), F.S. (in separate subparagraphs). The sponsor may wish to consider amending line 44 of the bill to read, "<u>described in subparagraph (1)(c)1.;</u>".

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 893.135 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 Joyner

A bill to be entitled

An act relating to controlled substances; amending s. 893.135, F.S.; authorizing a defendant to move to depart from the 3-year mandatory term of imprisonment and from the mandatory fine for a drug trafficking violation involving a specified quantity of a specified controlled substance; authorizing the state attorney to file an objection to the motion; authorizing the sentencing court to grant the motion if the court finds that the defendant has demonstrated by a preponderance of the evidence that specified criteria are met; providing an effective date.

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

Section 1. Present subsection (7) of section 893.135, Florida Statutes, is redesignated as subsection (8), and a new subsection (7) is added to that section, to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(7)(a) If a defendant is convicted of a violation of this section, the defendant may move the sentencing court to depart from the 3-year mandatory minimum term of imprisonment and the mandatory fine that would apply to the conviction absent a departure. The state attorney may file an objection to the motion.

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

1. The defendant has not previously moved to depart from a 3-year mandatory minimum term and mandatory fine pursuant to this subsection.

2. The defendant’s violation of this section would be subject to a 3-year mandatory minimum term and mandatory fine absent a departure.

3. The defendant’s violation of this section involves possession of one of the following controlled substances or a mixture that contains one of the following controlled substances:

a. Not more than 34 grams of cocaine;

b. Not more than 17 grams of hydrocodone;

c. Not more than 8 grams of oxycodone;

d. Not more than 6 grams of any controlled substance as described in paragraph (1)(c);

e. Not more than 34 grams of phencyclidine;

f. Not more than 17 grams of amphetamine or methamphetamine;

g. Not more than 6 grams of flunitrazepam;

h. Not more than 20 grams of a Phenethylamine as described in subparagraph (1)(k)1.; or

i. Not more than 2 grams of lysergic acid diethylamide (LSD).

4. The defendant did not possess the controlled substance or mixture containing the controlled substance with the intent to sell, manufacture, or deliver the substance or mixture.

5. The defendant did not obtain the controlled substance or mixture containing the controlled substance by using a minor to obtain the substance or mixture.

6. In committing the violation of this section, the defendant did not possess or threaten to use a firearm or deadly weapon, or threaten to use or use physical force against another person.

7. The defendant does not have a previous conviction for, does not have an adjudication of delinquency for, or has not had adjudication withheld for a violation of this section.

8. The defendant does not have a previous conviction for, does not have an adjudication of delinquency for, or has not had adjudication withheld for a violation of s. 893.13 which involved the sale, manufacture, or delivery of a controlled substance or the possession with intent to sell, manufacture, or deliver a controlled substance.

9. The defendant does not have a previous conviction for, does not have an adjudication of delinquency for, or has not had adjudication withheld for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction:

a. Section 393.135(2);

b. Section 394.4593(2);

c. Section 787.01, s. 787.02, or s. 787.025(2)(c), if the victim is a minor and the defendant is not the victim’s parent or guardian;

d. Section 787.06(3)(b), (d), (f), or (g);

e. Section 794.011, excluding s. 794.011(10);

f. Section 794.05;

g. Former s. 796.03;

h. Former s. 796.035;

i. Section 800.04;

j. Section 810.145(8);

k. Section 825.1025;

l. Section 827.071;

m. Section 847.0133;

n. Section 847.0135, excluding s. 847.0135(6);

o. Section 847.0137;

p. Section 847.0138;

q. Section 847.0145;

r. Section 916.1075(2);

s. Section 985.701(1); or

t. Any offense similar to those listed in sub-subparagraphs a.-s. which was committed in this state and which has been redesignated from a former statute number to one of those listed in this subparagraph.

10. The defendant is amenable to substance abuse treatment if the court determines that he or she is in need of such treatment.

Section 2. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and Civil Justice, *Vice Chair*
Appropriations
Health Policy
Higher Education
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR ARTHENIA L. JOYNER
Democratic Leader
19th District

January 28, 2015

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

Dear Chairman Evers:

This is to request that Senate Bill 464, Controlled Substances, be placed on the agenda for the Committee on Criminal Justice. Your consideration of this request is greatly appreciated.

Sincerely,

Arthenia L. Joyner

Arthenia L. Joyner
State Senator, District 19

THE FLORIDA SENATE

APPEARANCE RECORD

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

March 30, 2015
Meeting Date

464
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Controlled Substances

Name Nancy Daniels

Job Title Public Defender, 2nd Judicial Circuit

Address 301 South Monroe Street
Street

Tallahassee — Florida — 32301
City — *State* — *Zip*

Phone 850.606.1000

Email nancy.daniels@flpd2.com

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

3/30/15
Meeting Date

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

464
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Sentencing

Name Greg Newburn

Job Title State Policy Director

Address PO Box 142933
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Gainesville FL 32614
City State Zip

Phone 352.682.2542

Email gnewburn@famm.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Families Against Mandatory Minimums

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)

3/30/2014
Meeting Date

464
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Controlled Substances

Name: Jorge Chamizo

Job Title: Attorney

Address: 108 South Monroe Street
Street

Tallahassee, FL 32301
City State Zip

Phone: (850) 681-0024

Email: jorge@flapartners.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing: Fla Association of Criminal Defense Lawyers

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

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 538

INTRODUCER: Criminal Justice Committee and Senator Simmons

SUBJECT: Disclosure of Sexually Explicit Images

DATE: March 31, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	**Fav/CS**
2.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 538 creates the new criminal offense of electronic disclosure of sexually explicit images.

The bill creates a second degree misdemeanor offense for intentionally and knowingly disclosing sexually explicit images of a person to a social networking service or a website, or by means of any other electronic medium with the intent to harass the person if the person depicted in the sexually explicit image did not consent to the disclosure.

The bill enhances the conduct to a first degree misdemeanor if the offender is at least 18 years old and the victim is younger than 16 years old at the time of the offense.

The new offense is added to the list of offenses for which a court must issue a no-contact order to a defendant, which prohibits the defendant from having contact with the victim at the time of sentencing for the duration of the sentence imposed.

The bill clarifies that providers of Internet and storage services, or other information and communication services, such as electronic communications and messaging, are not liable under the provisions of this bill.

II. Present Situation:

Revenge Porn

Publishing a nude or semi-nude photograph or video on the Internet which was originally intended to be kept private between two people has become known as "revenge porn." In many cases, the embarrassing photos or videos are posted on a website that is specifically designed to provide a forum for this activity. These websites generally do not create their own content, but allow persons to post content to the site after the person agrees to certain terms and conditions.[1]

Section 230 of the Communications Decency Act of 1996 protects website hosts from being considered the publisher or speaker of material posted by third parties provided that the material is not illegal, such as child pornography.[2]

Florida law does not specifically prohibit posting pictures of a nude adult person on the Internet for viewing by other adults if the picture was taken with the knowledge and consent of the person. In limited circumstances, victims may seek relief through prosecution under the offense of stalking if they can prove cyberstalking (s. 784.048, F.S.), or extortion (s. 836.05, F.S.). Posting a picture that depicts nudity of a child may be punished as a second-degree felony or a third-degree felony under chs. 827 (Abuse of Children) or 847 (Obscenity), F.S. Section 817.568(4), F.S., makes it a first degree misdemeanor for a person without consent to use another person's personal identification information to harass that person.[3] However, victims of unauthorized web postings typically have no recourse in the state.

New Jersey was the first state to respond to "revenge porn" with legislation in 2004. The New Jersey Legislature made it a felony for any person to knowingly disclose or cause the disclosure[4] of any photograph or video recording of himself or herself engaging in sexual activity with another person without the express consent of the other person.[5] Since 2013, at least 13 states have enacted revenge porn laws.[6]

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[1] The website host typically derives profit from advertising revenue and, in some cases, from charging a fee to remove the offending material.

[2] The relevant portion of the Act provides: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. 230(c)(1).

[3] Section 817.568(1)(f), F.S., defines "personal identification information" as "any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including … name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, governmental passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer; … unique biometric data; … unique electronic identification number; … medical records; … telecommunication identifying information or access device; or other number or information that can be used to access a person' financial resources."

[4] Disclose is defined to mean sell, manufacture, give, provide, lend trade, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, advertise or offer. N.J. STAT. ANN. § 2C:14-9(2004).

[5] *Id.*

[6] As of March 2, 2014, the National Conference of State Legislatures reported that Arizona, California, Colorado, Delaware, Georgia, Hawaii, Idaho, Illinois, Maryland, Pennsylvania, Utah, Virginia, and Wisconsin had passed revenge porn laws. 2015 State Revenge Porn Legislation (Information provided from National Conference of State Legislatures (NCSL) March 2, 2015.)

Criminal Penalties

A second degree misdemeanor is punishable by up to 60 days in jail and up to a $500 fine. A first degree misdemeanor is punishable by up to a year in jail and up to a $1,000 fine.

No Contact Orders

In addition to authority provided to the court to prevent an offender from having contact with a victim, s. 921.244, F.S., specifically requires the court to enter an order of no contact when an offender has committed:

- Sexual battery (s. 794.011, F.S.);
- A lewd or lascivious offense on a victim under the age of 16 (s. 800.04, F.S.);
- Specific acts of computer pornography when the offender knows or should know that a victim under the age of 16 has viewed the transmission (s. 847.0135(5), F.S.); or
- An offense for which the offender qualifies for sentencing as a violent career criminal, a habitual felony offender, a habitual violent felony offender, or a three-time violent felony offender (s. 775.084, F.S.).

Telecommunications

Interactive Computer Service (47 U.S.C. s. 230(f))

The term "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a service or system that provides access to the Internet and systems operated or services offered by libraries or educational institutions.

Information Service (47 U.S.C. s. 153 (24))

The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, including electronic publishing. An information service does not include the use of any capability for management, control, or operation of a telecommunications system or the management of a telecommunications service.

Communications Services (Section 202.11, F.S.)

"Communications services" means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services to a point or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method, regardless of the protocol used for transmission or conveyance. The term includes transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing irrespective of whether the service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include:

- Information services.
- Installation or maintenance of wiring or equipment on a customer's premises.
- The sale or rental of tangible personal property.

- The sale of advertising, including, but not limited to, directory advertising.
- Bad check charges.
- Late payment charges.
- Billing and collection services.
- Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services.

III. Effect of Proposed Changes:

The bill creates s. 847.0136, F.S., to specifically address the non-consensual transmission or posting of sexually explicit images to social networking services or a website, or by means of any other electronic medium. Currently, it may be possible to prosecute such behavior under s. 817.568(4), F.S., as a first degree misdemeanor for harassment by use of personal identification information. If supported by additional facts, such actions might also be prosecuted as a felony if it includes the elements of crimes such as stalking (s. 784.048, F.S.), extortion (s. 836.05, F.S.), or an offense against a child under chs. 827 or 847, F.S.

Under the bill, a person may not disclose a sexually explicit image[7] of an identifiable person[8] to a social networking website or by means of another electronic medium if the disclosure is:

- Made without the person's consent;
- Knowing and intentional; and
- Made with the intent to harass the person.

A person who makes the disclosure commits a second degree misdemeanor. The bill enhances the conduct to a first degree misdemeanor if the offender was 18 years or older and the victim was younger than 16 years of age. The bill also provides that a violation is considered to take place in this state if any conduct that is an element of the offense or any harm to the identifiable person resulting from the offense occurs within this state.

The bill also adds the new offense to the list of offenses for which a court must issue a no-contact order to a defendant pursuant to s. 921.244, F.S.

The bill does not apply to disclosure of sexually explicit images for:

- Reporting, investigation, and prosecution of an alleged crime for law enforcement purposes; or
- Voluntary and consensual purposes in public or commercial settings.

Providers of Internet and storage services, or other information and communication services, such as electronic communications and messaging, are not liable under the provisions of this bill.

The bill takes effect October 1, 2015.

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[7] "Sexually explicit image" is defined in the bill as a private photograph, film, videotape, recording or other reproduction of nudity or sexual intercourse, including but not limited to, oral or anal sexual intercourse.

[8] "Identifiable person" is defined in the bill as an individual in a sexually explicit image who can be identified through visual recognition of any part of his or her body depicted in the image or identifying information as defined in s. 397.311(13), F.S. (name, address, social security number, fingerprints, photograph, and other similar information), which accompanies or is associated with the image.

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:

To date, no First Amendment challenges to statutes prohibiting the conduct of "revenge porn" have been made at the appellate level. Should this bill become law, the potential exists for a First Amendment challenge. However, appellate courts have upheld the prosecution of individuals under anti-harassment and anti-stalking laws for distributing sexually explicit images or sending harassing messages.[9] Additionally, the United States Supreme Court has ruled that the First Amendment does not attach to the dissemination of child pornography.[10] As such, a defendant would not be successful in asserting a first amendment challenge for disseminating sexually explicit images of children.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) reviewed the identical bill in the House, HB 151. CJIC found that HB 151 will have a positive insignificant impact.

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[9] A court upheld an anti-stalking act's anti-harassment provision in the prosecution of a defendant who distributed a sex video of the victim in addition to other prohibited conduct (State v. Bradford, 175 Wash.App. 912, 917 (2013)). A court upheld an anti-stalking statute on the basis that the statute regulated conduct, not speech, and prosecution was proper of a defendant who established a pattern of engaging in intimidating text messages, phone calls, and emails to the victim. Here, the court held "Such intimidating conduct serves no legitimate purpose and merits no First Amendment protection." (State v. Hemingway, Wis.2d 297, 304-305, 310 (2012)).

[10] New York v. Ferber, 458 U.S. 747, 756-757 (1982). In Ferber, the court upheld as legitimate the state interest in protecting the physical and psychological well-being of children. Id. at 756, 761.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 921.244 of the Florida Statutes.

This bill creates section 847.0136 of the Florida Statutes.

This bill reenacts section 784.048 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 30, 2015:

- Changes the penalty from a third degree felony to second degree misdemeanor for intentionally and knowingly disclosing sexually explicit images of a person to a social networking service or a website, or by means of any other electronic medium with the intent to harass the person.
- Changes the penalty from a second degree felony to a first degree misdemeanor if the offender was 18 years of age or older and the victim was younger than 16 years of age.

B. Amendments:

None.

595288

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2015	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 58 - 63
and insert:
who violates this section commits a 2nd degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083.

(b) An individual who is 18 years of age or older at the time he or she violates this section commits a 1st degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, if the violation involves a sexually explicit

By Senator Simmons

10-00340A-15 2015538__

A bill to be entitled

An act relating to the disclosure of sexually explicit images; creating s. 847.0136, F.S.; providing definitions; prohibiting an individual from electronically disclosing a sexually explicit image of an identifiable person with the intent to harass such person if the individual knows or should have known that such person did not consent to the disclosure; providing criminal penalties; providing for jurisdiction; providing exceptions; exempting providers of specified services; amending s. 921.244, F.S.; requiring a court to order that a person convicted of such offense be prohibited from having contact with the victim; providing criminal penalties for a violation of such order; providing that criminal penalties for certain offenses run consecutively with a sentence imposed for a violation of s. 847.0136, F.S.; reenacting s. 784.048(7), F.S., to incorporate the amendment made to s. 921.244, F.S., in a reference thereto; providing an effective date.

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

Section 1. Section 847.0136, Florida Statutes, is created to read:

847.0136 Prohibited electronic disclosure of sexually explicit images; penalties; jurisdiction.—

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

(a) “Disclose” means to publish, post, distribute, exhibit,

10-00340A-15 2015538__

advertise, offer, or transfer, or cause to be published, posted, distributed, exhibited, advertised, offered, or transferred.

(b) “Harass” means to engage in conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.

(c) “Identifiable person” means an individual in a sexually explicit image who can be identified through:

1. Recognition of his or her face as depicted in the sexually explicit image; or

2. Personal identification information that accompanies or is associated with the sexually explicit image.

(d) “Personal identification information” has the same meaning as provided in s. 817.568.

(e) “Sexually explicit image” means a private photograph, film, videotape, recording, or other reproduction of:

1. Nudity; or

2. Sexual intercourse, including, but not limited to, oral sexual intercourse or anal sexual intercourse.

(2) An individual may not intentionally and knowingly disclose a sexually explicit image of an identifiable person or that contains descriptive information in a form that conveys the personal identification information of the person to a social networking service or a website, or by means of any other electronic medium, with the intent to harass such person, if the individual knows or should have known that the person depicted in the sexually explicit image did not consent to such disclosure.

(3)(a) Except as provided in paragraph (b), an individual who violates this section commits a felony of the third degree, 10-00340A-15 2015538__

punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) An individual who is 18 years of age or older at the time he or she violates this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the violation involves a sexually explicit image of an individual who was younger than 16 years of age at the time the sexually explicit image was created.

(4) A violation of this section is committed within this state if any conduct that is an element of the offense described in subsection (2), or any harm to the identifiable person resulting from the offense described in subsection (2), occurs within this state.

(5) This section does not apply to the disclosure of a sexually explicit image for:

(a) The reporting, investigation, and prosecution of an alleged crime for law enforcement purposes.

(b) Voluntary and consensual purposes in public or commercial settings.

(6) This section does not impose liability on a provider of an interactive computer service as defined in 47 U.S.C. s. 230(f), an information service as defined in 47 U.S.C. s. 153, or communications services as defined in s. 202.11, for:

(a) The transmission, storage, or caching of electronic communications or messages of other persons;

(b) Other related telecommunications or commercial mobile radio service; or

(c) Content provided by another person.

Section 2. Section 921.244, Florida Statutes, is amended to read:

921.244 Order of no contact; penalties.—

(1) At the time of sentencing an offender convicted of a violation of s. 794.011, s. 800.04, s. 847.0135(5), s. 847.0136, or any offense in s. 775.084(1)(b)1.a.-o., the court shall order that the offender be prohibited from having any contact with the victim, directly or indirectly, including through a third person, for the duration of the sentence imposed. The court may reconsider the order upon the request of the victim if the request is made at any time after the victim has attained 18 years of age. In considering the request, the court shall conduct an evidentiary hearing to determine whether a change of circumstances has occurred which warrants a change in the court order prohibiting contact and whether it is in the best interest of the victim that the court order be modified or rescinded.

(2) An ~~Any~~ offender who violates a court order issued under this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) The punishment imposed under this section shall run consecutive to any former sentence imposed for a conviction for any offense under s. 794.011, s. 800.04, s. 847.0135(5), s. 847.0136, or any offense in s. 775.084(1)(b)1.a.-o.

Section 3. Subsection (7) of s. 784.048, Florida Statutes, is reenacted for the purpose of incorporating the amendment made by this act to s. 921.244, Florida Statutes, in a reference thereto.

Section 4. This act shall take effect October 1, 2015.

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

The Florida Senate

Committee Agenda Request

To: Senator Greg Evers, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 5, 2015

I respectfully request that **538**, relating to Disclosure of Sexually Explicit Images, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 10

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-30-15
Meeting Date

538
Bill Number (if applicable)

595288
Amendment Barcode (if applicable)

Topic Sexually Explicit Images

Name Samantha Sexton

Job Title Associate Director of Government Affairs

Address One West Adams Street, Suite 301
Street

Phone (904) 383-9403

Jacksonville FL 32202
City *State* *Zip*

Email Samantha.sexton@pacecenter.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing PACE Center for Girls

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)

3-30-15
Meeting Date

538
Bill Number (if applicable)

Topic ______

Amendment Barcode (if applicable) ______

Name Matt Dunagan

Job Title Assistant Executive Director

Address 2617 Mahan Drive
Street

Phone 850 274 3599

Tallahassee FL 32308
City State Zip

Email ______

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

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

Representing Florida Sheriffs Association

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

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

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

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)

3.30.15
Meeting Date

SB 538
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Sexually Explicit Images

Name Barney Bishop III

Job Title Pres & CEO

Address 204 S. Monroe
Street

Tall FL 32301
City State Zip

Phone 577-3032

Email barney@smartjusticealliance.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/30/15
Meeting Date

538
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Sexually Explicit Images

Name Samantha Sexton

Job Title Associate Director of Gov. Affairs

Address One West Adams St #301
Street

Jacksonville Fl 32202
City State Zip

Phone 904-383-9408

Email samantha.sexton@pacecenter.org

Speaking: [ ] For [ ] Against [ ] Information

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

Representing

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/30/15
Meeting Date

538
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Sexually Explicit Images

Name Jennifer Dritt

Job Title Executive Director

Address 1820 E. Park Ave Suite 100
Street

Tallahassee FL 32301
City State Zip

Phone 850-297-2000

Email jdritt@fcasv.org

Speaking: [x] For [ ] Against [ ] Information

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

Representing Florida Council Against Sexual Violence

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

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

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

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

S-001 (10/14/1

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 732

INTRODUCER: Senator Abruzzo

SUBJECT: Sentencing/Restitution

DATE: March 27, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	**Favorable**
2.			JU	
3.			FP	

I. Summary:

SB 732 amends the definition of "victim" in s. 775.089(1)(c), F.S., to clarify that it includes governmental entities and political subdivisions when such entities are a direct victim of the defendant's offense or criminal episode and are not merely providing public services in response to the offense or criminal episode.

The bill also requires a judge to order a person convicted of any offense relating to bribery and misuse of public office in ch. 838, F.S., or of any offense by public officers and employees in ch. 839, F.S., to make restitution to the victim and perform 250 hours of community service work. Restitution will be ordered if the judge finds that the victim suffered an actual financial loss caused directly or indirectly by the person's offense or an actual financial loss related to the person's criminal episode.

II. Present Situation:

Restitution

Section 775.089, F.S., requires a judge to order a defendant convicted of any criminal offense to make monetary or non-monetary restitution to a 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. Restitution must be ordered unless the judge finds clear and compelling reasons not to do so.[1] The trial court must first conduct a restitution hearing to determine by competent evidence the amount owed to the victim and the defendant's ability to pay.[2]

Currently, the restitution statute defines "victim," in part, as "each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the

[1] Section 775.089, F.S.

[2] *Exilorme v. State*, 857 So.2d 339 (Fla. 2d DCA 2003) and *Graham v. State*, 720 So.2d 294 (Fla. 5th DCA 1998).

defendant's offense or criminal episode."[3] It does not define the word "person." Person, however, is defined in s. 1.01(3), F.S., to include "individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations." Read together, it appears that governmental entities and political subdivisions could be "victims" for purposes of restitution. However, several of Florida's district courts of appeal are somewhat split on the issue.

Some district courts of appeal have held that governmental entities are barred from obtaining an order of restitution because they are not considered "victims" for purposes of restitution.[4] It appears that these holdings resulted from restitution being ordered in favor of these entities for conducting investigations or performing other public services that were within the normal scope of their duties as an entity, agency, or subdivision, rather than for actual damages suffered.[5]

Other district courts of appeal have held that governmental entities are "victims" for losses other than investigative costs, such as travel expenses incurred for trial, when the losses are a direct result of the defendant's criminal episode.[6] In *Childers v. State*, the First District Court held that because the definition of "person" included a list of individuals and entities, the Legislature did not intend the list to be limiting and exclusive, but rather illustrative.[7]

Offenses by Public Officials

Chapter 838, F.S., relating to bribery and misuse of public office, and ch. 839, F.S., relating to offenses by public officers and employees, create numerous criminal offenses involving public officials or employees and the performance of their official duties. Chapter 838, F.S., provides felony penalties for the following offenses:

- Bribery involving a public servant;[8]
- Unlawful compensation or reward for official behavior;[9]
- Corruption by threat against a public servant;[10]
- Official misconduct;[11]
- Bribery in athletic contests;[12]
- Soliciting, accepting, or agreeing to accept a commercial bribe;[13]
- Conferring, offering to confer, or agreeing to offer a commercial bribe;[14]

---

[3] The definition also includes the victim's estate if the victim is deceased, the victim's next of kin if the victim is deceased as a result of the offense, as well as the victim's trade association if the offense is a violation of s. 540.11(3)(a)3., F.S., involving the sale, or possession for purposes of sale, of physical articles and the victim has granted the trade association written authorization to represent the victim's interests in criminal legal proceedings and to collect restitution on the victim's behalf.
[4] *See Sims v. State*, 746 So.2d 546 (Fla. 2d DCA 1999); *Bain v. State*, 559 So.2d 106 (Fla. 4th DCA 1990); *T.H. Taylor v. State*, 672 So.2d 605 (Fla. 4th DCA 1996); and *Rodriguez v. State*, 691 So.2d 568 (Fla. 2d DCA 1997).
[5] *Id*.
[6] *Smith v. State*, 801 So.2d 1043 (Fla. 5th DCA 2001); *Childers v. State*, 936 So.2d 585 (Fla. 1st DCA 2006).
[7] *Childers*, at 597.
[8] Section 838.015, F.S., second degree felony offense.
[9] Section 838.016, F.S., second degree felony offense.
[10] Section 838.021, F.S., second and third degree felony offenses.
[11] Section 838.022, F.S., third degree felony offense.
[12] Section 838.12, F.S., third degree felony offenses.
[13] Section 838.15, F.S., third degree felony offense.
[14] Section 838.16, F.S., third degree felony offense.

- Disclosure or use of confidential criminal justice information;[15] and
- Bid tampering.[16]

Chapter 839, F.S., provides misdemeanor and felony penalties for the following offenses:

- County officers speculating in county warrants or certificates;[17]
- Municipal officers speculating in municipal scrip;[18]
- Tax collectors buying or receiving a lesser than face value amount of warrant or order;[19]
- Extortion by officers of the state;[20]
- Clerk of court, sheriff, or county judge failing to keep records of costs;[21]
- Public official or employee falsifying records;[22]
- Officer withholding records from successor;[23]
- Judicial officer withholding records;[24]
- Fraud of clerk in drawing a jury;[25]
- Misappropriation of moneys by commissioners to make sales;[26]
- Officer assuming to perform duties of office prior to qualification;[27]
- Sheriff or officer willfully or corruptly refusing or neglecting to execute process;[28]
- Officer refusing to execute criminal process;[29]
- Jailer or officer refusing to receive prisoner;[30]
- Officer taking insufficient bail;[31]
- Willful failure of officer to perform any duty required under criminal procedure law;[32] and
- Misuse of confidential information.[33]

As previously discussed, restitution is generally ordered under s. 775.089, F.S. However, some criminal statutes contain restitution and community service provisions that are specific to those particular offenses.[34] Chapters 838 and 839, F.S., do not currently have such specific restitution or community service provisions.

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[15] Section 838.21, F.S., third degree felony offense.
[16] Section 838.22, F.S., second degree felony offense.
[17] Section 839.04, F.S., second degree misdemeanor offense.
[18] Section 839.05, F.S., second degree misdemeanor offense.
[19] Section 839.06, F.S., first degree misdemeanor offense.
[20] Section 839.11, F.S., first degree misdemeanor offense.
[21] Section 839.12, F.S., second degree misdemeanor offense.
[22] Section 839.13, F.S., second degree felony, third degree felony, and first degree misdemeanor offenses.
[23] Section 839.14, F.S., second degree misdemeanor offense.
[24] Section 839.15, F.S., first degree misdemeanor offense.
[25] Section 839.16, F.S., second degree misdemeanor offense.
[26] Section 839.17, F.S., second degree felony offense.
[27] Section 839.18, F.S., second degree misdemeanor offense.
[28] Section 839.19, F.S., first degree misdemeanor offense.
[29] Section 839.20, F.S., first degree misdemeanor offense.
[30] Section 839.21, F.S., first degree misdemeanor offense.
[31] Section 839.23, F.S., second degree misdemeanor offense.
[32] Section 839.24, F.S., second degree misdemeanor offense.
[33] Section 839.26, F.S., first degree misdemeanor offense.
[34] Some examples of the statutes which include specified restitution provisions include: s. 267.13, F.S., relating to prohibition on unauthorized archeological excavation (provides a specified definition of restitution); s. 784.08, F.S., relating to assault or battery of a person 65 years or older (defendant shall be fined not more than $10,000, ordered to pay restitution, and perform up to 500 hours of community service); s. 812.0145, F.S., relating to theft from a person 65 years or older (defendant shall be

III. Effect of Proposed Changes:

Restitution

The bill amends the definition of "victim" in s. 775.089(1)(c), F.S., to clarify that it includes governmental entities and political subdivisions when such entities are a direct victim of the defendant's offense or criminal episode and are not merely providing public services in response to the offense or criminal episode. ("Governmental entities" and "political subdivisions" are defined under the bill as they are currently defined in s. 11.45, F.S.[35])

Offenses by Public Officials

The bill creates ss. 838.23 and 839.27, F.S., to require a judge to order a person convicted of any offense in chs. 838 or 839, F.S., to make restitution to the victim and perform 250 hours of community service work. Restitution will be ordered if the judge finds that the victim suffered an actual financial loss caused directly or indirectly by the person's offense or an actual financial loss related to the person's criminal episode.

These conditions of restitution and community service work are in addition to any fine or sentence that may be imposed and they may not be substituted for such fine or sentence under the bill.

The effective date of the bill is October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

ordered to pay restitution and perform up to 500 hours of community service); and s. 817.568, F.S., relating to criminal use of personal identification (provides a specified definition of restitution).

[35] "Governmental entity" means a state agency, county agency, or any other entity, however styled, that independently exercises any type of state or local governmental function. "Political subdivision" means a separate agency or unit of local government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, city, commission, consolidated government, county, department, district, institution, metropolitan government, municipality, office, officer, public corporation, town, or village.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

State and local governmental entities will now be able to recover restitution under the bill, resulting in a positive fiscal impact.

According to the Department of Corrections (DOC), the bill's new requirement that an offender perform 250 hours of community service work could be enforced by a DOC probation officer as part of the probationer's reporting requirements if the offender is sentenced to community supervision with the special condition imposed to complete 250 community service hours. Any fiscal impact to the department as a result of this new requirement is indeterminate at this time. (In FY 2013-14, there were 64 offenders sentenced to community supervision for violations of chs. 838 and 839, F.S.)[36]

This requirement could also be enforced by a DOC probation officer on an offender who is released from prison to post release supervision if a special condition is imposed and the length of supervision is long enough for the offender to complete the mandated hours. According to the department, any fiscal impact as a result of this new requirement is also indeterminate at this time. (In FY 2013-14 there were 13 offenders sentenced to state prison for a violation of chs. 838 and 839, F.S.)[37]

The bill's restitution and community service requirements may have a negative fiscal impact on local governments that will now be required to supervise the community service hours and restitution payments. (In FY 2013-14, there were 77 offenders sentenced statewide for a violation of chs. 838 and 839, F.S.)[38]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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[36] Department of Corrections, *2015 Bill Analysis for HB115* (2015) (on file with the Senate Criminal Justice Committee). (HB 115 is the identical companion to SB 732.)
[37] *Id.*
[38] *Id.*

VIII. Statutes Affected:

This bill substantially amends section 775.089 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 838.23 and 839.27.

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 Abruzzo

A bill to be entitled

An act relating to sentencing; amending s. 775.089, F.S.; revising the definition of the term “victim” to include governmental entities and political subdivisions in certain instances; creating ss. 838.23 and 839.27, F.S.; requiring the sentencing judge to order restitution and a specified number of community service work hours for violations of chapter 838, F.S., relating to bribery and misuse of public office, or chapter 839, F.S., relating to offenses by public officers and employees; providing an effective date.

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

Section 1. Paragraph (c) of subsection (1) of section 775.089, Florida Statutes, is amended to read:

775.089 Restitution.—

(1)

(c) The term “victim” as used in this section and in any provision of law relating to restitution means:

1. Each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant’s offense or criminal episode, and also includes the victim’s estate if the victim is deceased, and the victim’s next of kin if the victim is deceased as a result of the offense. The term includes governmental entities and political subdivisions, as those terms are defined in s. 11.45, when such entities are a direct victim of the defendant’s offense or criminal episode and not merely providing public

services in response to the offense or criminal episode.~~,~~

2. The term also includes ~~and~~ the victim’s trade association if the offense is a violation of s. 540.11(3)(a)3. involving the sale, or possession for purposes of sale, of physical articles and the victim has granted the trade association written authorization to represent the victim’s interests in criminal legal proceedings and to collect restitution on the victim’s behalf. The restitution obligation in this subparagraph ~~paragraph~~ relating to violations of s. 540.11(3)(a)3. applies only to physical articles and does not apply to electronic articles or digital files that are distributed or made available online. As used in this subparagraph ~~paragraph~~, the term “trade association” means an organization founded and funded by businesses that operate in a specific industry to protect their collective interests.

Section 2. Section 838.23, Florida Statutes, is created to read:

838.23 Restitution and community service.—A person who is convicted of any offense in this chapter shall be ordered by the sentencing judge to make restitution to the victim of the offense if, after conducting a hearing, the judge finds that the victim suffered an actual financial loss caused directly or indirectly by the person’s offense or an actual financial loss related to the person’s criminal episode. A person who is convicted of any offense in this chapter shall also be ordered to perform 250 hours of community service work. Restitution and community service work shall be in addition to any fine or sentence that may be imposed and may not be in lieu thereof.

Section 3. Section 839.27, Florida Statutes, is created to read:

839.27 Restitution and community service.—A person who is convicted of any offense in this chapter shall be ordered by the sentencing judge to make restitution to the victim of the offense if, after conducting a hearing, the judge finds that the victim suffered an actual financial loss caused directly or indirectly by the person’s offense or an actual financial loss related to the person’s criminal episode. A person who is convicted of any offense in this chapter shall also be ordered to perform 250 hours of community service work. Restitution and community service work shall be in addition to any fine or sentence that may be imposed and may not be in lieu thereof.

Section 4. This act shall take effect October 1, 2015.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Communications, Energy, and Public Utilities
Community Affairs
Fiscal Policy
Regulated Industries

JOINT COMMITTEE:
Joint Legislative Auditing Committee, *Chair*

SENATOR JOSEPH ABRUZZO
Minority Whip
25th District

February 17th, 2015

The Honorable Greg Evers
316 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Evers:

I respectfully request that Senate Bill 732, Sentencing, be considered for placement on the Criminal Justice committee agenda. This legislation will revise the definition of "victim" to include governmental entities and political subdivisions for restitution purposes.

Thank you in advance for your consideration. Please feel free to notify me if I can provide you with any additional information.

Sincerely,

Joseph Abruzzo

Cc: Amanda Cannon, Staff Director

REPLY TO:
- ❐ 12300 Forest Hill Boulevard, Suite 200, Wellington, Florida 33414-5785 (561) 791-4774 FAX: (888) 284-6495
- ❐ 110 Dr. Martin Luther King, Jr. Boulevard, Belle Glade, Florida 33430-3900 (561) 829-1410
- ❐ 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: *www.flsenate.gov*

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 804

INTRODUCER: Senator Abruzzo

SUBJECT: Violation of an Injunction for Protection Against Domestic Violence

DATE: March 27, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	**Favorable**
2.			ACJ	
3.			FP	

I. Summary:

SB 804 amends s. 741.31(4), F.S., increasing the penalty for third or subsequent violations of an injunction for protection to a third degree felony if a person has two or more prior convictions for the same offense.

The bill defines "conviction" to mean a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

II. Present Situation:

Injunctions for Protection against Domestic Violence

Any person who is the victim of domestic violence[1] or who reasonably believes that he or she is in imminent danger of becoming the victim of domestic violence may file a petition for an injunction for protection against domestic violence.[2] The sworn petition must allege the existence of domestic violence and include specific facts and circumstances upon which relief is sought.[3] A hearing must be set at the earliest possible time after a petition is filed and the respondent must be personally served with a copy of the petition.[4] At the hearing, specified injunctive relief may be granted if the court finds that the petitioner is:

- The victim of domestic violence; or

[1] Section 741.28, 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.

[2] Section 741.30(1), F.S.

[3] Section 741.30(3), F.S.

[4] Section 741.30(4), F.S.

- Has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence.[5]

If it appears to the court that an immediate and present danger of domestic violence exists when the petition is filed, the court may grant a temporary injunction ex parte.[6] Temporary injunctions are only effective for a fixed period that cannot exceed 15 days.[7] The hearing on the petition must be set for a date on or before the date when the temporary injunction expires.[8]

Violation of an Injunction

A respondent violates the terms of an injunction for protection against domestic violence issued pursuant to s. 741.30, F.S., or a foreign protection order accorded full faith and credit pursuant to s. 741.315, F.S., by:

- Refusing to vacate the dwelling that the parties share;
- Going to, or is within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
- Committing an act of domestic violence against the petitioner;
- Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;
- Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party;
- Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- Defacing or destroying the petitioner's personal property, including the petitioner's car; or
- Refusing to surrender firearms or ammunition if ordered to do so by the court.[9]

A court can enforce a violation of an injunction for protection through civil or criminal contempt proceedings, or the state attorney may prosecute the violation as a first degree misdemeanor.[10]

Currently, violating an injunction for protection is a first degree misdemeanor, regardless of how many times a person is convicted of this offense.[11]

---

[5] Either party may move the court to modify or dissolve an injunction at any time. s. 741.30(6)(c) and (10), F.S.
[6] Pursuant to s. 741.30(5), F.S., the court may grant such relief as it deems proper, including an injunction restraining the respondent from committing any acts of domestic violence, awarding to the petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner, and providing the petitioner a temporary parenting plan.
[7] Section 741.30(5)(c), F.S.
[8] Pursuant to s. 741.30(5)(c), F.S., the court may grant a continuance of the hearing for good cause, which may include obtaining service of process. A temporary injunction must be extended, if necessary, during any period of continuance.
[9] Sections 741.31(4)(a), 784.047, and 784.0487, F.S.
[10] A first degree misdemeanor is punishable by up to one year in county jail and a $1,000 fine. See ss. 775.082, and 775.083, F.S.
[11] Section 741.30, F.S.

III. Effect of Proposed Changes:

The bill amends s. 741.31(4), F.S., increasing the penalty for third or subsequent violations of an injunction for protection to a third degree felony if a person has two or more prior convictions for the same offense.

The bill defines "conviction" to mean a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

The bill provides an effective date of October 1, 2015.

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 met on March 11, 2015, and gave a recommended estimate of positive indeterminate. FDLE reported that in FY 13-14, there were 183 guilty/convicted counts and 6 adjudication withheld counts for repeat offenders violating s. 741.31, F.S. It is unknown what number of these repeat offenses were third or subsequent violations. In FY 13-14, the incarceration rate for unranked 3rd degree felonies was 9.7 percent.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 741.31 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 Abruzzo

A bill to be entitled

An act relating to violation of an injunction for protection against domestic violence; amending s. 741.31, F.S.; providing enhanced criminal penalties for a third or subsequent violation of an injunction for protection against domestic violence or a foreign protection order issued under specified provisions; providing an effective date.

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

Section 1. Subsection (4) of section 741.31, Florida Statutes, is amended to read:

741.31 Violation of an injunction for protection against domestic violence.—

(4)(a) A person who willfully violates an injunction for protection against domestic violence issued pursuant to s. 741.30, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, by:

1. Refusing to vacate the dwelling that the parties share;

2. Going to, or being within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;

3. Committing an act of domestic violence against the petitioner;

4. Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;

5. Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party;

6. Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;

7. Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle; or

8. Refusing to surrender firearms or ammunition if ordered to do so by the court

commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, except as provided in paragraph (c).

(b)1. It is a violation of s. 790.233, and a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for a person to violate a final injunction for protection against domestic violence by having in his or her care, custody, possession, or control any firearm or ammunition.

2. It is the intent of the Legislature that the disabilities regarding possession of firearms and ammunition are consistent with federal law. Accordingly, this paragraph shall not apply to a state or local officer as defined in s. 943.10(14), holding an active certification, who receives or possesses a firearm or ammunition for use in performing official duties on behalf of the officer's employing agency, unless otherwise prohibited by the employing agency.

(c) A person who has two or more prior convictions for violation of an injunction and who commits any third or subsequent violation commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of this paragraph, the term “conviction” means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

Section 2. This act shall take effect October 1, 2015.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Communications, Energy, and Public Utilities
Community Affairs
Fiscal Policy
Regulated Industries

JOINT COMMITTEE:
Joint Legislative Auditing Committee, *Chair*

SENATOR JOSEPH ABRUZZO
Minority Whip
25th District

February 17th, 2015

The Honorable Greg Evers
316 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Evers:

I respectfully request that Senate Bill 804, Violation of an Injunction for Protection Against Domestic Violence, be considered for placement on the Criminal Justice Committee agenda. This piece of legislation provides enhanced criminal penalties for a third or subsequent violation of an injunction for protection against domestic violence.

Thank you in advance for your consideration. Please feel free to notify me if I can provide you with any additional information.

Sincerely,

Joseph Abruzzo

Cc: Amanda Cannon, Staff Director

REPLY TO:
- 12300 Forest Hill Boulevard, Suite 200, Wellington, Florida 33414-5785 (561) 791-4774 FAX: (888) 284-6495
- 110 Dr. Martin Luther King, Jr. Boulevard, Belle Glade, Florida 33430-3900 (561) 829-1410
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Senate's Website: *www.flsenate.gov*

THE FLORIDA SENATE

APPEARANCE RECORD

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

3·30·15
Meeting Date

SB 804
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Domestic Violence - Injunction

Name Barney Bishop III

Job Title Pres & CEO

Address 204 S. Monroe
Street

Tall — FL — 32301
City — State — Zip

Phone 577·3032

Email barney@smartjusticealliance.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

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 902

INTRODUCER: Senator Clemens

SUBJECT: Hemp Production

DATE: March 27, 2015 REVISED: 03/30/15

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Becker	Becker	AG	**Favorable**
2.	Erickson	Cannon	CJ	**Favorable**
3.			RI	
4.			AP	

I. Summary:

SB 902 creates the Hemp Industry Development Act, which proposes a means whereby hemp can be legally grown as an agricultural crop in Florida. The bill defines "hemp," provides findings and legislative intent relevant to its use as an agricultural crop, and provides that, upon meeting specified requirements, an individual in this state may plant, grow, or harvest hemp.

The bill requires an individual who intends to grow hemp to register with the Department of Agriculture and Consumer Services (department) and establishes the requirements and procedures for doing so. The bill also requires the department to adopt rules that include testing and inspection of hemp and assessment of a fee commensurate with the department's costs for testing and inspection. The bill also provides affirmative defenses to *Cannabis*-related criminal charges or prosecutions.

II. Present Situation:

It is estimated that hemp has been grown for at least 12,000 years for textiles, paper, and food.[1] Industrial hemp and marijuana are both classified as *Cannabis sativa*, but industrial hemp is bred to maximize fiber and seed/oil, while marijuana is bred to maximize delta-9 tetrahydrocannabinol (THC). Industrial hemp has a THC content of between 0.05-1 percent and marijuana has a THC content of 3-20 percent.[2]

[1] North American Industrial Hemp Council, Inc., *Hemp Facts*, http://naihc.org/hemp_information/hemp_facts.html (last viewed on March 24, 2015).

[22] *Id.*

Chapter 893, F.S., designates *Cannabis* plants and the THC as Schedule I substances.[3] These are illegal to possess in Florida,[4] aside from a low-THC strain for medical use.[5]

The 2014 Farm Bill included a provision that would allow institutions of higher education and state departments of agriculture to grow or cultivate industrial hemp.[6] As of September 2014, nineteen states had laws to provide for hemp pilot studies and/or for production.[7]

III. Effect of Proposed Changes:

Section 1 cites this act as the "Hemp Industry Development Act."

Section 2 creates s. 581.301, F.S., which defines "hemp" as all parts of any plant of the genus *Cannabis* containing no more than 0.3 percent delta-9 tetrahydrocannabinol. The bill states that hemp is considered an agricultural crop in Florida and that hemp produces a viable, environmentally sound crop. The bill further states the Legislature intends to promote economic development and job growth through the cultivation, processing, distribution, manufacturing, and sale of hemp.

The bill creates procedures for individuals intending to grow hemp to register with the Department of Agriculture and Consumer Services (department). The individual must submit a form to the department with the name and address of the individual, a statement that the seeds obtained for planting meet the requirements set forth in the bill, and the location and acreage of all parcels sown with hemp. An individual registered with the department must allow hemp crops to be inspected and tested by and at the discretion of the department at all stages of hemp production and distribution. The bill authorizes the department to assess an annual registration fee of up to $100 for the performance of its duties under the bill. The bill exempts from the registration requirements of this section employees of the Experiment Station of the University of Florida, Extension Service of the University of Florida, or the State University System involved in research or extension-related activities.

The bill gives the department rulemaking authority including, but not limited to:

- Testing of the hemp during growth to determine delta-9 tetrahydrocannabinol levels;
- Inspection of hemp during the sowing, growing season, harvest, storage, processing, manufacturing, and distribution; and
- Assessment of a fee to offset the costs of the department's activities in the testing and inspection of hemp production.

The bill prohibits the department from adopting a rule that prohibits an individual from growing, processing, distributing, manufacturing, or selling hemp based on its legal status under federal law.

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[3] Section 893.03(1)(c)7., F.S.
[4] *See* ss. 893.13 and 893.135, F.S.
[5] *See* ss. 381.986, 381.987, and 893.02(3), F.S.
[6] National Conference of State Legislatures, *State Industrial Hemp Statutes*, September 15, 2014, http://www.ncsl.org/research/agriculture-and-rural-development/state-industrial-hemp-statutes.aspx (last viewed on March 24, 2015).
[7] *Id.*

The bill provides that it is an affirmative defense[8] to a charge or prosecution for the possession, cultivation, manufacturing, delivery, distribution or sale of *Cannabis* under ch. 893 that:

- The defendant was growing, processing, distributing, manufacturing, or selling hemp pursuant to this section; or
- The defendant had valid applicable controlled substances registrations from the United States Drug Enforcement Administration.

The bill states that it is not a violation of state or local law for an individual to grow, possess, distribute, move, manufacture, dispose of, sell, purchase, or possess hemp.

Section 3 provides the bill takes effect on July 1, 2015.

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:

According to the Department of Revenue (DOR), federal law prohibits financial institutions from accepting funds from the sale of Schedule I controlled substances. Taxpayers would be unable to submit any applicable sales tax to the DOR using electronic methods, given these banking restrictions. In addition, it is unclear whether accepting cash payments of sales tax on these federally restricted items, and then processing and distributing the funds, would cause the DOR to be in violation of federal law.[9]

There is pending federal legislation in Congress to provide that the scheduling of marijuana in Schedule I of the federal Controlled Substance Act (CSA) does not apply to industrial hemp. "The Industrial Hemp Farming Act of 2015 (H.R. 525; S. 134) would

[8] An "affirmative defense" is "[a] defense in which the defendant introduces evidence, which, if found to be credible, will negate criminal or civil liability, even if it is proven that the defendant committed the alleged acts." Legal Information Institute, Cornell University Law School, https://www.law.cornell.edu/wex/affirmative_defense (last viewed on March 25, 2015).

[9] Analysis of SB 902 (February 19, 2015), Florida Department of Revenue (on file with the Senate Committee on Criminal Justice).

amend the CSA to specify that the term 'marijuana' does not include industrial hemp, thus excluding hemp from the CSA as a controlled substance subject to DEA regulation."[10] If this legislation were to become law, the DOR analysis relevant to federal Schedule I substances would not be relevant to industrial hemp.

B. Private Sector Impact:

The bill authorizes the Department of Agriculture and Consumer Services to assess an annual registration fee of up to $100 for the performance of its duties under the bill.

C. Government Sector Impact:

See "Tax/Fee Issues" regarding the Department of Revenue. The bill would require the Department of Agriculture and Consumer Services to regulate the growth and distribution of hemp and a fee is associated to offset the cost of doing so.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Agriculture and Consumer Services raises a number of questions, including:
- Would large plantings of industrial grade *Cannabis* pose an invasive plant threat?
- What are the standards that should apply to cultivation and cultivation containment?
- What will the scope of interest in production be, which in-turn will determine the level of resources needed to oversee it?[11]

The department suggests the need for more research to determine the true impact of hemp as an agricultural crop.[12]

VIII. Statutes Affected:

This bill creates section 581.301 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.

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[10] Johnson, Renée. *Hemp as an Agricultural Commodity* (February 2, 2015) (Summary). Congressional Research Service.
[11] Analysis of SB 902 (February 24, 2015), Department of Agriculture and Consumer Services (on file with the Senate Committee on Criminal Justice).
[12] *Id*.

B. Amendments:

None.

By Senator Clemens

27-01100-15 2015902__

A bill to be entitled

An act relating to hemp production; providing a short title; creating s. 581.301, F.S.; providing a definition; providing that hemp is an agricultural crop; providing legislative intent; requiring registration of hemp producers; providing registration requirements; providing exemptions; requiring rulemaking; providing for an affirmative defense to certain charges relating to cannabis; providing exceptions to other laws; providing an effective date.

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

Section 1. This act may be cited as the "Hemp Industry Development Act."

Section 2. Section 581.301, Florida Statutes, is created to read:

581.301 Hemp.—

(1) DEFINITION.—As used in this section, the term "hemp" means all parts of any plant of the genus *Cannabis* containing no more than 0.3 percent delta-9 tetrahydrocannabinol.

(2) AGRICULTURAL CROP.—Hemp is considered an agricultural crop in this state which produces a viable, environmentally sound crop that requires less irrigation, fewer pesticides, and fewer toxic refinery processes than alternative materials and has multiple applications that include a wide variety of manufactured and fabricated products. The Legislature intends to promote economic development and job growth through the cultivation, processing, distribution, manufacturing, and sale

27-01100-15 2015902__

of hemp. Upon meeting the requirements of subsection (3), an individual in this state may plant, grow, or harvest hemp.

(3) REGISTRATION.—

(a) Except as provided in this section, an individual intending to grow hemp shall register with the department through submission of a form provided by the department containing:

1. The name and address of the individual.

2. A statement that the seeds obtained for planting are of a type and variety containing no more than 0.3 percent delta-9 tetrahydrocannabinol.

3. The location and acreage of all parcels sown with hemp and other field identification as may be required by the department.

(b) An individual registered with the department pursuant to this section must allow hemp crops to be inspected and tested by and at the discretion of the department throughout sowing, growing season, harvest, storage, processing, manufacturing, and distribution.

(c) The department may assess an annual registration fee on growers of up to $100 for the performance of its duties under this section.

(d) The registration requirements of this section do not apply to employees of the Experiment Station of the University of Florida, Extension Service of the University of Florida, or the State University System involved in research or extension-related activities.

(4) RULEMAKING.—The department shall adopt rules that include, but are not limited to:

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

(a) Testing of the hemp during growth to determine delta-9 tetrahydrocannabinol levels.

(b) Inspection of the hemp during sowing, growing season, harvest, storage, processing, manufacturing, and distribution.

(c) Assessment of a fee that is commensurate with the costs of the department’s activities in testing and inspection of hemp production.

(d) The department may not adopt under this chapter, or any other provision of law, a rule that prohibits an individual from growing, processing, distributing, manufacturing, or selling hemp based on its legal status under federal law.

(e) Any other rules and procedures necessary to carry out this section.

(5) AFFIRMATIVE DEFENSE FOR CANNABIS OFFENSES.—It is an affirmative defense to a charge or prosecution for the possession, cultivation, manufacturing, delivery, distribution, or sale of cannabis under chapter 893 that:

(a) The defendant was growing, processing, distributing, manufacturing, or selling hemp pursuant to this section; or

(b) The defendant had valid applicable controlled substances registrations from the United States Drug Enforcement Administration.

(6) EXCEPTIONS TO OTHER LAWS.—It is not a violation of state or local law for an individual to grow, process, distribute, move, manufacture, dispose of, sell, purchase, or possess hemp.

Section 3. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Transportation, Tourism, and Economic Development, *Vice Chair*
Banking and Insurance
Criminal Justice
Education Pre-K-12
Ethics and Elections
Fiscal Policy

SENATOR JEFF CLEMENS
27th District

March 23, 2015

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

Chair Evers:

I respectfully request that SB 902 – Hemp Production be added to the agenda for the next Committee on Criminal Justice meeting.

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

Sincerely,

Senator Jeff Clemens
Florida Senate District 27

REPLY TO:
☐ 508 Lake Avenue, Unit C, Lake Worth, Florida 33460 (561) 540-1140 FAX: (561) 540-1143
☐ 226 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: *www.flsenate.gov*

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-30-15
Meeting Date

902
Bill Number (if applicable)

Topic Industrial Hemp Development

Amendment Barcode (if applicable)

Name Ethel Rowland

Job Title Legislative Director

Address 1375 Cypress Ave
Street

Phone 772-618-3678

Melbourne, FL 32935
City State Zip

Email ethelrowland@gmail.com

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

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

Representing Florida Cannabis Action Network

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

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

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

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

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)

3/30/15
Meeting Date

SB 902
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Hemp Production

Name: Ron Watson

Job Title: Lobbyist

Address: 3738 Mundon Way
Street

Tallahassee | FL | 32309
City | State | Zip

Phone: (850) 567-1202

Email: watsonstrategies@comcast.net

Speaking: ☒ For ☐ Against ☐ Information

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

Representing: Watson Strategies

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)

3-30-15
Meeting Date

SB 902
Bill Number (if applicable)

Topic: Hemp Production/Criminal Justice

Amendment Barcode (if applicable)

Name: Amy Datz

Job Title: Retired Environmental Planner

Address: 1130 Crestview Ave.
Street

Tallahassee FL 32303
City State Zip

Phone: 850 322-1599

Email: amdatz@ mac.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing: Environmental Caucus of FL

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)

3/30/15
Meeting Date

902
Bill Number (if applicable)

Topic Industrialized Hemp as Ag. Crop

Amendment Barcode (if applicable)

Name Josephine C. Krehl

Job Title President of BMI INC.

Address 3784 Wentworth Way
Street

Phone 850-653-6928

Tallahassee FL 32311
City State Zip

Email brickmasonindustries@gmail.com

Speaking: [x] For [ ] Against [ ] Information

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

Representing Brick Mason Industries Inc.

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

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

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

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

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)

3/30/~~14~~2015
Meeting Date

902
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Industrialized Hemp as Ag. Crop

Name Carina D. Krehl

Job Title Student

Address 3784 Wentworth Way
Street

Tallahassee FL 32311
City State Zip

Phone (850)653-5849

Email Krehl.1234@gmail.com

Speaking: [x] For [ ] Against [ ] Information

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

Representing as Concerned Citizen

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

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

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

... 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)

3/30/15
Meeting Date

902
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Ind. Hemp as Ag. Crop.

Name Richmond Abellera

Job Title Student

Address 880 Bahama Dr.
Street

Phone 850 264 8922

Tallahassee FL 32305
City State Zip

Email ~~abell~~260@mymail.tcc.fl.edu

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

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

Representing

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

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3-30-15
Meeting Date

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

SB 902
Bill Number (if applicable)

Topic Hemp Production/Criminal Justice

Amendment Barcode (if applicable)

Name Amy Datz

Job Title Retired Environmental Planner

Address 1130 Crestview Ave
Street

Tallahassee FL 32303
City State Zip

Phone 850 322-1598

Email amaliedatz@mac.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Environmental Caucus of FL

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 30, 2015
Meeting Date

SB 902
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Industrial hemp as an agricultural crop

Name: Michael Krehl

Job Title: Representative

Address: 3784 Wentworth Way
Street

Tallahassee — *City*; Florida — *State*; 32311 — *Zip*

Phone: 850-653-5191

Email: floridahempalliance@gmail.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing: The Florida Hemp 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 944

INTRODUCER: Senator Soto

SUBJECT: Secondhand Dealers

DATE: March 27, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	**Favorable**
2.	Cellon	Cannon	CJ	**Favorable**
3.			RC	

I. Summary:

SB 944 requires law enforcement officers to place a 90-day written order ("hold order") mandating a secondhand dealer to hold a specific item that an officer has probable cause to believe was stolen. This process allows the item to be used as evidence in a criminal case, and to be returned to its rightful owner, should a judge enter an order to that effect. Current law permits, but does not require, a law enforcement officer to place a hold order.

II. Present Situation:

A secondhand dealer engages in the business of buying, reselling, or consigning certain types of used personal property.[1] Part I of ch. 538, F.S., grants authority to regulate secondhand dealers to the Department of Revenue (department). The department requires secondhand dealers to register on an annual basis, and currently has 5,048 secondhand dealer registrants.[2] Pawnbrokers were formerly regulated as secondhand dealers, but are now separately regulated under ch. 539, F.S.

Upon each acquisition, a secondhand dealer is required to complete a transaction record that details the goods purchased and the seller's identity. The secondhand dealer must retain this document for at least 1 year and forward a copy to local law enforcement within 24 hours of the acquisition of the goods. Secondhand dealers are required to hold all property for at least 15 days after they acquire the property.[3] Should a law enforcement officer have probable cause to believe that the goods held by a secondhand dealer are stolen, the officer may place a 90-day written

[1] Section 538.03, F.S.

[2] Section 538.09, F.S.; Florida Department of Revenue, *Secondhand Dealers Registered with the Florida Department of Revenue*, (2015), available at http://dor.myflorida.com/dor/taxes/documents/secondhand_dealers_recyclers_08_09_13.pdf, (last accessed March 18, 2015).

[3] Section 538.06, F.S.

hold order on the goods, which prevents the secondhand dealer from selling them.[4] This allows the goods to be preserved for use as evidence in a criminal trial, and for the possible return to their rightful owner.

A victim of a theft whose property is subject to a hold order may recover his or her goods or the value thereof through one of three methods:[5]

- A court may order restitution or return of the goods to the secondhand dealer or victim of the crime.[6] If the court orders return of the goods or restitution to the victim, the court must also order restitution to the secondhand dealer from the person who sold the goods to the secondhand dealer;[7]
- A victim may file an action for replevin against the secondhand dealer;[8] or
- A victim may purchase her items back from the secondhand dealer, and then file a civil action against the thief for reimbursement of the cost expended.

Local law enforcement enforces secondhand dealer compliance with registration, record keeping, holding periods, and inspection requirements.[9]

III. Effect of Proposed Changes:

The bill requires law enforcement officers to place a 90-day hold order on goods in the possession of a secondhand dealer for which there is probable cause to believe have been stolen. Previously, such action by law enforcement was optional. This 90-day hold order may be overridden by a court order to return the goods to either the secondhand dealer or another rightful owner.[10]

Section 2 of the bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[4] Section 538.06, F.S.
[5] Interview with representative of the Florida Law Enforcement Property Recovery Unit, March 18, 2015.
[6] Section 538.07, F.S.
[7] Section 538.06(4), F.S.
[8] Section 538.08, F.S.
[9] Section 538.05, F.S.; http://dor.myflorida.com/dor/taxes/secondhand_dealers_recyclers.html.
[10] Section 538.06(4), F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This may result in increased workload and costs for law enforcement officers involved in the recovery of stolen property.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill does not affect the procedures for placement of a hold order on property in the possession of a pawnbroker.

VIII. Statutes Affected:

This bill substantially amends section 538.06 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 Soto

14-01345-15 2015944__

A bill to be entitled

An act relating to secondhand dealers; amending s. 538.06, F.S.; requiring a law enforcement officer with jurisdiction to place a specified written hold order on specified goods; providing an effective date.

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

Section 1. Subsection (3) of section 538.06, Florida Statutes, is amended to read:

538.06 Holding period.—

(3) Upon probable cause that goods held by a secondhand dealer are stolen, a law enforcement officer with jurisdiction <u>shall</u> ~~may~~ place a 90-day written hold order on the goods <u>subject to the court’s disposition under subsection (4)</u>. However, the hold may be extended beyond 90 days by a court of competent jurisdiction upon a finding of probable cause that the property is stolen and further holding is necessary for the purposes of trial or to safeguard such property. The dealer shall assume all responsibility, civil or criminal, relative to the property or evidence in question, including responsibility for the actions of any employee with respect thereto.

Section 2. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DARREN SOTO
Democratic Caucus Rules Chair
14th District

COMMITTEES:
Rules, *Vice Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Environmental Preservation and Conservation
Finance and Tax
Judiciary

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

March 24, 2015

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

Chair Evers,

I respectively request that Senate Bill 944, Secondhand Dealers, be placed on the agenda as soon as possible. Senate Bill 944 would require law enforcement to place a 90 day hold on items believed to be stolen. Currently, law enforcement is permitted to place a 90 day hold on those items. This bill aims to protect victims of theft.

Thank you for your consideration. Should you have any questions or concerns, please feel free to contact me at 850-487-5014.

Sincerely,

Darren M Soto

Darren M. Soto
State Senator, District 14

Cc: Amanda Cannon, Staff Director
Sue Arnold, Committee Administrative Assistant

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1000

INTRODUCER: Senator Hays

SUBJECT: Slungshot

DATE: March 20, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	**Favorable**
2.			CM	
3.			RC	

I. Summary:

SB 1000 deletes references to "slungshot" in ch. 790, F.S. By making these deletions, the bill:

- Allows persons to carry a slungshot in a concealed manner;
- Allows slungshots to be manufactured, displayed for sale, and sold; and
- Allows a dealer in arms to sell or transfer a slungshot to a minor.

"Slungshot" is defined in s. 790.001(12), F.S., as a small mass of metal, stone, sand, or similar material fixed on a flexible handle, strap, or the like, used as a weapon.

II. Present Situation:

"Slungshot" is defined in s. 790.001(12), F.S., as a small mass of metal, stone, sand, or similar material fixed on a flexible handle, strap, or the like, used as a weapon. The term "slungshot" is contained within the definition of what can be considered a concealed weapon under current law.[1] It is a second degree misdemeanor to manufacture a slungshot or cause one to be manufactured, or to sell a slungshot or expose one for sale.[2] It is a second degree felony for any dealer in arms to sell or transfer a slungshot to a minor.[3]

The slungshot often consists of a weight affixed to the end of a long cord by being wound into the center of a knot called a monkey's fist.[4] Although the slungshot is a maritime tool, it became an improvised and very effective weapon, widely used by street gangs in the 19th century.[5]

[1] Section 790.001(3)(a), F.S.
[2] Section 790.09, F.S.
[3] Section 790.18, F.S.
[4] http://en.wikipedia.org
[5] *Id.;* see also http://wisegeek.com/what-is-a-slungshot.htm

Survivalists have embraced the slungshot as both a tool and a weapon. Demonstrations of how to make slungshots and use them are available on the internet.[6]

III. Effect of Proposed Changes:

The bill deletes references to "slungshot" in ch. 790, F.S. The weapon (or tool) may be manufactured, displayed for sale, sold, and carried in a concealed manner under the provisions of the bill. The bill will also allow a dealer in arms to sell or transfer a slungshot to a minor.

The bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Businesses and individuals will be allowed to manufacture and sell slungshots under the bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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[6] http://www.paracordist.com; http://SurvivalistBoards.com. (last visited March 5, 2015).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 790.001, 790.09, and 790.18.

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 Hays

11-00995B-15 20151000__

A bill to be entitled

An act relating to slungshot; amending s. 790.001, F.S.; revising the definition of “concealed weapon” to delete its inclusion of a slungshot; amending s. 790.09, F.S.; deleting provisions prohibiting the manufacture or sale of any instrument or weapon usually known as slungshot; amending s. 790.18, F.S.; deleting a provision prohibiting a dealer in arms from selling or transferring a slungshot to a minor; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 790.001, Florida Statutes, is amended to read:

790.001 Definitions.—As used in this chapter, except where the context otherwise requires:

(3)(a) “Concealed weapon” means any dirk, metallic knuckles, ~~slungshot,~~ billie, tear gas gun, chemical weapon or device, or other deadly weapon carried on or about a person in such a manner as to conceal the weapon from the ordinary sight of another person.

Section 2. Section 790.09, Florida Statutes, is amended to read:

790.09 Manufacturing or selling metallic knuckles ~~slungshot~~.—Whoever manufactures or causes to be manufactured~~,~~ or sells or exposes for sale any instrument or weapon of the kind usually known as ~~slungshot, or~~ metallic knuckles commits~~, shall be guilty of~~ a misdemeanor of the second degree, punishable as

11-00995B-15 20151000__

provided in s. 775.082 or s. 775.083.

Section 3. Section 790.18, Florida Statutes, is amended to read:

790.18 Sale or transfer of arms to minors by dealers.—It is unlawful for any dealer in arms to sell or transfer to a minor any firearm, pistol, Springfield rifle or other repeating rifle, bowie knife or dirk knife, brass knuckles, ~~slungshot,~~ or electric weapon or device. A person who violates this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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 1010
INTRODUCER:	Senator Braynon
SUBJECT:	False Personation
DATE:	March 20, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	**Favorable**
2.			CA	
3.			FP	

I. Summary:

SB 1010 amends s. 843.08, F.S., relating to false personation of law enforcement officers and other specified persons, to add firefighters and fire or arson investigators of the Department of Financial Services. As a result of this change, false personation of these persons would be prohibited and subject to current penalties. Specifically, it would be:

- A third degree felony to falsely personate a firefighter or a fire or arson investigator of the Department of Financial Services;
- A second degree felony to commit this false personation during the course of the commission of a felony; and
- A first degree felony to commit this false personation during the course of the commission of a felony if the commission of that felony results in the death or personal injury of another human being.

The bills also amends various offenses in s. 843.085, F.S., relating to unlawful use of badges or other indicia of authority, to make those offenses applicable to unauthorized wearing, display, sale, etc., of fire department badges and unauthorized ownership or operation of a motor vehicle marked or identified as a fire department vehicle. Further, the bill amends criminal intent language relevant to those offenses to address a 2005 Florida Supreme Court decision that held that the intent language is unconstitutional.

II. Present Situation:

False Personation of Law Enforcement Officers and Other Specified Persons (s. 843.08, F.S.)

Section 843.08, F.S., punishes false personation of a law enforcement officer or other specified person. A person commits this false personation offense if he or she falsely assumes or pretends to be a law enforcement officer or other person specified in the statute and takes upon himself or herself to act as such or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such specified person. The list of specified persons includes:

- Sheriff;
- Officer of the Florida Highway Patrol;
- Officer of the Fish and Wildlife Conservation Commission;
- Officer of the Department of Transportation;
- Officer of the Department of Financial Services;
- Officer of the Department of Corrections;
- Correctional probation officer;
- Deputy sheriff;
- State attorney or assistant state attorney;
- Statewide prosecutor or assistant statewide prosecutor;
- State attorney investigator;
- Coroner;
- Police officer;
- Lottery special agent or lottery investigator;
- Beverage enforcement agent;
- Watchman;
- Any member of the Parole Commission and any administrative aide or supervisor employed by the commission;
- Any personnel or representative of the Florida Department of Law Enforcement; and
- A federal law enforcement officer as defined in s. 901.1505, F.S.

It is a third degree felony[1] to commit this offense. It is a second degree felony[2] to commit this false personation during the course of the commission of a felony. It is a first degree felony[3] to commit this false personation during the course of the commission of a felony if the commission of that felony results in the death or personal injury of another human being.

Unauthorized Use of Badges or Other Indicia of Authority (s. 843.085, F.S.)

Unauthorized Wearing or Display of Indicia of Authority

Section 843.085(1) and (5), F.S., provide that it is a first degree misdemeanor[4] to wear or display any authorized indicia of authority, including any badge, insignia, emblem, identification card, or uniform, or any colorable imitation thereof, of any federal, state, county, or municipal law

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[1] A third degree felony is punishable by up to 5 years in state prison, a fine of up to $5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.

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

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

[4] A first degree misdemeanor is punishable by up to 1 year incarceration in county jail, a fine of up to $1,000, or both. Sections 775.082 and 775.083, F.S.

enforcement agency, or other criminal justice agency[5] as now or hereafter defined in s. 943.045, F.S., which:
- Could deceive a reasonable person into believing that such item is authorized by any of those agencies for use by the person displaying or wearing it; or
- Displays in any manner or combination the word or words “police,” “patrolman,” “agent,” “sheriff,” “deputy,” “trooper,” “highway patrol,” “commission officer,” “Wildlife Officer,” “Marine Patrol Officer,” “state attorney,” “public defender,” “marshal,” “constable,” or “bailiff,” which could deceive a reasonable person into believing that such item is authorized by any of those agencies for use by the person displaying or wearing it.

This offense does not apply to:
- A person appointed by the Governor pursuant to ch. 354, F.S. (special officers for carriers);
- A person authorized to wear or display the indicia of authority by the appropriate agency;
- A person who displays the indicia of authority in a closed or mounted case as a collection or exhibit; or
- A fraternal, benevolent, or labor organization or association, or their chapters or subsidiaries, that uses the words “police,” “patrolman,” “sheriff,” “deputy,” “trooper,” “highway patrol,” “commission officer,” “Wildlife Officer,” “Marine Patrol Officer,” “marshal,” “constable,” or “bailiff” in the official name of the organization or association.

Unauthorized Ownership or Operation of Motor Vehicles with Certain Markings

Section 843.085(2) and (5), F.S., provides that it is a first degree misdemeanor to own or operate a motor vehicle if:
- The vehicle is marked or identified in any manner or combination by the word or words “police,” “patrolman,” “sheriff,” “deputy,” “trooper,” “highway patrol,” “commission officer,” “Wildlife Officer,” “Marine Patrol Officer,” “marshal,” “constable,” or “bailiff,” or by any lettering, marking, or insignia, or colorable imitation thereof, including, but not limited to, stars, badges, or shields;
- The wording is officially used to identify the vehicle as a federal, state, county, or municipal law enforcement vehicle or a vehicle used by a criminal justice agency as now or hereafter defined in s. 943.045, F.S.; and
- The use of the wording on the vehicle could deceive a reasonable person into believing that the vehicle is authorized by the appropriate agency for use by the person operating the motor vehicle.

This offense does not apply if:
- The vehicle is owned or operated by the appropriate agency and its use is authorized by the agency;
- The local law enforcement agency authorizes the use of the vehicle;

[5] The statute references the definition of “criminal justice agency” in s. 943.045, F.S. Section 943.045(11), F.S., defines a “criminal justice agency” as: a court; the Florida Department of Law Enforcement; the Department of Juvenile Justice; the protective investigations component of the Department of Children and Families, which investigates the crimes of abuse and neglect; and any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice.

- The person owning or operating the marked vehicle is appointed by the Governor pursuant to ch. 354, F.S. (special officers for carriers); or
- The words “police,” “patrolman,” “sheriff,” “deputy,” “trooper,” “highway patrol,” “commission officer,” “Wildlife Officer,” “Marine Patrol Officer,” “marshal,” “constable,” or “bailiff” are used by a fraternal, benevolent, or labor organization or association, or their chapters or subsidiaries, in the official name of the organization or association.

Unauthorized Sale or Transfer of a Badge

Section 843.085(3) and (5), F.S., provides that it is a first degree misdemeanor to sell, transfer, or give away the authorized badge, or a colorable imitation of the badge, including miniatures, of any criminal justice agency as now or hereafter defined in s. 943.045, or bearing in any manner or combination the word or words “police,” “patrolman,” “sheriff,” “deputy,” “trooper,” “highway patrol,” “commission officer,” “Wildlife Officer,” “Marine Patrol Officer,” “marshal,” “constable,” “agent,” “state attorney,” “public defender,” or “bailiff,” which could deceive a reasonable person into believing that such item is authorized by any of the those agencies.

This offense does not apply to:

- Agency purchases or upon the presentation and recordation of both a driver license and other identification showing any transferee to actually be a member of such criminal justice agency;
- A person appointed by the Governor pursuant to ch. 354, F.S. (special officers for carriers); or
- A fraternal, benevolent, or labor organization or association, or their chapters or subsidiaries, that uses the words “police,” “patrolman,” “sheriff,” “deputy,” “trooper,” “highway patrol,” “commission officer,” “Wildlife Officer,” “Marine Patrol Officer,” “marshal,” “constable,” or “bailiff” in the official name of the organization or association.

Sult v. State

In *Sult v. State*,[6] the Florida Supreme Court held that s. 843.085, F.S. (2001), is unconstitutionally overbroad, vague, and violates substantive due process. The Court only discusses subsection (1) of this statute in its analysis but the intent language the Court found objectionable (“could deceive a reasonable person”) also appears in subsections (2) and (3) of the statute. Specifically, the Court found:

> With no specific intent-to-deceive element, the section extends its prohibitions to innocent wearing and displaying of specified words. The reach of the statute is not tailored toward the legitimate public purpose of prohibiting conduct intended to deceive the public into believing law enforcement impersonators. The “could deceive a reasonable person” element of section 843.085(1), in conjunction with the prohibition of a display in any manner or combination of the words listed in the statute, results in a virtually boundless and uncertain restriction on expression.[7]

[6] 906 So.2d 1013 (Fla. 2005).
[7] *Sult*, 906 So.2d at 1021.

The Court also found that s. 843.085(1), F.S., "because of its imprecision, … fails to give fair notice of what conduct is prohibited. The statute fails to delineate when the displaying or wearing of the prohibited words will subject the person to prosecution, thus inviting arbitrary and discriminatory enforcement and making entirely innocent activities subject to prosecution."[8]

The Legislature has never amended the intent language to address the *Sult* decision.

III. Effect of Proposed Changes:

The bill amends s. 843.08, F.S., relating to false personation of law enforcement officers and other specified persons, to add firefighters[9] and fire or arson investigators of the Department of Financial Services.[10] As a result of this change, false personation of these persons would be prohibited and subject to current penalties. Specifically, it would be:

- A third degree felony to falsely personate a firefighter or a fire or arson investigator of the Department of Financial Services;
- A second degree felony to commit this false personation during the course of the commission of a felony; and
- A first degree felony to commit this false personation during the course of the commission of a felony if the commission of that felony results in the death or personal injury of another human being.

Currently, s. 843.08, F.S., prohibits false personation of a watchman. The term "watchman" is undefined. The bill defines a "watchman" as a security officer licensed under ch. 493, F.S.[11]

Currently, s. 843.08, F.S., prohibits false personation of an officer of the Department of Transportation. In 2011, the Office of Motor Carrier Compliance was transferred from the Department of Transportation to the Department of Highway Safety and Motor Vehicles' Division of the Florida Highway Patrol (FHP).[12] FHP "troopers" perform the commercial motor vehicles inspection functions that used to be performed by Motor Carrier Compliance officers.[13] Consistent with this development, the bill removes reference to an officer of the Department of Transportation. FHP troopers are already covered under the statute ("officer of the Florida Highway Patrol").

[8] *Sult*, 906 So.2d at 1022 (citation omitted).

[9] The bill does not define "firefighter" by reference to any specific definition of the term in the Florida Statutes. However, most of the descriptive terms for officers or persons listed in the statute are not defined by reference to a statutory definition (e.g., "police officer"). A person is certified as a "firefighter" pursuant to the requirements of Part IV of ch. 633, F.S.

[10] The Division of State Fire Marshal is a division of the Department of Financial Services. Section 20.121(2)(b), F.S. The Chief Financial Officer is designated as "State Fire Marshal." Section 633.104(1), F.S. One of the duties of the State Fire Marshal is to enforce all laws and provisions of ch. 633, F.S. (fire prevention and control), and any rules adopted pursuant to that chapter, relating to the suppression of arson and the investigation of the cause, origin, and circumstances of fire. Section 633.104(2)(e), F.S.

[11] Section 493.6101(19), F.S., defines a "security officer" as any individual who, for consideration: advertises as providing or performs bodyguard services or otherwise guards persons or property; attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other documents, papers, and articles of value or procurement of the return of those items.

[12] Chapter 2011-66, L.O.F.

[13] *See* http://www.flhsmv.gov/news/pdfs/PR062911.pdf (last visited on March 4, 2015).

The bill also amends various offenses in s. 843.085, F.S., relating to unlawful use of badges or other indicia of authority, to make those offenses applicable to unauthorized wearing, display, sale, etc., of fire department badges and unauthorized ownership or operation of a motor vehicle marked or identified as a fire department vehicle. The bill specifies that the statute does not prohibit a fraternal, benevolent, or labor organization or association, or their subsidiaries or chapters, from using the words "fire department," in any manner or in any combination, if those words appear in the official name of the organization or association.

To address the Florida Supreme Court's decision, in *Sult v. State*, the bill replaces current criminal intent language relevant to offenses in s. 843.085, F.S. ("could deceive a reasonable person") with specific intent language ("intent to mislead or cause another person to believe").

The bill also amends s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to make technical, corrective change to descriptive language regarding the current ranking of false personation under s. 843.08, F.S. It does not change the current ranking of the offense.

The bill takes effect on October 1, 2015.

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, which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates the bill will have a positive insignificant prison bed impact (the bill may increase the Department of Corrections' prison bed population by 10 or fewer beds annually).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 843.08, 843.085, and 921.0022.

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 Braynon

36-01330-15 20151010__

A bill to be entitled

An act relating to false personation; amending s. 843.08, F.S.; revising the list of officials who are prohibited from being falsely personated; revising terminology; amending s. 843.085, F.S.; prohibiting the sale or transfer of specified badges bearing in any manner or combination the words “fire department” and the ownership or operation of vehicles marked or identified by the words “fire department”; requiring specified intent for certain offenses; providing an exception; amending s. 921.0022, 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 843.08, Florida Statutes, is amended to read:

843.08 False personation ~~Falsely personating officer, etc~~.—A person who falsely assumes or pretends to be a firefighter, sheriff, officer of the Florida Highway Patrol, officer of the Fish and Wildlife Conservation Commission, a fire or arson investigator of the Department of Financial Services, ~~officer of the Department of Transportation~~, officer of the Department of Financial Services, officer of the Department of Corrections, correctional probation officer, deputy sheriff, state attorney or assistant state attorney, statewide prosecutor or assistant statewide prosecutor, state attorney investigator, coroner, police officer, lottery special agent or lottery investigator,

36-01330-15 20151010__

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

Section 2. Section 843.085, Florida Statutes, is amended to read:

843.085 Unlawful use of ~~police~~ badges or other indicia of authority.~~—It is unlawful for any person:~~

(1) It is unlawful for any person, unless appointed by the Governor pursuant to chapter 354, authorized by the appropriate agency, or displayed in a closed or mounted case as a collection or exhibit, to wear or display any authorized indicia of authority, including any badge, insignia, emblem, identification card, or uniform, or any colorable imitation thereof, of any federal, state, county, or municipal law enforcement agency, or

other criminal justice agency as ~~now or hereafter~~ defined in s. 943.045, with the intent to mislead or cause another person to believe that he or she is a member of that agency or is authorized to display or wear such item, or to wear or display any item that ~~which could deceive a reasonable person into believing that such item is authorized by any of the agencies described above for use by the person displaying or wearing it, or which~~ displays in any manner or combination the word or words “police,” “patrolman,” “agent,” “sheriff,” “deputy,” “trooper,” “highway patrol,” “commission officer,” “Wildlife Officer,” “Marine Patrol Officer,” “state attorney,” “public defender,” “marshal,” “constable,” ~~or~~ “bailiff,” or “fire department,” with the intent to mislead or cause another person to believe that he or she is a member of that agency or is authorized to wear or display such item ~~which could deceive a reasonable person into believing that such item is authorized by any of the agencies described above for use by the person displaying or wearing it~~.

(2) It is unlawful for a person to own or operate a motor vehicle marked or identified in any manner or combination by the word or words “police,” “patrolman,” “sheriff,” “deputy,” “trooper,” “highway patrol,” “commission officer,” “Wildlife Officer,” “Marine Patrol Officer,” “marshal,” “constable,” ~~or~~ “bailiff,” or “fire department,” or by any lettering, marking, or insignia, or colorable imitation thereof, including, but not limited to, stars, badges, or shields, officially used to identify the vehicle as a federal, state, county, or municipal law enforcement vehicle or a vehicle used by a criminal justice agency as ~~now or hereafter~~ defined in s. 943.045, or a vehicle used by a fire department with the intent to mislead or cause

another person to believe that such vehicle is an official vehicle of that agency and is authorized to be used by that agency ~~which could deceive a reasonable person into believing that such vehicle is authorized by any of the agencies described above for use by the person operating the motor vehicle~~, unless such vehicle is owned or operated by the appropriate agency and its use is authorized by such agency, or the local law enforcement agency or fire department authorizes the use of such vehicle, or ~~unless~~ the person is appointed by the Governor pursuant to chapter 354.

(3) It is unlawful for a person to sell, transfer, or give away the authorized badge, or colorable imitation thereof, including miniatures, of any criminal justice agency as ~~now or hereafter~~ defined in s. 943.045, or bearing in any manner or combination the word or words “police,” “patrolman,” “sheriff,” “deputy,” “trooper,” “highway patrol,” “commission officer,” “Wildlife Officer,” “Marine Patrol Officer,” “marshal,” “constable,” “agent,” “state attorney,” “public defender,” ~~or~~ “bailiff,” or “fire department,” with the intent to mislead or cause another person to believe that he or she is a member of that agency or is authorized to wear or display such item ~~which could deceive a reasonable person into believing that such item is authorized by any of the agencies described above~~, except for agency purchases or upon the presentation and recordation of both a driver license and other identification showing any transferee to actually be a member of such criminal justice agency or unless the person is appointed by the Governor pursuant to chapter 354. A transferor of an item covered by this subsection is required to maintain for 2 years a written record

of such transaction, including records showing compliance with this subsection, and if such transferor is a business, it shall make such records available during normal business hours for inspection by any law enforcement agency having jurisdiction in the area where the business is located.

(4) ~~Nothing in~~ This section does not ~~shall~~ prohibit a fraternal, benevolent, or labor organization or association, or their chapters or subsidiaries, from using the following words, in any manner or in any combination, if those words appear in the official name of the organization or association: “police,” “patrolman,” “sheriff,” “deputy,” “trooper,” “highway patrol,” “commission officer,” “Wildlife Officer,” “Marine Patrol Officer,” “marshal,” “constable,” ~~or~~ “bailiff,~~.~~” or “fire department.”

(5) Violation of any provision of this section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This section is cumulative to any law now in force in the state.

Section 3. Paragraph (b) 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

(b) LEVEL 2

Florida Statute	Felony Degree	Description

379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
590.28(1)	3rd	Intentional burning of lands.
784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.

806.13(1)(b)3.	3rd	Criminal mischief; damage $1,000 or more to public communication or any other public service.
810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
812.014(2)(c)1.	3rd	Grand theft, 3rd degree; $300 or more but less than $5,000.
812.014(2)(d)	3rd	Grand theft, 3rd degree; $100 or more but less than $300, taken from unenclosed curtilage of dwelling.
812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
817.234(1)(a)2.	3rd	False statement in support of

		insurance claim.
817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over $300.
817.52(3)	3rd	Failure to redeliver hired vehicle.
817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
817.60(5)	3rd	Dealing in credit cards of another.
817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
817.61	3rd	Fraudulent use of credit cards over $100 or more within 6 months.
826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
831.01	3rd	Forgery.

831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
843.08	3rd	False personation ~~Falsely impersonating an officer~~.
893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5.,

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		(2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs other than cannabis.
893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.

Section 4. This act shall take effect October 1, 2015.

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)

3/30/15
Meeting Date

SB 1010
Bill Number (if applicable)

Topic False Personation

Amendment Barcode (if applicable)

Name Jim Tolley

Job Title President

Address 345 West Madison Street
Street

Phone 850-224-7333

Tallahassee Florida 32301
City State Zip

Email jimt@fpfp.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Professional Firefighters

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 1112
INTRODUCER:	Criminal Justice Committee and Senator Abruzzo
SUBJECT:	Sexting
DATE:	March 31, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	**Fav/CS**
2.			ACJ	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1112 amends s. 985.0301, F.S., to provide that the circuit court has exclusive original jurisdiction of proceeding in which a child is alleged to have committed a noncriminal violation that has been assigned to juvenile court by law.

The bill amends the punishment schedule for sexting in s. 847.0141, F.S., by including the issuance of a citation for first violations and making it permissive for second violations. The bill requires all court records and information obtained or produced in relation to a noncriminal sexting violation to be afforded the same level of confidentiality provided under ss. 985.04 and 985.045, F.S. All noncriminal sexting violations that occurred on or after October 1, 2011, are considered confidential.

II. Present Situation:

Sexting occurs when a minor knowingly uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of any person which depicts nudity, as defined in s. 847.001(9), F.S., and is harmful to minors, as defined in s. 847.0016, F.S.

The term “nudity” is defined in s. 847.001(9), F.S., to mean:

> [T]he showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother's breastfeeding of her baby does not under any circumstance constitute "nudity," irrespective of whether or not the nipple is covered during or incidental to feeding.

Section 847.001(6), F.S., defines "harmful to minors" to mean:

> [A]ny reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:
> (a) Predominantly appeals to a prurient, shameful, or morbid interest;
> (b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
> (c) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

A mother's breastfeeding of her baby is not under any circumstance "harmful to minors."

The transmission or distribution of multiple photographs or videos is a single offense if the photographs or videos were transmitted or distributed within the same 24-hour period.

Following is the graduated punishment schedule for a violation of sexting:

- A first sexting violation is a noncriminal violation, punishable by eight hours of community service or, if ordered by the court in lieu of community service, a $60 fine. The court may also order the minor to participate in suitable training or instruction in lieu of, or in addition to, the community service or fine.
- A sexting violation that occurs after being found to have committed a noncriminal violation for sexting is a first-degree misdemeanor. A first-degree misdemeanor is punishable by a jail term of not more than one year and may include a fine of not more than $1,000.
- A sexting violation that occurs after being found to have committed a first-degree misdemeanor violation for sexting is an unranked third-degree felony. A third-degree felony is punishable by state imprisonment for not more than five years and may include a fine of not more than $5,000. However, because the felony is unranked, the offender may be sentenced to a term of probation under supervision by the Department of Corrections.

The sexting provisions do not prohibit the prosecution of a minor for conduct relating to material that includes the depiction of sexual conduct or sexual excitement, and does not prohibit the prosecution of a minor for stalking under s. 784.048, F.S.

State v. C.M.

In January 2015, Florida's Fourth District Court of Appeal (DCA) decided State v. C.M.[1] The case involved a minor who was charged via a delinquency petition with committing a first-time

[1] 154 So. 3d 1177 (Fla. 4th DCA 2015).

violation of the sexting statute – a noncriminal violation. At trial, the defense filed a motion to dismiss arguing that because the minor did not commit a delinquent act, she could not be subject to prosecution through a petition for delinquency. The trial court agreed and granted the motion.

On appeal, the Fourth DCA recognized that under the delinquency statutes, the state attorney files a petition for delinquency to obtain a finding that a child has committed a delinquent act or violation of law. The court held that because a first offense of sexting (a noncriminal violation) does not fit within the definition of "delinquent act" or "violation of law," a petition for delinquency was not the proper method to prosecute such offense.

The state argued that the trial court's dismissal left them without a remedy, and asserted that the court should authorize the use of a petition for delinquency because it was the only method to determine if a noncriminal first offense of sexting occurred. The Fourth DCA disagreed reasoning that courts "are not at liberty to add words to statutes that were not placed there by the Legislature." The court went on to state:

> [O]nly the legislature can add to the sexting statute to set out the procedure for the prosecution and determination if there has been a violation of the first offense. Until that is effectuated by the legislature, we are bound to the letter of the law and "must apply a statute as [we] find it, leaving to the legislature the correction of assorted inconsistencies and inequalities in its operation."

III. Effect of Proposed Changes:

The bill amends the punishment schedule in s. 847.0141, F.S., by including the issuance of a citation for first violations. The bill specifies that for a first violation of sexting the minor must sign and accept a citation indicating a promise to appear before the juvenile court. In lieu of appearing in court, the minor may complete 8 hours of community service work, pay a $60 civil penalty, or participate in a cyber-safety program, if such a program is locally available. The minor must satisfy any penalty within 30 days after receipt of the citation.

The citation must be in a form prescribed by the issuing law enforcement agency, must be signed by the minor, and must contain all of the following:

- The date and time of issuance;
- The name and address of the minor to whom the citation is issued;
- A thumbprint of the minor to whom the citation is issued;
- Identification of the noncriminal violation and the time it was committed;
- The facts constituting reasonable cause;
- The specific section of law violated;
- The name and authority of the citing officer; and
- The procedures that the minor must follow to contest the citation, perform the required community service, pay the civil penalty, and participate in a cyber-safety program.

If the citation is contested and the court determines that the minor committed a noncriminal violation under this section, the court may order the minor to perform 8 hours of community service, pay a $60 civil penalty, or participate in a cyber-safety program, or any combination thereof.

A minor who fails to comply with the citation waives the right to contest it and the court may impose any of the stated penalties or issue an order to show cause. Upon a finding of contempt, the court may impose additional age-appropriate penalties, which may include issuance of an order to the Department of Highway Safety and Motor Vehicles to withhold issuance of, or suspend the driver license or driving privilege of, the minor for 30 consecutive days. The court may not impose incarceration.

The bill provides that a minor commits a first degree misdemeanor for a violation that occurs after the minor has been found to have committed a noncriminal violation or has satisfied the penalty imposed in lieu of a court appearance unless a law enforcement officer elects to issue a civil citation as provided in this section.

The bill requires all court records and information obtained or produced in relation to a noncriminal sexting violation to be afforded the same level of confidentiality provided under ss. 985.04 and 985.045, F.S. All noncriminal sexting violations that occurred on or after October 1, 2011, are considered confidential.

The bill also requires 80 percent of all civil penalties received by a juvenile court pursuant to the citation process outlined above to be remitted by the clerk of the court to the county commission to provide training on cyber safety for minors. The remaining 20 percent must remain with the clerk of the court to defray administrative costs.

The bill specifically addresses the holding in State v. C.M. by amending s. 985.0301, F.S., to provide that the circuit court has exclusive original jurisdiction of proceeding in which a child is alleged to have committed a noncriminal violation that has been assigned to juvenile court by 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:

The bill requires 80 percent of all civil penalties received by a juvenile court pursuant to the citation process be remitted by the clerk of the court to the county commission to provide training on cyber safety for minors

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 847.0141 and 985.0301.

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 30, 2015:
The Committee Substitute permits a law enforcement officer to issue a citation on a second violation of sexting in lieu of criminal penalties being imposed.

B. Amendments:

None.

917056

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete line 94
and insert:
or s. 775.083, unless a law enforcement officer elects to issue a civil citation as provided in paragraph (3)(a) of this section.

================= T I T L E A M E N D M E N T ================
And the title is amended as follows:

917056

Delete line 16
and insert:
additional penalties in certain circumstances; providing for law enforcement to issue a civil citation in lieu of criminal penalties;

650934

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/27/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 94 - 98
and insert:
or s. 775.083. As an alternative to a first degree misdemeanor a law enforcement officer may issue a civil citation as specified in paragraph (3)(a) of this section.

(c) Commits a felony of the third degree for a violation that occurs after the minor has been ~~being~~ found to have committed a misdemeanor of the first degree for sexting,

650934

punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As an alternative to a third degree felony a law enforcement officer may issue a civil citation as specified in paragraph (3)(a) of this section.

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

And the title is amended as follows:

Delete line 16

and insert:

additional penalties in certain circumstances; providing for law enforcement to issue a civil citation in lieu of criminal penalties;

By Senator Abruzzo

25-00323A-15 20151112__

A bill to be entitled

An act relating to sexting; amending s. 847.0141, F.S.; removing the court's discretion to impose a specified penalty for a first violation of sexting; requiring a minor cited for a first violation to sign and accept a citation to appear before juvenile court or, in lieu of appearing in court, to complete community service work, pay a civil penalty, or participate in a cyber-safety program within a certain period of time, if such program is locally available; requiring the citation to be in a form prescribed by the issuing law enforcement agency; requiring such citation to include certain information; authorizing a court to order certain penalties under certain circumstances; authorizing a court to order specified additional penalties in certain circumstances; prohibiting the court from imposing incarceration; specifying that all court records and any information obtained or produced are confidential; providing retroactive application of confidentiality provisions for certain violations; conforming provisions to changes made by the act; requiring that a specified percentage of civil penalties received by a juvenile court be remitted by the clerk of court to the county commission to provide cyber-safety training for minors; requiring that the remaining percentage remain with the clerk of the court to cover administrative costs; amending s. 985.0301, F.S.; creating exclusive original jurisdiction in the circuit court when a

child is alleged to have committed a noncriminal violation that is assigned to juvenile court; providing an effective date.

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

Section 1. Subsections (3) and (5) of section 847.0141, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

847.0141 Sexting; prohibited acts; penalties.—

(3) A minor who violates subsection (1):

(a) Commits a noncriminal violation for a first violation~~, punishable by 8 hours of community service or, if ordered by the court in lieu of community service, a $60 fine. The court may also order the minor to participate in suitable training or instruction in lieu of, or in addition to, community service or a fine~~. The minor must sign and accept a citation indicating a promise to appear before the juvenile court. In lieu of appearing in court, the minor may complete 8 hours of community service work, pay a $60 civil penalty, or participate in a cyber-safety program, if such a program is locally available. The minor must satisfy any penalty within 30 days after receipt of the citation.

1. A citation issued to a minor under this subsection must be in a form prescribed by the issuing law enforcement agency, must be signed by the minor, and must contain all of the following:

a. The date and time of issuance.

b. The name and address of the minor to whom the citation is issued.

c. A thumbprint of the minor to whom the citation is issued.

d. Identification of the noncriminal violation and the time it was committed.

e. The facts constituting reasonable cause.

f. The specific section of law violated.

g. The name and authority of the citing officer.

h. The procedures that the minor must follow to contest the citation, perform the required community service, pay the civil penalty, and participate in a cyber-safety program.

2. If the citation is contested and the court determines that the minor committed a noncriminal violation under this section, the court may order the minor to perform 8 hours of community service, pay a $60 civil penalty, or participate in a cyber-safety program, or any combination thereof.

3. A minor who fails to comply with the citation waives his or her right to contest it, and the court may impose any of the penalties identified in subparagraph 2. or issue an order to show cause. Upon a finding of contempt, the court may impose additional age-appropriate penalties, which may include issuance of an order to the Department of Highway Safety and Motor Vehicles to withhold issuance of, or suspend the driver license or driving privilege of, the minor for 30 consecutive days. However, the court may not impose incarceration.

4. All court records and information obtained or produced under this paragraph shall be afforded the same level of confidentiality provided under ss. 985.04 and 985.045. All noncriminal violations for sexting that occurred on or after

October 1, 2011, are considered confidential.

(b) Commits a misdemeanor of the first degree for a violation that occurs after the minor has been ~~being~~ found to have committed a noncriminal violation for sexting or has satisfied the penalty imposed in lieu of a court appearance as provided in paragraph (a), punishable as provided in s. 775.082 or s. 775.083.

(c) Commits a felony of the third degree for a violation that occurs after the minor has been ~~being~~ found to have committed a misdemeanor of the first degree for sexting, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) As used in this section, the term “found to have committed” means a determination of guilt that is the result of a plea or trial, or a finding of delinquency that is the result of a plea or an adjudicatory hearing, regardless of whether adjudication is withheld.

(6) Eighty percent of all civil penalties received by a juvenile court pursuant to this section shall be remitted by the clerk of the court to the county commission to provide training on cyber safety for minors. The remaining 20 percent shall remain with the clerk of the court to defray administrative costs.

Section 2. Subsection (1) of section 985.0301, Florida Statutes, is amended to read:

985.0301 Jurisdiction.—

(1) The circuit court has exclusive original jurisdiction of proceedings in which a child is alleged to have committed:

(a) ~~to have committed~~ A delinquent act or violation of law.

(b) A noncriminal violation that has been assigned to

<u>juvenile court by law.</u>

Section 3. This act shall take effect October 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3·30·15
Meeting Date

SB 1112
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Sexting

Name Barney Bishop III

Job Title Pres & CEO

Address 204 S. Monroe
Street

Tall FL 32301
City State Zip

Phone 577·3032

Email barney@smartjusticealliance.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/30/15
Meeting Date

1112
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Sexting

Name Laura Fellman

Job Title Florida PTA Legislative Committee Member

Address 7654 Soliman Cir.
Street

Phone 561 445 4000

Boca Raton FL 33433
City State Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

The Florida Senate

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 1174

INTRODUCER: Senator Simmons

SUBJECT: Trespass on Airport Property

DATE: March 27, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	**Favorable**
2.			ACJ	
3.			FP	

I. Summary:

SB 1174 provides that it is a third degree felony for a person to trespass on the operational area of an airport with the intent to injure another person, damage property, or impede the operation or use of an aircraft, runway, taxiway, ramp, cargo ramp, or apron area.

II. Present Situation:

Trespass on Property Other than a Structure or Conveyance

Section 810.09, F.S, punishes trespass on property other than a structure or conveyance.

Section 810.09(1)(a), F.S., provides that it is a first degree misdemeanor[1] for a person, without being authorized, licensed, or invited, to willfully enter upon or remain in any property other than a structure or conveyance:

- As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011, F.S.; or
- If the property is the unenclosed curtilage[2] of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass.[3]

---

[1] A first degree misdemeanor is punishable by up to a year in jail, a fine of up to $1,000, or both. Sections 77.082 and 77.083, F.S.

[2] "Unenclosed curtilage" means the unenclosed land or grounds, and any outbuildings, that are directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling. Section 810.09(1)(b), F.S.

[3] Currently, a law enforcement officer may arrest a person without a warrant if there is probable cause to believe that the person has committed trespass in a secure area of an airport when signs are posted in conspicuous areas of the airport which notify that unauthorized entry into such areas constitutes a trespass and specify the methods for gaining authorized access to such areas. Section 901.15(14), F.S. A law enforcement officer may also arrest without a warrant if the person has committed a felony or misdemeanor offense in the officer's presence. Section 901.15(1), F.S.

Section 810.09(2)(a), F.S., provides that it is a first degree misdemeanor if the offender defies an order to leave, personally communicated to the offender by the owner of the premises or by an authorized person, or willfully opens any door, fence, or gate or does any act that exposes animals, crops, or other property to waste, destruction, or freedom; unlawfully dumps litter on property; or trespasses on property other than a structure or conveyance.

There are seven third degree felony[4] trespassing offenses:

- The offender is armed with a firearm or other dangerous weapon during the commission of the offense of trespass on property other than a structure or conveyance.
- The offender trespasses on a construction site that is:
  - Greater than 1 acre in area and is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."; or
  - One acre or less in area and is identified as such with a sign that appears prominently, in letters of not less than 2 inches in height, and reads in substantially the following manner: "THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."[5]
- The offender trespasses on commercial horticulture property and the property is legally posted and identified in substantially the following manner: "THIS AREA IS DESIGNATED COMMERCIAL PROPERTY FOR HORTICULTURE PRODUCTS, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."
- The offender trespasses on an agricultural site for testing or research purposes that is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED AGRICULTURAL SITE FOR TESTING OR RESEARCH PURPOSES, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."
- The offender trespasses on a domestic violence center certified under s. 39.905, F.S., which is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED RESTRICTED SITE AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."
- A person, in taking or attempting to take any animal described in s. 379.101(19) or (20), F.S., or in killing, attempting to kill, or endangering any animal described in s. 585.01(13), F.S., knowingly propels or causes to be propelled any potentially lethal projectile over or across private land without authorization.[6]
- The offender trespasses on an agricultural chemicals manufacturing facility that is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED AGRICULTURAL CHEMICALS MANUFACTURING FACILITY, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

[4] A third degree felony is punishable by up to 5 years in state prison, a fine of up to $5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.

[5] The sign must be placed at the location on the property where the permits for construction are located. For construction sites of 1 acre or less as provided in this subparagraph, it is not necessary to give notice by posting as defined in s. 810.011(5), F.S.

[6] "Potentially lethal projectile" includes any projectile launched from any firearm, bow, crossbow, or similar tensile device. This provision does not apply to any governmental agent or employee acting within the scope of his or her official duties.

Unlawful Entry on Property

Section 876.43, F.S., authorizes the following persons or entities to post on the property of the person or entity at each gate, entrance, dock or railway entrance and every 100 feet of waterfront a sign reading "No Entry Without Permission":

- Any individual, partnership, association, corporation, municipal corporation or state or any political subdivision thereof engaged in, or preparing to engage in:
  - The manufacture, transportation or storage of any product to be used in the preparation of the United States, or of any country with which the United States shall then maintain friendly relations, or of any of the states for defense or for war or in the prosecution of war by the United States; or
  - The manufacture, transportation, distribution or storage of gas, oil, coal, electricity, or water.
- Any individual, partnership, association, corporation, municipal corporation or state or any political subdivision thereof operating any public utility, whose property, except where it fronts on water or where there are entrances for railway cars, vehicles, persons or things, is surrounded by a fence or wall, or a fence or wall and buildings.

It is a second degree misdemeanor[7] for a person, without permission of such owner, to willfully enter upon premises so posted.

Trespass on the Operational Area of an Airport

Three incidents reported in the media in 2014-15 are examples of airport trespassing. In 2014, a man breached a fence at the Orlando International Airport and tried to crawl into the wheel well of a parked airplane.[8] That same year, a man scaled a fence at Tampa International Airport and went onto an active runway.[9] In March of 2015, a woman scaled a fence on the Western perimeter of the Miami-Dade International Airport.[10]

It appears that trespass (if the trespasser is unarmed) in the operational area of an airport may be charged as either a first degree misdemeanor violation under s. 810.09(1)(a), F.S., or as a second degree misdemeanor violation under s. 876.43, F.S. (assuming the operational area qualifies as a premises described in that statute).[11]

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[7] A second degree misdemeanor is punishable by up to 60 days in jail, a fine of up to $500, or both. Sections 775.082 and 775.083, F.S.

[8] "Arrest at Orlando International Airport." September 18, 2014. cityoforlando.net. This article is available at http://www.cityoforlando.net/police/arrest-at-orlando-international-airport/ (last viewed on March 9, 2015).

[9] Ahlers. Mike M. "Man Jumps Tampa airport fence, taken into custody." May 19, 2014. CNN. This article is available at http://www.cnn.com/2014/05/19/us/florida-airport-fence-jumper/index.html (last viewed on March 9, 2015).

[10] D'Oench, Peter. "Police: Woman Arrested for Scaling Miami Airport Fence." March 2, 2015. CBS Miami. This article is available at http://miami.cbslocal.com/2015/03/02/police-woman-arrested-for-scaling-miami-airport-fence/ (Last viewed on March 9, 2015).

[11] For an example of airport trespass being charged as a violation of s. 876.43, F.S., see the arrest affidavit at the "Download the Arrest Affidavit" link for the article referenced in footnote 7 of this analysis.

Federal law punishes entry by fraud or false pretenses into a secure area of an airport.[12]

III. Effect of Proposed Changes:

The bill provides that it is a third degree felony for a person to trespass on the operational area of an airport with the intent to injure another person, damage property, or impede the operation or use of an aircraft, runway, taxiway, ramp, cargo ramp, or apron area.

The bill defines "operational area of an airport" as any portion of an airport where access by the public is prohibited by fences or appropriate signs, and includes runways, taxiways, all ramps and apron areas, aircraft parking and storage areas, fuel storage areas, maintenance areas, and any other area of an airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft.[13] Therefore, by definition, for trespassing to be punished as a third degree felony the area in which the trespassing occurred must be enclosed by fencing or have signage indicating that access to the area by the general public is prohibited.[14]

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.

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[12] *See* 18 U.S.C. § 1036. The offense is punishable by a fine or imprisonment for not more than 6 months, or both. *Id.* However, if the offense is committed with the intent to commit a felony, the offense is punishable by a fine or imprisonment of not more than 10 years, or both. *Id.*

[13] This definition is substantially similar to the definition of "operational area" in New Jersey law: "any portion of a public airport, from which access by the public is prohibited by fences or appropriate signs, and includes runways, taxiways, all ramps, cargo ramps and apron areas, aircraft parking and storage areas, fuel storage areas, maintenance areas, and any other area of a public airport used or intended to be used for landing, takeoff or surface maneuvering of aircraft." N.J. Rev. Stat. § 2C:18-1. The definition is relevant to N.J. Rev. Stat. § 2C:18-3, which, in part, punishes a person who, knowing he is or she is not licensed or privileged to do so, enters or surreptitiously remains in any operational area of an airport.

[14] Federal regulations require airports to post signs at secured area access points and on the perimeter that provide warning of the prohibition against unauthorized entry. Signs must be posted by each airport operator in accordance with its security program. 49 CFR Part 1542.201(6). Airports must also post signs on air operations area (AOA) access points and perimeters that provide warning of the prohibition against unauthorized entry to the AOA. Signs must be posted by each airport operator in accordance with its security program. 49 CFR Part 1542.203(4). E-mail (March 9, 2015) from Mr. Larry Dale, President/CEO, Orlando Sanford International Airport (on file with the Senate Committee on Criminal Justice).

B. Private Sector Impact:

The bill may result in a cost savings to airports if it deters or reduces airport trespassing.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates that SB 1174 will have a positive insignificant prison bed impact (an increase of 10 or fewer prison beds per year).

VI. Technical Deficiencies:

None.

VII. Related Issues:

Some of the states that specifically punish airport trespassing include California, Illinois, Mississippi, New Jersey, North Carolina, South Carolina, and Tennessee.[15]

VIII. Statutes Affected:

This bill substantially amends section 810.09 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.

[15] *See* Cal. Penal Code § 602(u), 725 Ill. Comp. Stat. § 5/21-7, Miss. Code Ann. § 97-17-87(2)(a), N.J. Rev. Stat. § 2C:18-3, N.C. Gen. Stat. § 63-26.1, S.C. Code Ann. § 55-13-40, and Tenn. Code Ann. §.39-17-109.

By Senator Simmons

10-00909A-15 20151174__

A bill to be entitled

An act relating to trespass on airport property; amending s. 810.09, F.S.; providing a criminal penalty for trespass on the operational area of an airport with intent to commit specified acts; defining the term “operational area of an airport”; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) is republished and paragraph (j) is added to subsection (2) of section 810.09, Florida Statutes, to read:

810.09 Trespass on property other than structure or conveyance.—

(1)(a) A person who, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance:

1. As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011; or

2. If the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass,

commits the offense of trespass on property other than a structure or conveyance.

(2)

<u>(j)1. The offender commits a felony of the third degree,</u>

10-00909A-15 20151174__

<u>punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the offender trespasses on the operational area of an airport with the intent to injure another person, damage property, or impede the operation or use of an aircraft, runway, taxiway, ramp, cargo ramp, or apron area.</u>

<u>2. As used in this paragraph, the term “operational area of an airport” means any portion of an airport where access by the public is prohibited by fences or appropriate signs, and includes runways, taxiways, all ramps and apron areas, aircraft parking and storage areas, fuel storage areas, maintenance areas, and any other area of an airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft.</u>

Section 2. This act shall take effect October 1, 2015.

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 1182
INTRODUCER:	Senator Latvala
SUBJECT:	Terroristic Threats
DATE:	March 27, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	**Pre-meeting**
2.			ACJ	
3.			AP	

I. Summary:

The bill creates an act relating to terroristic threats. The bill provides that a person commits the crime of terroristic threats if he or she communicates, directly or indirectly, a threat to do a violent act dangerous to human life with the intent to terrorize, intimidate, injure, or coerce a person or group; cause the evacuation of a building, place of assembly or facility of public transportation; or cause serious public inconvenience or terror.

Persons violating this provision commit a third degree felony. Persons commit a second degree felony if occupants of the building, place of assembly, or facility of public transportation are diverted from their normal or customary operations; if the threat is against a law enforcement officer or immediate family member; or state attorney or assistant state attorney.

The bill provides that in addition to any restitution ordered, persons violating this section may be ordered to pay restitution in an amount equal to the cost of the evacuation. A judgment of restitution does not preclude persons from recovering in a civil action.

II. Present Situation:

Corruption by threat against public servants

It is a felony to unlawfully harm or threaten to harm any public servant,[1] his or her immediate family, or any other person whose welfare the public servant is interested with the intent or purpose of:

- Influencing the performance of any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant, in violation or performance of a public duty[2];

---

[1] Section 838.021, F.S.
[2] Section 838.021(1)(a), F.S.

- Causing or inducing the public servant to use or exert, or procure the use of exertion of any influence upon or with any other public servant regarding any act or omission which the defendant believes to be or the public servant represents as being, within the official discretion of the public servant, in violation or performance of a public duty.[3]

Prosecution under this section does not require allegation or proof that:

- The public servant ultimately sought to be unlawfully influenced was qualified to act in the desired way;
- That the public servant had assumed office;
- That the matter was properly pending before him or her or might by law properly be brought before him or her;
- That the public servant possessed jurisdiction over the matter; or
- That his or her official action was necessary to achieve the person's purpose.[4]

It is a second degree felony if the defendant actually does harm or a third degree felony if the defendant threatens harm.[5]

III. Effect of Proposed Changes:

The bill creates s. 775.32, F.S., an act related to terroristic threats. For purposes of the act the bill provides the following definitions:

- "Communicate" – is defined as a means to convey in person, in writing, or by electronic means to another person or other persons a message, including words, images, or language, through the use of electronic mail, the Internet, or any other type of electronic communication;
- "Immediate family member" – is defined to mean a spouse, parent, brother, sister, child, uncle, aunt, first cousin, nephew, niece, half-brother, half-sister, father-in-law, mother-in law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepparent, stepbrother, stepsister, stepchild, grandparent, great-grandparent, grandchild, great-grandchild, step great-grandchild of the person; a person who is engaged to be married to, or who otherwise holds himself or herself out as, or is generally known as, the person whom the person intends to marry; or a person to whom the person stands in loco parentis; or
  - Any other person living in the person's household and related to the person by blood or marriage or any other natural person having the same legal residence as the person.[6]
- "Law enforcement officer" includes a law enforcement officer, a correctional officer, a correctional probation officer including part-time and auxiliary officers, a county probation officer, an employee or agent of the Department of Corrections who supervises or provides services to inmates, an officer of the Florida Commission on Offender Review, a federal law enforcement officer, law enforcement personnel of the Fish and Wildlife Conservation Commission, or the Department of Law Enforcement.

[3] Section 838.021(1)(b), F.S.
[44] Section 838.021(2), F.S.
[5] Section 838.021(3)(a) and (b), F.S.
[6] A similar definition of "relative" is also found in s. 112.312, F.S.

The bill provides that a person commits a crime of terroristic threats if the person communicates, directly or indirectly, a threat to do any of the following:

- Commit any violent act or any act dangerous to human life with the intent to terrorize, intimidate, injure, or coerce a person or group;
- Cause the evacuation of a building, place of assembly, or facility of public transportation;
- Cause serious public inconvenience or terror, or cause serious inconvenience with reckless disregard of the risk of causing such terror or inconvenience.
- A person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

A person who violates this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S., if the violation:

- Causes the occupants of the building, place of assembly, or facility of public transportation to be diverted from their normal or customary operations;
- Involves a threat against a law enforcement officer or an immediate family member of a law enforcement officer; or
- Involves a threat against a state attorney or an assistant state attorney, or an immediate family member of a state attorney or an assistant state attorney.

A person convicted of violating this section shall, in addition to any other restitution that may be ordered, pay restitution in an amount equal to the cost of the evacuation, including, but not limited to, fire and police response; emergency medical service or emergency preparedness response; and transportation of an individual from the building, place of assembly, or facility of public transportation. A judgment or order of restitution does not preclude a person from recovering from the offender other relief that may be available in a civil action authorized by law, provided that a civil award shall be reduced by the amount paid under the judgment or order of restitution.[7]

The bill has an effective date of October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[7] Pennsylvania, New York, Missouri, Illinois, Nebraska, Minnesota, Kentucky, Georgia, and California have passed similar laws relating to terroristic threats. See 18 Pa. Cons. Stat. s. 2706. McKinney's Penal law s. 490.20, V.A.M.S. 574.125, 720 ILCS 5/29D-20, Neb.Rev.St. s28-311.01,M.S.A. s. 609.713, KRS s. 508.080, Ga St. s. 16-11-37, and Cal. Penal Code s. 422

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) reviewed the bill and found that it will have a positive insignificant impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 775.32 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 Latvala

20-00652A-15 20151182__

A bill to be entitled

An act relating to terroristic threats; creating s. 775.32, F.S.; defining terms; providing that a person commits the crime of terroristic threats if he or she communicates, directly or indirectly, a threat to do specified acts; providing criminal penalties; requiring a person convicted of terroristic threats to, in addition to other restitution ordered, pay restitution in an amount equal to the cost of evacuation; providing that a judgment or order of restitution does not preclude relief recovery in a civil action; providing an effective date.

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

Section 1. Section 775.32, Florida Statutes, is created to read:

775.32 Terroristic threats.—

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

(a) “Communicate” means to convey in person, in writing, or by electronic means to another person or other persons a message, including words, images, or language, through the use of electronic mail, the Internet, or any other type of electronic communication.

(b) “Immediate family member” of a person means:

1. A spouse, parent, brother, sister, child, uncle, aunt, first cousin, nephew, niece, half-brother, half-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepparent, stepbrother, stepsister,

20-00652A-15 20151182__

stepchild, grandparent, great-grandparent, grandchild, great-grandchild, step grandparent, step great-grandparent, step grandchild, or step great-grandchild of the person; a person who is engaged to be married to, or who otherwise holds himself or herself out as, or is generally known as, the person whom the person intends to marry; or a person to whom the person stands in loco parentis; or

2. Any other person living in the person’s household and related to the person by blood or marriage or any other natural person having the same legal residence as the person.

(c) “Law enforcement officer” includes a law enforcement officer, a correctional officer, a correctional probation officer, a part-time law enforcement officer, a part-time correctional officer, an auxiliary law enforcement officer, and an auxiliary correctional officer, as those terms are respectively defined in s. 943.10, and a county probation officer; an employee or agent of the Department of Corrections who supervises or provides services to inmates; an officer of the Florida Commission on Offender Review; a federal law enforcement officer as defined in s. 901.1505; and law enforcement personnel of the Fish and Wildlife Conservation Commission or the Department of Law Enforcement.

(2) A person commits the crime of terroristic threats if the person communicates, directly or indirectly, a threat to do any of the following:

(a) Commit any violent act or any act dangerous to human life with the intent to terrorize, intimidate, injure, or coerce a person or group.

(b) Cause the evacuation of a building, place of assembly, or facility of public transportation.

(c) Cause serious public inconvenience or terror, or cause serious inconvenience with reckless disregard of the risk of causing such terror or inconvenience.

(3) A person who violates subsection (2) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person who violates subsection (2) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the violation:

(a) Causes the occupants of the building, place of assembly, or facility of public transportation to be diverted from their normal or customary operations;

(b) Involves a threat against a law enforcement officer or an immediate family member of a law enforcement officer; or

(c) Involves a threat against a state attorney or an assistant state attorney, or an immediate family member of a state attorney or an assistant state attorney.

(5) A person convicted of violating subsection (2) shall, in addition to any other restitution that may be ordered, pay restitution in an amount equal to the cost of the evacuation, including, but not limited to, fire and police response; emergency medical service or emergency preparedness response; and transportation of an individual from the building, place of assembly, or facility of public transportation. A judgment or order of restitution does not preclude a person from recovering from the offender such relief as may be available in a civil action authorized by law, provided that a civil award shall be reduced by the amount paid under the judgment or order of

restitution.

Section 2. This act shall take effect October 1, 2015.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JACK LATVALA
20th District

COMMITTEES:
Appropriations Subcommittee on Transportation, Tourism, and Economic Development, *Chair*
Appropriations
Commerce and Tourism
Governmental Oversight and Accountability
Regulated Industries
Rules

March 2, 2015

The Honorable Greg Evers, Chairman
Senate Committee on Criminal Justice
510 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Evers:

I respectfully request consideration of Senate Bill 1182/Terroristic Threats by the Senate Criminal Justice Committee at your earliest convenience.

This bill will provide for penalties for individuals communicating threats of violent acts to human life, causing serious public terror or involving a threat against a law enforcement officer or their family.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

Jack

Jack Latvala
State Senator
District 20

Cc: Amanda Cannon, Staff Director; Sue Arnold, Administrative Assistant

REPLY TO:
☐ 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
☐ 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: *www.flsenate.gov*

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/30/2015
Meeting Date

1182
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Terroristic Threats

Name Matt Puckett

Job Title Lobbyist

Address 300 East Brevard St.
Street

Tallahassee FL 32301
City State Zip

Phone 850-222-3329

Email N/A

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Police Benevolent Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

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 1188
INTRODUCER:	Senator Simpson
SUBJECT:	Controlled Substances
DATE:	March 27, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	**Pre-meeting**
2.			ACJ	
3.			AP	

I. Summary:

SB 1188 provides for a 3-year mandatory minimum term of imprisonment for violating s. 893.13(1)(a), F.S. (prohibiting sale, manufacturing, etc., of specified controlled substances), if the violation occurs in a dwelling.

The bill also punishes trafficking in described synthetic cannabinoids. The offense is a first degree felony. The gram-weight threshold for charging trafficking in these substances is "more than 250 grams." Depending upon the gram weight involved in the offense, the offender is subject to:

- A 3-year mandatory minimum term of imprisonment and a $25,000 fine;
- A 7-year mandatory minimum term of imprisonment and a $55,000 fine; or
- A 15-year mandatory minimum term of imprisonment and a $200,000 fine.

II. Present Situation:

Controlled Substance

A substance is a "controlled substance" if it is listed in any of five schedules in s. 893.03, F.S. The particular scheduling determines which penalties may be imposed for unlawful possession, sale, etc., and the conditions under which the substance can be legally possessed, prescribed, sold, etc.

Controlled Substance Offenses in s 893.13(1)(a), F.S.

Section 893.13(1)(a), F.S., punishes selling, manufacturing, or delivering, or possessing with the intent to sell, manufacture, or deliver a controlled substance.[1] It is a second degree felony,[2] third degree felony, [3] or first degree misdemeanor[4] to sell, manufacture, etc., the controlled substance depending on how the substance is scheduled. For example, selling a synthetic cannabinoid[5] scheduled in s. 893.03(1)(c), F.S. ("Schedule I(c)"), is a second degree felony. In contrast, unlawfully selling buprenorphine, an opioid medication scheduled in s. 893.03(5)(b), F.S. ("Schedule V(b)"), is a first degree misdemeanor.

Drug Trafficking

The drug trafficking statute, s. 893.135, F.S., prohibits and punishes knowingly selling, purchasing, manufacturing, delivering, bringing into this state, or possessing certain controlled substances in a specified quantity. The statute does not apply to all controlled substances. The quantities of the specific controlled substances sold, manufactured, etc., may be substantial, and the felony degree and penalties for a violation of this statute are greater than the felony degree and penalties for a violation of s. 893.13(1)(a), F.S. Most drug trafficking violations are first degree felonies.[6] There are also mandatory minimum terms and substantial mandatory fines (not a feature of s. 893.13(1)(a), F.S.).

Currently, there is no drug trafficking offense involving synthetic cannabinoids scheduled in Schedule I(c). An example of a drug trafficking offense that involves Schedule I(c) controlled substances is trafficking in phenethylamines.[7] A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 10 grams or more of any described phenethylamine commits a first degree felony. If the quantity involved:

- Is 10 grams or more, but less than 200 grams, the person is sentenced to a mandatory minimum term of imprisonment of 3 years and a fine of $50,000;

[1] Section 893.13(9), F.S., provides an exception to the unlawful acts specified in s. 893.13(1)-(8), F.S., for delivery to, or actual or constructive possession for medical or scientific use or purpose only of controlled substances by, persons included in classes specified in this subsection, or the agents or employees of those persons, for use in the usual course of their business or profession or in the performance of their official duties.

[2] Section 893.13(1)(a)1., F.S. A second degree felony is punishable by up to 15 years in state prison, a fine of up to $10,000, or both. Sections 775.082 and 775.083, F.S.

[3] Section 893.13(1)(a)2., F.S. A third degree felony is punishable by up to 5 years in state prison, a fine of up to $5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.

[4] Section 893.13(1)(a)3., F.S. A first degree misdemeanor is punishable by up to one year in jail, a fine of up to $1,000, or both. Sections 775.082 and 775.083, F.S.

[5] "Synthetic Cannabinoids are chemicals that act as cannabinoid receptor agonists. Chemically they are not similar to cannabinoids but the term 'Synthetic Cannabinoids' or 'Cannabinomimetics' is widely used to refer to them as they are cannabinoid-like in their activity." "Synthetic Cannabinoid Drug Information," Redwood Toxicology Laboratory, available at https://www.redwoodtoxicology.com/resources/drug_info/synthetic_cannabinoids (last viewed on March 9, 2015).

[6] Generally, a first degree felony is punishable by up to 30 years in state prison, a fine of up to $10,000, or both. Sections 775.082 and 775.083, F.S.

[7] Section 893.135(1)(k), F.S. "Phenethylamines" is a broad category of psychoactive substances.

- Is 200 grams or more, but less than 400 grams, the person is sentenced to a mandatory minimum term of imprisonment of 7 years and a fine of $100,000; or
- Is 400 grams or more, the person is sentenced to a mandatory minimum term of imprisonment of 15 years and a fine of $250,000.

A person who knowingly manufactures or brings into this state 30 kilograms or more of a described phenethylamine commits a capital felony[8] and is also subject to a fine of $250,000.

III. Effect of Proposed Changes:

The bill provides for a 3-year mandatory minimum term of imprisonment for violating s. 893.13(1)(a), F.S. (prohibiting sale, manufacturing, etc., of specified controlled substances), if the violation occurs in a dwelling, as that term is defined in s. 810.011, F.S.[9]

The bill also amends s. 893.135, F.S., the drug trafficking statute, to provide that it is a first degree felony for any person to knowingly sell, purchase, manufacture, deliver, or bring into this state, or to knowingly be in actual or constructive possession of, "more than 250 grams" of a described synthetic cannabinoid.[10] The offense also covers mixtures that contain those substances.

Mandatory minimum terms and substantial mandatory fines are also provided. If the quantity involved:

- Is more than 250 grams,[11] but less than 500 grams, the person is sentenced to a mandatory minimum term of imprisonment of 3 years and a fine of $25,000;
- Is 500 grams or more, but less than 1,000 grams, the person is sentenced to a mandatory minimum term of imprisonment of 7 years and a fine of $50,000; or
- Is 1,000 grams or more, but less than 30 kilograms,[12] the person is sentenced to a mandatory minimum term of imprisonment of 15 years and a fine of $200,000.[13]

The bill amends s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to make conforming changes to references to trafficking offenses in the chart due to the amendment of s. 893.135, F.S.

Typically, trafficking offenses are ranked in the chart based on the gram-weight quantity ranges provided. For example, trafficking in 10 grams or more, but less than 200 grams, of a

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[8] A capital felony is punishable by life imprisonment or a death sentence. Sections 775.082, 775.083, and 921.142, F.S.

[9] Section 810.011(2), F.S., defines a "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.

[10] The bill references controlled substances in s. 893.03(1)(c)114.-142., 151.-159., and 166.-173., F.S. The Florida Department of Law Enforcement states that the substances referenced "appear to be exclusively the synthetic cannabinoids listed under Schedule I (F.S. 893.03)." Analysis of SB 1188 (February 24, 2015), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice).

[11] The description of the gram-weight threshold is atypical. Typically, the description begins with a specific number followed by "or more" (i.e., "250 grams or more").

[12] It is unclear why there is a cap of "less than 30 kilograms."

[13] Unlike several other drug trafficking offenses, there is no capital felony for trafficking in the described synthetic cannabinoids.

phenethylamine is a Level 7 offense; trafficking in 200 grams or more, but less than 400 grams, of a phenethylamine is a Level 8 offense; and trafficking in 400 grams or more of a phenethylamine is a Level 9 offense.[14] The higher the ranking, the greater the number of sentence points. The bill does not rank the new trafficking offense in the chart. While there is no requirement to rank a felony offense in the chart, the effect of not doing so is that the offense receives a "default" ranking based on its felony degree, as provided in s. 921.0023, F.S. The default ranking under that statute for a first degree felony is Level 7. This means that trafficking in a described synthetic cannabinoid is a Level 7 offense, regardless of the quantity involved.

The effective date of the bill is October 1, 2015.

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 synthetic cannabinoids referenced in the new drug trafficking provision are already controlled substances. Therefore, current law (not this bill) makes products containing these substances unlawful and makes selling those products unlawful.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation estimates that SB 1188 will have a positive indeterminate (unquantifiable) prison bed impact.

VI. Technical Deficiencies:

The bill provides for a 3-year mandatory minimum term of imprisonment for violating s. 893.13(1)(a), F.S. (prohibiting sale, manufacturing, etc., of specified controlled substances), if

[14] *See* s. 921.0022(3)(g), (h), and (i), F.S.

the violation occurs in a dwelling. However, under this paragraph, selling, manufacturing, etc. certain controlled substances is a first degree misdemeanor. Section 775.082, F.S., provides that the maximum period of incarceration for a first degree misdemeanor is one year in jail.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 893.13, 893.135, and 921.0022.

This bill reenacts the following sections of the Florida Statutes for the purpose of incorporating the amendment to s. 893.13, F.S., in references to that statute: 373.6055, 381.986, 397.451, 414.095, 772.12, 775.087, 782.04, 810.02, 893.03, 893.1351, 903.133, 907.041, 921.0024, 943.0585, and 943.059.

This bill reenacts section 812.014 of the Florida Statutes for the purpose of incorporating the amendments to ss. 893.13 and 893.135, F.S., in references to those 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.

195724

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Criminal Justice (Clemens) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (3) of section 893.135, Florida Statutes, is amended to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(3)(a) Notwithstanding the provisions of s. 948.01 and except as provided in paragraph (b), with respect to any person

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who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving the mandatory minimum term of imprisonment prescribed by this section.

(b) A person currently incarcerated for a violation of subparagraph (1)(c)1. committed on or before July 1, 2014, may petition the sentencing court for resentencing under current law ~~A person sentenced to a mandatory minimum term of imprisonment under this section is not eligible for any form of discretionary early release, except pardon or executive clemency or conditional medical release under s. 947.149, prior to serving the mandatory minimum term of imprisonment~~.

Section 2. Section 893.22, Florida Statutes, is created to read:

893.22 Departure from mandatory minimum sentences.—For an offense listed under this chapter committed on or after October 1, 2015, which carries a mandatory minimum sentence, a court must impose the mandatory minimum sentence unless the court finds that such sentence is not necessary for the protection of the public. If a court finds that it is not necessary for the protection of the public to sentence the defendant to the mandatory minimum sentence, the court shall provide written reasons or a written transcript of orally stated reasons as permissible, if filed by the court within 7 days after the date of sentencing. Each month, a court shall submit to the Office of Economic and Demographic Research of the Legislature the written reasons or transcripts in each case in which the court determined not to sentence a defendant to the mandatory minimum

195724

<u>sentence.</u>

Section 3. This act shall take effect July 1, 2015.

================= 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 sentencing; amending s. 893.135, F.S.; providing an exception to certain sentencing prohibitions; authorizing a person incarcerated for a specified violation on or before a specified date to petition the court for resentencing; deleting a provision prohibiting a person sentenced to a mandatory minimum term of imprisonment from certain eligibility; creating s. 893.22, F.S.; requiring a court to impose the mandatory minimum sentence for certain offenses committed on or after a specified date; providing an exception; requiring a court to provide certain written documentation under certain circumstances; requiring a court to submit a monthly report to the Office of Economic and Demographic Research specifying certain information; providing an effective date.

By Senator Simpson

A bill to be entitled

An act relating to controlled substances; amending s. 893.13, F.S.; specifying the penalty for a person who violates a certain controlled substance law in a dwelling; amending s. 893.135, F.S.; establishing the felony of "trafficking in synthetic drugs" and specifying a penalty; amending s. 921.0022, F.S.; conforming cross-references; reenacting ss. 893.13(9), 893.135(1), and 921.0022(3)(e), F.S., to incorporate the amendment made to s. 893.13, F.S., in references thereto; reenacting ss. 373.6055(3)(c), 381.986(7)(a) and (b), 397.451(6), 414.095(1), 772.12(2), 775.087(2)(a) and (3)(a), 782.04(1)(a), (3)(a), and (4)(a), 810.02(3), 893.03(3)(c), 893.13(8)(d), 893.1351(1) and (2), 903.133, 907.041(4)(c), 921.0024(1)(b), 943.0585, and 943.059, F.S., to incorporate the amendment made to s. 893.135, F.S., in references thereto; reenacting s. 812.014(2)(c), to incorporate the amendments made to ss. 893.13 and 893.135, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 893.13, Florida Statutes, is amended to read:

893.13 Prohibited acts; penalties.—

(1)(a) Except as authorized by this chapter and chapter 499, a person may not sell, manufacture, or deliver, or possess

with intent to sell, manufacture, or deliver, a controlled substance. A person who violates this provision with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in 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) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

A person who violates this paragraph while in a dwelling, as that term is defined in s. 810.011, shall be sentenced to a mandatory minimum term of imprisonment of 3 years.

Section 2. Present paragraphs (b) through (l) of subsection (1) of section 893.135, Florida Statutes, are redesignated as paragraphs (c) through (m), respectively, and a new paragraph (b) is added to that subsection, to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(b) Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, more than 250 grams of a controlled substance described in s. 893.03(1)(c)46.-50., s. 893.03(1)(c)114.-142., s. 893.03(1)(c)151.-159., or s. 893.03(1)(c)166.-173., or any mixture containing these substances, commits a felony of the first degree, which felony shall be known as “trafficking in synthetic drugs,” punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

1. Is more than 250 grams, but less than 500 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and ordered to pay a fine of $25,000.

2. Is 500 grams or more, but less than 1,000 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and ordered to pay a fine of $50,000.

3. Is 1,000 grams or more, but less than 30 kilograms, the person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and ordered to pay a fine of $200,000.

Section 3. Paragraphs (g), (h), and (i) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(g) LEVEL 7

Florida Statute	Felony Degree	Description
316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.

316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; $10,000 or less.
409.920	2nd	Medicaid provider fraud;

(2)(b)1.b.		more than $10,000, but less than $50,000.
456.065(2)	3rd	Practicing a health care profession without a license.
456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
458.327(1)	3rd	Practicing medicine without a license.
459.013(1)	3rd	Practicing osteopathic medicine without a license.
460.411(1)	3rd	Practicing chiropractic medicine without a license.
461.012(1)	3rd	Practicing podiatric medicine without a license.
462.17	3rd	Practicing naturopathy without a license.

463.015(1)	3rd	Practicing optometry without a license.
464.016(1)	3rd	Practicing nursing without a license.
465.015(2)	3rd	Practicing pharmacy without a license.
466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
467.201	3rd	Practicing midwifery without a license.
468.366	3rd	Delivering respiratory care services without a license.
483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
483.901(9)	3rd	Practicing medical physics without a license.
484.013(1)(c)	3rd	Preparing or dispensing

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

		optical devices without a prescription.
484.053	3rd	Dispensing hearing aids without a license.
494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.
560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by a money services business.
560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less

		than $20,000 by financial institution.
775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).

782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.

784.048(7)	3rd	Aggravated stalking; violation of court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.
787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.

787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass

		destruction.
790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.
796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
800.04(5)(c)1.	2nd	Lewd or lascivious

		molestation; victim younger than 12 years of age; offender younger than 18 years of age.
800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age or older.
800.04(5)(e)	1st	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.
806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
810.02(3)(b)	2nd	Burglary of unoccupied

		dwelling; unarmed; no assault or battery.
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
812.014(2)(b)4.	2nd	Property stolen, law

		enforcement equipment from authorized emergency vehicle.
812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
817.034(4)(a)1.	1st	Communications fraud, value greater than $50,000.
817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.

817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
825.103(3)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at

		$10,000 or more, but less than $50,000.
827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
838.015	2nd	Bribery.
838.016	2nd	Unlawful compensation or reward for official behavior.
838.021(3)(a)	2nd	Unlawful harm to a public servant.
838.22	2nd	Bid tampering.

843.0855(2)	3rd	Impersonation of a public officer or employee.
843.0855(3)	3rd	Unlawful simulation of legal process.
843.0855(4)	3rd	Intimidation of a public officer or employee.
847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.
874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs,

		manages, or supervises criminal gang-related activity.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
893.13(4)(a)	1st	Deliver to minor cocaine

		(or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
893.135 (1)(c)1.a. ~~893.135 (1)(b)1.a.~~	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
893.135 (1)(d)1.a. ~~893.135 (1)(c)1.a.~~	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
893.135 (1)(d)2.a. ~~893.135 (1)(c)2.a.~~	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.
893.135 (1)(d)2.b. ~~893.135 (1)(c)2.b.~~	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.

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893.135 (1)(d)3.a. ~~893.135 (1)(c)3.a.~~	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
893.135 (1)(d)3.b. ~~893.135 (1)(c)3.b.~~	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
893.135(1)(e)1. ~~893.135(1)(d)1.~~	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
893.135(1)(f)1. ~~893.135(1)(e)1.~~	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
893.135(1)(g)1. ~~893.135(1)(f)1.~~	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
893.135 (1)(h)1.a. ~~893.135 (1)(g)1.a.~~	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.

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893.135 (1)(i)1.a. ~~893.135 (1)(h)1.a.~~	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
893.135 (1)(k)1.a. ~~893.135 (1)(j)1.a.~~	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
893.135 (1)(l)2.a. ~~893.135 (1)(k)2.a.~~	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.
896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions

		exceeding $300 but less than $20,000.
943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false

		registration information.
944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
985.4815(12)	3rd	Failure to report or providing false

		information about a sexual offender; harbor or conceal a sexual offender.
985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

(h) LEVEL 8

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.a.	2nd	DUI manslaughter.
316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
499.0051(8)	1st	Knowing forgery of prescription

		labels or prescription drug labels.
560.123(8)(b)2.	2nd	Failure to report currency or payment instruments totaling or exceeding $20,000, but less than $100,000 by money transmitter.
560.125(5)(b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding $20,000, but less than $100,000.
655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding $20,000, but less than $100,000 by financial institutions.
777.03(2)(a)	1st	Accessory after the fact, capital felony.
782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or

		unlawfully discharging bomb.
782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
787.06(3)(a)1.	1st	Human trafficking for labor and services of a child.
787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity of an adult.
787.06(3)(c)2.	1st	Human trafficking using coercion for labor and services of an unauthorized alien adult.
787.06(3)(e)1.	1st	Human trafficking for labor and services by the transfer or transport of a child from outside

		Florida to within the state.
787.06(3)(f)2.	1st	Human trafficking using coercion for commercial sexual activity by the transfer or transport of any adult from outside Florida to within the state.
790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
794.011(5)(a)	1st	Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does not use physical force likely to cause serious injury.
794.011(5)(b)	2nd	Sexual battery; victim and offender 18 years of age or older; offender does not use physical force likely to cause serious injury.
794.011(5)(c)	2nd	Sexual battery; victim 12 years of age or older; offender younger than 18 years; offender does not use physical force likely to cause

		injury.
794.011(5)(d)	1st	Sexual battery; victim 12 years of age or older; offender does not use physical force likely to cause serious injury; prior conviction for specified sex offense.
794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
800.04(4)(b)	2nd	Lewd or lascivious battery.
800.04(4)(c)	1st	Lewd or lascivious battery; offender 18 years of age or older; prior conviction for specified sex offense.
806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
810.02(2)(a)	1st,PBL	Burglary with assault or battery.
810.02(2)(b)	1st,PBL	Burglary; armed with explosives or dangerous weapon.
810.02(2)(c)	1st	Burglary of a dwelling or

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		structure causing structural damage or $1,000 or more property damage.
812.014(2)(a)2.	1st	Property stolen; cargo valued at $50,000 or more, grand theft in 1st degree.
812.13(2)(b)	1st	Robbery with a weapon.
812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
817.535(4)(a)1.	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.
817.535(5)(a)	2nd	Filing false lien or other unauthorized document; owner of

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		the property incurs financial loss as a result of the false instrument.
817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.
825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
825.103(3)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at $50,000 or more.
837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.

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860.16	1st	Aircraft piracy.
893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
893.135 (1)(c)1.b. ~~893.135 (1)(b)1.b.~~	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
893.135 (1)(d)1.b. ~~893.135 (1)(c)1.b.~~	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
893.135	1st	Trafficking in hydrocodone, 50

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(1)(d)2.c. ~~893.135 (1)(c)2.c.~~		grams or more, less than 200 grams.
893.135 (1)(d)3.c. ~~893.135 (1)(c)3.c.~~	1st	Trafficking in oxycodone, 25 grams or more, less than 100 grams.
893.135 (1)(e)1.b. ~~893.135 (1)(d)1.b.~~	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
893.135 (1)(f)1.b. ~~893.135 (1)(e)1.b.~~	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
893.135 (1)(g)1.b. ~~893.135 (1)(f)1.b.~~	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
893.135 (1)(h)1.b. ~~893.135 (1)(g)1.b.~~	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.

893.135 (1)(i)1.b. ~~893.135 (1)(h)1.b.~~	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
893.135 (1)(k)1.b. ~~893.135 (1)(j)1.b.~~	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
893.135 (1)(l)2.b. ~~893.135 (1)(k)2.b.~~	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.

895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding $20,000, but less than $100,000.
896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding $20,000 but less than $100,000.

(i) LEVEL 9

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
327.35 (3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.
409.920 (2)(b)1.c.	1st	Medicaid provider fraud; $50,000 or more.
499.0051(9)	1st	Knowing sale or purchase of

		contraband prescription drugs resulting in great bodily harm.
560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding $100,000 by money transmitter.
560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding $100,000.
655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding $100,000 by financial institution.
775.0844	1st	Aggravated white collar crime.
782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.

782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
787.02(3)(a)	1st,PBL	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
787.06(3)(c)1.	1st	Human trafficking for labor and services of an unauthorized alien

		child.
787.06(3)(d)	1st	Human trafficking using coercion for commercial sexual activity of an unauthorized adult alien.
787.06(3)(f)1.	1st,PBL	Human trafficking for commercial sexual activity by the transfer or transport of any child from outside Florida to within the state.
790.161	1st	Attempted capital destructive device offense.
790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
794.011(4)(a)	1st,PBL	Sexual battery, certain circumstances; victim 12 years of

		age or older but younger than 18 years; offender 18 years or older.
794.011(4)(b)	1st	Sexual battery, certain circumstances; victim and offender 18 years of age or older.
794.011(4)(c)	1st	Sexual battery, certain circumstances; victim 12 years of age or older; offender younger than 18 years.
794.011(4)(d)	1st,PBL	Sexual battery, certain circumstances; victim 12 years of age or older; prior conviction for specified sex offenses.
794.011(8)(b)	1st,PBL	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.

812.13(2)(a)	1st,PBL	Robbery with firearm or other deadly weapon.
812.133(2)(a)	1st,PBL	Carjacking; firearm or other deadly weapon.
812.135(2)(b)	1st	Home-invasion robbery with weapon.
817.535(3)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.
817.535(4)(a)2.	1st	Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.
817.535(5)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument.
817.568(7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial

		authority.
827.03(2)(a)	1st	Aggravated child abuse.
847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
893.135	1st	Attempted capital trafficking offense.
893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
893.135 (1)(c)1.c. ~~893.135 (1)(b)1.c.~~	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
893.135	1st	Trafficking in illegal drugs, more

(1)(d)1.c. ~~893.135 (1)(c)1.c.~~		than 28 grams, less than 30 kilograms.
893.135 (1)(d)2.d. ~~893.135 (1)(c)2.d.~~	1st	Trafficking in hydrocodone, 200 grams or more, less than 30 kilograms.
893.135 (1)(d)3.d. ~~893.135 (1)(c)3.d.~~	1st	Trafficking in oxycodone, 100 grams or more, less than 30 kilograms.
893.135 (1)(e)1.c. ~~893.135 (1)(d)1.c.~~	1st	Trafficking in phencyclidine, more than 400 grams.
893.135 (1)(f)1.c. ~~893.135 (1)(e)1.c.~~	1st	Trafficking in methaqualone, more than 25 kilograms.
893.135 (1)(g)1.c. ~~893.135 (1)(f)1.c.~~	1st	Trafficking in amphetamine, more than 200 grams.

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

893.135 (1)(i)1.c. ~~893.135 (1)(h)1.c.~~	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
893.135 (1)(k)1.c. ~~893.135 (1)(j)1.c.~~	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
893.135 (1)(l)2.c. ~~893.135 (1)(k)2.c.~~	1st	Trafficking in Phenethylamines, 400 grams or more.
896.101(5)(c)	1st	Money laundering, financial instruments totaling or exceeding $100,000.
896.104(4)(a)3.	1st	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding $100,000.

Section 4. Subsection (9) of s. 893.13, subsection (1) of s. 893.135, and paragraph (e) of subsection (3) of s. 921.0022, Florida Statutes, are reenacted for the purpose of incorporating the amendment made to s. 893.13, Florida Statutes, in references

thereto.

Section 5. Paragraph (c) of subsection (3) of s. 373.6055, paragraphs (a) and (b) of subsection (7) of s. 381.986, subsection (6) of s. 397.451, subsection (1) of s. 414.095, subsection (2) of s. 772.12, paragraph (a) of subsection (2), and paragraph (a) of subsection (3) of s. 775.087, paragraph (a) of subsection (1), paragraph (a) of subsection (3), and paragraph (a) of subsection (4) of s. 782.04, subsection (3) of s. 810.02, paragraph (c) of subsection (3) of s. 893.03, paragraph (d) of subsection (8) of s. 893.13, subsections (1) and (2) of s. 893.1351, s. 903.133, paragraph (c) of subsection (4) of s. 907.041, paragraph (b) of subsection (1) of s. 921.0024, s. 943.0585, and s. 943.059, Florida Statutes, are reenacted for the purpose of incorporating the amendment made by this act to s. 893.135, Florida Statutes, in references thereto.

Section 6. Paragraph (c) of subsection (2) of s. 812.014, Florida Statutes, is reenacted for the purpose of incorporating the amendments made to ss. 893.13 and 893.135, Florida Statutes, in a reference thereto.

Section 7. This act shall take effect October 1, 2015.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR WILTON SIMPSON
18th District

COMMITTEES:
Community Affairs, *Chair*
Environmental Preservation and Conservation, *Vice Chair*
Appropriations Subcommittee on General Government
Finance and Tax
Judiciary
Transportation

JOINT COMMITTEE:
Joint Legislative Auditing Committee

March 2, 2015

Senator Greg Evers
Criminal Justice Committee
510 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chairman Evers,

Please place Senate Bill 1188 relating to controlled substances, on the next Criminal Justice Committee agenda.

Please contact my office with any questions. Thank you.

Wilton Simpson
Senator, 18th District

CC: Amanda Cannon, Staff Director

REPLY TO:
- ☐ 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- ☐ Post Office Box 938, Brooksville, Florida 34605
- ☐ Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

Senate's Website: *www.flsenate.gov*

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/30/15
Meeting Date

1188
Bill Number (if applicable)

195724
Amendment Barcode (if applicable)

Topic Sentencing

Name Greg Newburn

Job Title State Policy Director

Address PO Box 142933
Street

Gainesville FL 32614
City State Zip

Phone 352.682.2542

Email gnewburn@famm.org

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

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

Representing Families Against Mandatory Minimums

Appearing at request of Chair: [ ] Yes [X] 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 30, 2015
Meeting Date

1188
Bill Number (if applicable)

195724
Amendment Barcode (if applicable)

Topic Public Records Exemption-Personnel Information

Name Nancy Daniels

Job Title Public Defender, 2nd Judicial Circuit

Address 301 S. Monroe Street
Street

Tallahassee Florida 32301
City *State* *Zip*

Phone 850.606.1000

Email nancy.daniels@flpd2.com

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)

3.30.15
Meeting Date

SB 1188
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Controlled Substances

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Speaking: [ ] For [ ] Against [ ] Information

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

Representing: Fla. Smart Justice Alliance

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

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

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

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

S-001 (10/14/14)

The Florida Senate

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 1316

INTRODUCER: Criminal Justice Committee and Senator Soto

SUBJECT: Criminal History Records of Minors

DATE: March 31, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	**Fav/CS**
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1316 addresses the inconsistencies that exist between s. 85.04(1), F.S. (making the majority of juvenile records confidential), and s. 943.053, F.S. (allowing a juvenile's criminal history information to be disseminated in the same manner as that of an adult), by:

- Making the records of juveniles who have been found to have committed three or more misdemeanors confidential and exempt (currently they are not);
- Ensuring that the list of juvenile records that are not confidential and exempt under s. 985.04(2), F.S., is identical to the list of juvenile records deemed to be not confidential and exempt under s. 943.053, F.S.;
- Requiring the Florida Department of Law Enforcement (FDLE) to release juvenile criminal history records in a manner that takes into account the records' confidential and exempt status; and
- Specifying how FDLE must release juvenile criminal history records.

The bill expands existing public record exemptions and repeals them on October 2, 2020, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage since it expands public records exemptions.

II. Present Situation:

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.[1] The records of the legislative, executive, and judicial branches are specifically included.[2]

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act[3] guarantees every person's right to inspect and copy any state or local government public record[4] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[5]

Only the Legislature may create an exemption to public records requirements.[6] Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.[7] Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions[8] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[9]

The Open Government Sunset Review Act[10] requires a newly created or expanded public records exemption to be repealed on October 2 of the fifth year after enactment, unless reviewed and reenacted by the Legislature.[11] It further provides that a public records exemption may be created

[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[3] Chapter 119, F.S.
[4] 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 (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).
[5] Section 119.07(1)(a), F.S.
[6] FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (s*ee WFTV, Inc. v. The 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 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see* Attorney General Opinion 85-62, August 1, 1985).
[7] FLA. CONST., art. I, s. 24(c).
[8] The bill may, however, contain multiple exemptions that relate to one subject.
[9] FLA. CONST., art. I, s. 24(c).
[10] Section 119.15, F.S.
[11] Section 119.15(3), F.S.

or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves.[12]

Confidential Information of Juveniles

Section 985.04(1), F.S., provides that all records obtained under ch. 985, F.S., resulting from a juvenile's involvement in the juvenile justice system are confidential. There are several exceptions to this general provision of confidentiality. For example, s. 985.04(2), F.S., provides in part, that the name, photograph, address, and crime or arrest report of certain juveniles is not confidential and exempt from s. 119.07(1), F.S., solely because of the juvenile's age, if the juvenile is:

- Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors;
- Transferred to the adult system by indictment, judicial waiver, or direct file;
- Taken into custody by a law enforcement officer for a violation of law subject to mandatory direct file under s. 985.557(2)(b) or (d), F.S.; or
- Transferred to the adult system but sentenced to the juvenile system under s. 985.565, F.S.

Criminal Justice Information Program

Section 943.05, F.S., creates the Criminal Justice Information Program (CJIP) within FDLE to act as the state's central criminal justice information[13] repository. Law enforcement agencies, clerks of the court, the Department of Corrections (DOC), and the Department of Juvenile Justice (DJJ) are required to submit specified information on offenders they have had contact with for inclusion in CJIP.[14] This information can then be transmitted between criminal justice agencies.[15]

Currently, s. 943.051, F.S., requires state, county, municipal, or other law enforcement agencies to capture and electronically submit to FDLE the fingerprints, palm prints, and facial images of:

- Each adult person charged with or convicted of a felony, misdemeanor, or violation of a comparable ordinance;
- A juvenile who is charged with or found to have committed an offense, which would be a felony if committed by an adult; or
- A minor who is charged with or found to have committed an enumerated offense, unless the minor is issued a civil citation pursuant to s. 985.12, F.S.

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[12] Section 119.15(5)(b), F.S.

[13] Section 943.045(12), F.S., provides "criminal justice information" means information on individuals collected or disseminated as a result of arrest, detention, or the initiation of a criminal proceeding by criminal justice agencies, including arrest record information, correctional and release information, criminal history record information, conviction record information, offender registration information, identification record information, and wanted persons record information. The term does not include statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable. The term does not include criminal intelligence information or criminal investigative information.

[14] Section 943.052, F.S.

[15] Section 985.051, F.S.

Dissemination of Criminal History Information under Chapter 943, F.S.

Criminal history information[16] compiled by CJIP may be released to criminal justice agencies, noncriminal justice agencies, and the private sector upon request in accordance with s. 943.053, F.S. Criminal justice agencies are provided criminal history information free of charge on a priority basis.[17] With some exceptions, noncriminal justice agencies and persons in the private sector are charged $24 dollars per name submitted.[18]

Currently, s. 943.053, F.S., allows a juvenile's criminal history information to be disseminated in the same manner as that of an adult.[19] Additionally, the statute is silent as to the release of a juvenile's information which has been made confidential pursuant to s. 985.04, F.S.

G.G. v. FDLE

In *G.G. v. FDLE,*[20] a juvenile with no prior criminal history record was arrested for petit theft – a first degree misdemeanor. Several weeks after the arrest, G.G.'s attorney received G.G.'s criminal history information from FDLE, and discovered that it included information relating to the petit theft arrest.[21] G.G. filed suit, claiming that the petit theft information should be confidential and exempt under s. 985.04(1), F.S.[22] The trial court disagreed, holding that s. 943.053(3), F.S., creates an exception to confidentiality established for juvenile criminal history records in s. 985.04(1), F.S.[23]

On appeal, the First District Court of Appeal reversed the trial court's decision and held that FDLE's authority to disseminate criminal justice information under s. 943.053(3), F.S., is expressly limited by s. 985.04, F.S., which, with very few exceptions, makes juvenile records confidential.[24]

FDLE – Release of Juvenile Information since G.G.

As noted above, s. 985.04(1), F.S., makes the majority of juvenile records confidential. However, s. 985.04(2), F.S., creates exceptions for records if the juvenile is:

- Taken into custody for a violation of law which, if committed by an adult, would be a felony;
- Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors; or

[16] Section 943.045(5), F.S., defines "criminal history information" as information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. The term does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system.
[17] Section 943.053(3)(a), F.S.
[18] Section 943.053(30)(b), F.S. The guardian ad litem program; vendors of the Department of Children and Families, DJJ, and the Department of Elderly Affairs; the Department of Agriculture and Consumer Services; and other qualified entities are charged a lesser amount.
[19] Section 943.053(3)(a), F.S.
[20] 97 So. 3d 268 (Fla. 1st DCA 2012).
[21] *Id*. at 269.
[22] *Id*.
[23] *Id*.
[24] *Id*. at 273.

- Transferred to the adult system.

In an effort to comply with the ruling in *G.G. v. FDLE*, the FDLE is ensuring that only the above-described records are released. However, because of programming limitations[25] and incomplete reporting of juvenile disposition information,[26] FDLE reports that they are unable to accurately and fairly assess whether a juvenile has been found by a court to have committed three or more misdemeanors.[27] As such, FDLE is currently only releasing the following juvenile records to private entities and non-criminal justice agencies:

- Taken into custody or charged with a crime that would be a felony if committed by an adult; and
- Treated as adults.[28]

III. Effect of Proposed Changes:

The bill addresses the inconsistencies that exist between s. 985.04(1), F.S. (making the majority of juvenile records confidential), and s. 943.053, F.S. (allowing a juvenile's criminal history information to be disseminated in the same manner as that of an adult), by:

- Ensuring that the specified juvenile records deemed to be not confidential and exempt under s. 943.053, F.S., are identical to the juvenile records deemed to be not confidential and exempt under s. 985.04, F.S.; and
- Requiring FDLE to release juvenile criminal history records in a manner that takes into account the records' confidential and exempt status.

Section 985.04, F.S.

The bill amends s. 985.04(1), F.S., clarifying that juvenile records obtained under ch. 985, F.S., are confidential and exempt (rather than just confidential).[29]

The bill also amends s. 985.04(2), F.S., to specify that the following juvenile records are not confidential and exempt:

- Records where a juvenile has been taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;

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[25] FDLE cites that there would be extensive programming changes required to ensure that the records of juveniles found to have committed three or more misdemeanors were available for dissemination. Florida Department of Law Enforcement, *2015 Bill Analysis for PCB CRJS 15-05/7103* (on file with the Senate Criminal Justice Committee).

[26] Disposition, or charge outcome, reporting for juvenile arrests was not legislatively mandated until July 1, 2008. This has resulted in much lower arrest-disposition reporting rates for juveniles. (The juvenile reporting rate for all arrests is currently 48.5%, while the adult rate is 72.2 %.) *Id.*

[27] *Id.*

[28] *Id.*

[29] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (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); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. *See* 85-62 Fla. Op. Att'y Gen. (August 1, 1985).

- Records where a juvenile has been charged with a violation of law which, if committed by an adult, would be a felony;
- Records where a juvenile has been found to have committed an offense which, if committed by an adult, would be a felony; or
- Records where a juvenile has been transferred to adult court pursuant to part X of ch. 985, F.S.

Notably, the bill removes language specifying that the records of juveniles who have been found to have committed three or more misdemeanor violations are not confidential and exempt. These records will now be confidential and exempt.

Section 943.053, F.S.

The bill amends s. 943.053, F.S., so that the list of juvenile records deemed to be not confidential and exempt under s. 985.04(2), F.S., will be identical to the list of juvenile records deemed to be not confidential and exempt under s. 943.053, F.S. Because the language regarding three or more misdemeanors is not included on the list, FDLE will no longer be tasked with determining whether the juvenile had three or more misdemeanors before releasing such records to the private sector and noncriminal justice agencies.

The bill further amends s. 943.053, F.S., establishing a separate process for the dissemination of juvenile criminal history information. Under this process, juvenile criminal history information, including the information that is made confidential and exempt, is available to:

- A criminal justice agency for criminal justice purposes on a priority basis and free of charge;
- The person to whom the record relates or his or her attorney;
- The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or
- An agency or entity specified in ss. 943.0585(4) or 943.059(4), F.S.,[30] for the purposes specified therein, and to any person within such agency or entity who has direct responsibility for employment, access authorization, or licensure decisions.

Juvenile criminal history information that is not confidential and exempt may be released to the private sector and noncriminal justice agencies upon tender of fees and in the same manner that criminal history information relating to adults is released.

The bill provides that juvenile records deemed confidential and exempt under the provisions of s. 943.053, F.S., which are released by the sheriff, DOC, or DJJ to private entities under contract with each entity retain their confidential status upon release to these private entities.

The bill repeals all new public records exemptions provided for in the bill on October 2, 2020, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.[31]

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[30] These sections require persons who are seeking employment with specified agencies (e.g., in part, DCF, Department of Health, and DJJ) to acknowledge their criminal history record, even if such record has been sealed or expunged.
[31] FLA. CONST. art. I, s. 24(c).

Lastly, the bill makes conforming changes to ss. 496.4101 and 943.056, F.S., to reflect changes made in the act.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

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

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands a public record exemption limited to certain criminal history information of juveniles.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may result in a positive economic benefit to juveniles with misdemeanor records who are seeking employment as these records will no longer be released to the public.

C. Government Sector Impact:

FDLE reports that the Computerized Criminal History System requires an update to comply with the ruling or to implement the bill, which will require 891 hours of programming at $85 dollars per hour for a total of $75,877.[32] Additionally, the bill may require staff training related to the expansion of the public records exemption, which will likely result in an insignificant fiscal impact to FDLE. These costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.[33]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 985.04 and 943.053.

This bill makes conforming and technical changes to the following sections of the Florida Statutes: 496.4101 and 943.056.

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 30, 2015:
- Deletes the bill's original provisions;
- Make the records of juveniles who have been found to have committed three or more misdemeanors confidential and exempt;
- Ensures that the list of juvenile records that are not confidential and exempt under s. 985.04(2), F.S., is identical to the list of juvenile records deemed to be not confidential and exempt under s. 943.053, F.S.;
- Requires FDLE to release juvenile criminal history records in a manner that takes into account the records' confidential and exempt status;
- Specifies how FDLE must release juvenile criminal history records;
- Expands existing public record exemptions; and
- Provides a statement of public necessity.

[32] Florida Department of Law Enforcement, *2015 Bill Analysis for PCB CRJS 15-05/7103* (on file with the Senate Criminal Justice Committee).
[33] *Id*.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2015	.	
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	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (1) and (2) of section 985.04, Florida Statutes, are amended to read:

985.04 Oaths; records; confidential information.—

(1)(a) Except as provided in subsections (2), (3), (6), and (7) and s. 943.053, all information obtained under this chapter in the discharge of official duty by any judge, any employee of the court, any authorized agent of the department, the Florida Commission on Offender Review, the Department of Corrections, the juvenile justice circuit boards, any law enforcement agent, or any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to information obtained before, on, or after the effective date of this exemption.

(b) Such confidential and exempt information may be disclosed only to the authorized personnel of the court, the department and its designees, the Department of Corrections, the Florida Commission on Offender Review, law enforcement agents, school superintendents and their designees, any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile, and others entitled under this chapter to receive that information, or upon order of the court.

(c) Within each county, the sheriff, the chiefs of police, the district school superintendent, and the department shall enter into an interagency agreement for the purpose of sharing information about juvenile offenders among all parties. The agreement must specify the conditions under which summary criminal history information is to be made available to appropriate school personnel, and the conditions under which school records are to be made available to appropriate department personnel. Such agreement shall require notification to any classroom teacher of assignment to the teacher’s classroom of a juvenile who has been placed in a probation or

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commitment program for a felony offense. The agencies entering into such agreement must comply with s. 943.0525, and must maintain the confidentiality of information that is otherwise exempt from s. 119.07(1), as provided by law.

(2) Notwithstanding any other provisions of this chapter, the name, photograph, address, and crime or arrest report of a child:

(a) Taken into custody ~~if the child has been taken into custody~~ by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;

(b) Charged with a violation of law which, if committed by an adult, would be a felony ~~Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors~~;

(c) Found to have committed an offense which, if committed by an adult, would be a felony; or ~~Transferred to the adult system under s. 985.557, indicted under s. 985.56, or waived under s. 985.556;~~

(d) Transferred to adult court, pursuant to part X of this chapter, ~~Taken into custody by a law enforcement officer for a violation of law subject to s. 985.557(2)(b) or (d); or~~

~~(e) Transferred to the adult system but sentenced to the juvenile system under s. 985.565~~

are ~~shall~~ not ~~be~~ considered confidential and exempt from s. 119.07(1) solely because of the child’s age.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from

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repeal through reenactment by the Legislature.

Section 2. Subsections (3), (8), (9), and (10) of section 943.053, Florida Statutes, are amended to read:

943.053 Dissemination of criminal justice information; fees.—

(3)(a) Criminal history information~~, including information~~ relating to an adult ~~minors,~~ compiled by the Criminal Justice Information Program from intrastate sources shall be available on a priority basis to criminal justice agencies for criminal justice purposes free of charge. After providing the program with all known personal identifying information, persons in the private sector and noncriminal justice agencies may be provided criminal history information upon tender of fees as established in this subsection and in the manner prescribed by rule of the Department of Law Enforcement. ~~Any access to criminal history information by the private sector or noncriminal justice agencies as provided in this subsection shall be assessed without regard to the quantity or category of criminal history record information requested.~~

(b)1. Criminal history information relating to a juvenile compiled by the Criminal Justice Information Program from intrastate sources shall be released as provided in this section. Such information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, unless such juvenile has been:

a. Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;

b. Charged with a violation of law which, if committed by an adult, would be a felony;

c. Found to have committed an offense which, if committed by an adult, would be a felony; or

d. Transferred to adult court pursuant to part X of chapter 985,

and provided the criminal history record has not been expunged or sealed under any law applicable to such record.

2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

(c)1. Criminal history information relating to juveniles, including criminal history information consisting in whole or in part of information that is confidential and exempt under paragraph (b), shall be available to:

a. A criminal justice agency for criminal justice purposes on a priority basis and free of charge;

b. The person to whom the record relates, or his or her attorney;

c. The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or

d. An agency or entity specified in s. 943.0585(4) or s. 943.059(4), for the purposes specified therein, and to any person within such agency or entity who has direct responsibility for employment, access authorization, or licensure decisions.

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2. After providing the program with all known personal identifying information, the criminal history information relating to a juvenile which is not confidential and exempt under this subsection may be released to the private sector and noncriminal justice agencies not specified in s. 943.0585(4) or s. 943.059(4) in the same manner as provided in paragraph (a). Criminal history information relating to a juvenile which is not confidential and exempt under this subsection is the entire criminal history information relating to a juvenile who satisfies any of the criteria listed in subparagraph (b)1., except for any portion of such juvenile’s criminal history record which has been expunged or sealed under any law applicable to such record.

3. All criminal history information relating to juveniles, other than that provided to criminal justice agencies for criminal justice purposes, shall be provided upon tender of fees as established in this subsection and in the manner prescribed by rule of the Department of Law Enforcement.

(d) The fee for access to criminal history information by the private sector or a noncriminal justice agency shall be assessed without regard to the size or category of criminal history record information requested.

(e) ~~(b)~~ The fee per record for criminal history information provided pursuant to this subsection and s. 943.0542 is $24 per name submitted, except that the fee for the guardian ad litem program and vendors of the Department of Children and Families, the Department of Juvenile Justice, and the Department of Elderly Affairs shall be $8 for each name submitted; the fee for a state criminal history provided for application processing as

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required by law to be performed by the Department of Agriculture and Consumer Services shall be $15 for each name submitted; and the fee for requests under s. 943.0542, which implements the National Child Protection Act, shall be $18 for each volunteer name submitted. The state offices of the Public Defender shall not be assessed a fee for Florida criminal history information or wanted person information.

(8) Notwithstanding ~~the provisions of~~ s. 943.0525, and any user agreements adopted pursuant thereto, and notwithstanding the confidentiality of sealed records as provided for in s. 943.059 and juvenile records as provided for in paragraph (3)(b), the sheriff of any county that has contracted with a private entity to operate a county detention facility pursuant to ~~the provisions of~~ s. 951.062 shall provide that private entity, in a timely manner, copies of the Florida criminal history records for its inmates. The sheriff may assess a charge for the Florida criminal history records pursuant to ~~the provisions of~~ chapter 119. Sealed records and confidential juvenile records received by the private entity under this section remain confidential and exempt from ~~the provisions of~~ s. 119.07(1).

(9) Notwithstanding ~~the provisions of~~ s. 943.0525, and any user agreements adopted pursuant thereto, and notwithstanding the confidentiality of sealed records as provided for in s. 943.059 and juvenile records as provided for in paragraph (3)(b), the Department of Corrections shall provide, in a timely manner, copies of the Florida criminal history records for inmates housed in a private state correctional facility to the private entity under contract to operate the facility pursuant

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to ~~the provisions of~~ s. 944.105. The department may assess a charge for the Florida criminal history records pursuant to the provisions of chapter 119. Sealed records <u>and confidential juvenile records</u> received by the private entity under this section remain confidential and exempt from ~~the provisions of~~ s. 119.07(1).

(10) Notwithstanding ~~the provisions of~~ s. 943.0525 and any user agreements adopted pursuant thereto, and notwithstanding the confidentiality of sealed records as provided for in s. 943.059 <u>or of juvenile records as provided for in paragraph (3)(b)</u>, the Department of Juvenile Justice or any other state or local criminal justice agency may provide copies of the Florida criminal history records for juvenile offenders currently or formerly detained or housed in a contracted juvenile assessment center or detention facility or serviced in a contracted treatment program and for employees or other individuals who will have access to these facilities, only to the entity under direct contract with the Department of Juvenile Justice to operate these facilities or programs pursuant to ~~the provisions of~~ s. 985.688. The criminal justice agency providing such data may assess a charge for the Florida criminal history records pursuant to ~~the provisions of~~ chapter 119. Sealed records <u>and confidential juvenile records</u> received by the private entity under this section remain confidential and exempt from ~~the provisions of~~ s. 119.07(1). Information provided under this section shall be used only for the criminal justice purpose for which it was requested and may not be further disseminated.

Section 3. Paragraph (b) of subsection (3) of section 496.4101, Florida Statutes, is amended to read:

496.4101 Licensure of professional solicitors and certain employees thereof.—

(3)

(b) Fees for state and federal fingerprint processing and fingerprint retention fees shall be borne by the applicant. The state cost for fingerprint processing is that authorized in s. 943.053(3)(e) ~~s. 943.053(3)(b)~~ for records provided to persons or entities other than those specified as exceptions therein.

Section 4. Subsection (1) of section 943.056, Florida Statutes, is amended to read:

943.056 Criminal history records; access, review, and challenge.—

(1) For purposes of verification of the accuracy and completeness of a criminal history record, the Department of Law Enforcement shall provide, in the manner prescribed by rule, such record for review upon verification, by fingerprints, of the identity of the requesting person. If a minor, or the parent or legal guardian of a minor, requests a copy of the minor's criminal history record, the Department of Law Enforcement shall provide such copy, including any portions of the record which may be confidential under s. 943.053(3)(b), for review upon verification, by fingerprints, of the identity of the minor. The providing of such record shall not require the payment of any fees, except those provided for by federal regulations.

Section 5. The Legislature finds that it is a public necessity that the criminal history information of juveniles who have not been adjudicated delinquent of a felony or who have been found only to have committed misdemeanor offenses and certain criminal history information relating to a juvenile

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compiled by the Criminal Justice Information Program be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution under ss. 985.04 and 943.053, Florida Statutes. Many individuals who have either completed their sanctions and received treatment or who were never charged in the juvenile justice system have found it difficult to obtain employment. The presence of an arrest or a misdemeanor record in these individuals' juvenile past and certain criminal history information relating to a juvenile compiled by the Criminal Justice Information Program creates an unnecessary barrier to becoming productive members of society, thus frustrating the rehabilitative purpose of the juvenile system. The Legislature therefore finds that it is in the best interest of the public that individuals with juvenile misdemeanor records are given the opportunity to become contributing members of society. Therefore, prohibiting the unfettered release of juvenile misdemeanor records and certain criminal history information relating to a juvenile compiled by the Criminal Justice Information Program is of greater importance than any public benefit that may be derived from the full disclosure and release of such arrest records and information.

Section 6. 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

767816

An act relating to public records; amending s. 985.04, F.S.; specifying that certain confidential information obtained under ch. 985, F.S., relating to juvenile justice, is exempt from public records requirements; providing applicability; revising applicability of public records requirements with respect to the arrest records of certain juvenile offenders; providing for future review and repeal of such applicability provisions; amending s. 943.053, F.S.; providing an exemption from public records requirements for juvenile information compiled by the Criminal Justice Information Program from intrastate sources; providing exceptions; providing for future review and repeal of the exemption; providing for release by the Department of Law Enforcement of the criminal history information of a juvenile which has been deemed confidential and exempt under certain circumstances; amending ss. 496.4101 and 943.056, F.S.; conforming provisions to changes made by the act; providing a statement of public necessity; providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/27/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (1) and (2) of section 985.04, Florida Statutes, are amended to read:

985.04 Oaths; records; confidential information.—

(1)(a) Except as provided in subsections (2), (3), (6), and (7) and s. 943.053, all information obtained under this chapter in the discharge of official duty by any judge, any employee of

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the court, any authorized agent of the department, the Florida Commission on Offender Review, the Department of Corrections, the juvenile justice circuit boards, any law enforcement agent, or any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to information obtained before, on, or after the effective date of this exemption.

(b) Such confidential and exempt information may be disclosed only to the authorized personnel of the court, the department and its designees, the Department of Corrections, the Florida Commission on Offender Review, law enforcement agents, school superintendents and their designees, any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile, and others entitled under this chapter to receive that information, or upon order of the court.

(c) Within each county, the sheriff, the chiefs of police, the district school superintendent, and the department shall enter into an interagency agreement for the purpose of sharing information about juvenile offenders among all parties. The agreement must specify the conditions under which summary criminal history information is to be made available to appropriate school personnel, and the conditions under which school records are to be made available to appropriate department personnel. Such agreement shall require notification to any classroom teacher of assignment to the teacher’s classroom of a juvenile who has been placed in a probation or

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commitment program for a felony offense. The agencies entering into such agreement must comply with s. 943.0525, and must maintain the confidentiality of information that is otherwise exempt from s. 119.07(1), as provided by law.

(2) Notwithstanding any other provisions of this chapter, the name, photograph, address, and crime or arrest report of a child:

(a) Taken into custody ~~if the child has been taken into custody~~ by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;

(b) Charged with a violation of law which, if committed by an adult, would be a felony ~~Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors~~;

(c) Found to have committed an offense which, if committed by an adult, would be a felony; or ~~Transferred to the adult system under s. 985.557, indicted under s. 985.56, or waived under s. 985.556;~~

(d) Transferred to adult court, pursuant to part X of this chapter, ~~Taken into custody by a law enforcement officer for a violation of law subject to s. 985.557(2)(b) or (d); or~~

~~(e) Transferred to the adult system but sentenced to the juvenile system under s. 985.565~~

are ~~shall~~ not ~~be~~ considered confidential and exempt from s. 119.07(1) solely because of the child’s age.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from

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repeal through reenactment by the Legislature.

Section 2. Subsections (3), (8), (9), and (10) of section 943.053, Florida Statutes, are amended to read:

943.053 Dissemination of criminal justice information; fees.—

(3)(a) Criminal history information~~, including information~~ relating to an adult ~~minors,~~ compiled by the Criminal Justice Information Program from intrastate sources shall be available on a priority basis to criminal justice agencies for criminal justice purposes free of charge. After providing the program with all known personal identifying information, persons in the private sector and noncriminal justice agencies may be provided criminal history information upon tender of fees as established in this subsection and in the manner prescribed by rule of the Department of Law Enforcement. ~~Any access to criminal history information by the private sector or noncriminal justice agencies as provided in this subsection shall be assessed without regard to the quantity or category of criminal history record information requested.~~

(b)1. Criminal history information relating to a juvenile compiled by the Criminal Justice Information Program from intrastate sources shall be released as provided in this section. Such information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, unless such juvenile has been:

a. Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;

b. Charged with a violation of law which, if committed by

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an adult, would be a felony;

c. Found to have committed an offense which, if committed by an adult, would be a felony; or

d. Transferred to adult court pursuant to part X of chapter 985,

and provided the criminal history record has not been expunged or sealed under any law applicable to such record.

2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

(c)1. Criminal history information relating to juveniles, including criminal history information consisting in whole or in part of information that is confidential and exempt under paragraph (b), shall be available to:

a. A criminal justice agency for criminal justice purposes on a priority basis and free of charge;

b. The person to whom the record relates, or his or her attorney;

c. The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or

d. An agency or entity specified in s. 943.0585(4) or s. 943.059(4), for the purposes specified therein, and to any person within such agency or entity who has direct responsibility for employment, access authorization, or licensure decisions.

2. After providing the program with all known personal identifying information, the criminal history information relating to a juvenile which is not confidential and exempt under this subsection may be released to the private sector and noncriminal justice agencies not specified in s. 943.0585(4) or s. 943.059(4) in the same manner as provided in paragraph (a). Criminal history information relating to a juvenile which is not confidential and exempt under this subsection is the entire criminal history information relating to a juvenile who satisfies any of the criteria listed in subparagraph (b)1., except for any portion of such juvenile’s criminal history record which has been expunged or sealed under any law applicable to such record.

3. All criminal history information relating to juveniles, other than that provided to criminal justice agencies for criminal justice purposes, shall be provided upon tender of fees as established in this subsection and in the manner prescribed by rule of the Department of Law Enforcement.

(d) The fee for access to criminal history information relating to juveniles by the private sector or a noncriminal justice agency shall be assessed without regard to the size or category of criminal history record information requested.

(e) ~~(b)~~ The fee per record for criminal history information provided pursuant to this subsection and s. 943.0542 is $24 per name submitted, except that the fee for the guardian ad litem program and vendors of the Department of Children and Families, the Department of Juvenile Justice, and the Department of Elderly Affairs shall be $8 for each name submitted; the fee for a state criminal history provided for application processing as

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required by law to be performed by the Department of Agriculture and Consumer Services shall be $15 for each name submitted; and the fee for requests under s. 943.0542, which implements the National Child Protection Act, shall be $18 for each volunteer name submitted. The state offices of the Public Defender shall not be assessed a fee for Florida criminal history information or wanted person information.

(8) Notwithstanding ~~the provisions of~~ s. 943.0525, and any user agreements adopted pursuant thereto, and notwithstanding the confidentiality of sealed records as provided for in s. 943.059 and juvenile records as provided for in paragraph (3)(b), the sheriff of any county that has contracted with a private entity to operate a county detention facility pursuant to ~~the provisions of~~ s. 951.062 shall provide that private entity, in a timely manner, copies of the Florida criminal history records for its inmates. The sheriff may assess a charge for the Florida criminal history records pursuant to ~~the provisions of~~ chapter 119. Sealed records and confidential juvenile records received by the private entity under this section remain confidential and exempt from ~~the provisions of~~ s. 119.07(1).

(9) Notwithstanding ~~the provisions of~~ s. 943.0525, and any user agreements adopted pursuant thereto, and notwithstanding the confidentiality of sealed records as provided for in s. 943.059 and juvenile records as provided for in paragraph (3)(b), the Department of Corrections shall provide, in a timely manner, copies of the Florida criminal history records for inmates housed in a private state correctional facility to the private entity under contract to operate the facility pursuant

to ~~the provisions of~~ s. 944.105. The department may assess a charge for the Florida criminal history records pursuant to the provisions of chapter 119. Sealed records and confidential juvenile records received by the private entity under this section remain confidential and exempt from ~~the provisions of~~ s. 119.07(1).

(10) Notwithstanding ~~the provisions of~~ s. 943.0525 and any user agreements adopted pursuant thereto, and notwithstanding the confidentiality of sealed records as provided for in s. 943.059 or of juvenile records as provided for in paragraph (3)(b), the Department of Juvenile Justice or any other state or local criminal justice agency may provide copies of the Florida criminal history records for juvenile offenders currently or formerly detained or housed in a contracted juvenile assessment center or detention facility or serviced in a contracted treatment program and for employees or other individuals who will have access to these facilities, only to the entity under direct contract with the Department of Juvenile Justice to operate these facilities or programs pursuant to ~~the provisions of~~ s. 985.688. The criminal justice agency providing such data may assess a charge for the Florida criminal history records pursuant to ~~the provisions of~~ chapter 119. Sealed records and confidential juvenile records received by the private entity under this section remain confidential and exempt from ~~the provisions of~~ s. 119.07(1). Information provided under this section shall be used only for the criminal justice purpose for which it was requested and may not be further disseminated.

Section 3. Paragraph (b) of subsection (3) of section 496.4101, Florida Statutes, is amended to read:

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496.4101 Licensure of professional solicitors and certain employees thereof.—

(3)

(b) Fees for state and federal fingerprint processing and fingerprint retention fees shall be borne by the applicant. The state cost for fingerprint processing is that authorized in s. 943.053(3)(e) ~~s. 943.053(3)(b)~~ for records provided to persons or entities other than those specified as exceptions therein.

Section 4. Subsection (1) of section 943.056, Florida Statutes, is amended to read:

943.056 Criminal history records; access, review, and challenge.—

(1) For purposes of verification of the accuracy and completeness of a criminal history record, the Department of Law Enforcement shall provide, in the manner prescribed by rule, such record for review upon verification, by fingerprints, of the identity of the requesting person. If a minor, or the parent or legal guardian of a minor, requests a copy of the minor's criminal history record, the Department of Law Enforcement shall provide such copy, including any portions of the record which may be confidential under s. 943.053(3)(b), for review upon verification, by fingerprints, of the identity of the minor. The providing of such record shall not require the payment of any fees, except those provided for by federal regulations.

Section 5. The Legislature finds that it is a public necessity that the criminal history information of juveniles who have not been adjudicated delinquent of a felony or who have been found only to have committed misdemeanor offenses and certain criminal history information relating to a juvenile

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compiled by the Criminal Justice Information Program be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution under ss. 985.04 and 943.053, Florida Statutes. Many individuals who have either completed their sanctions and received treatment or who were never charged in the juvenile justice system have found it difficult to obtain employment. The presence of an arrest or a misdemeanor record in these individuals' juvenile past and certain criminal history information relating to a juvenile compiled by the Criminal Justice Information Program creates an unnecessary barrier to becoming productive members of society, thus frustrating the rehabilitative purpose of the juvenile system. The Legislature therefore finds that it is in the best interest of the public that individuals with juvenile misdemeanor records are given the opportunity to become contributing members of society. Therefore, prohibiting the unfettered release of juvenile misdemeanor records and certain criminal history information relating to a juvenile compiled by the Criminal Justice Information Program is of greater importance than any public benefit that may be derived from the full disclosure and release of such arrest records and information.

Section 6. 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

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An act relating to public records; amending s. 985.04, F.S.; specifying that certain confidential information obtained under ch. 985, F.S., relating to juvenile justice, is exempt from public records requirements; providing applicability; revising applicability of public records requirements with respect to the arrest records of certain juvenile offenders; providing for future review and repeal of such applicability provisions; amending s. 943.053, F.S.; providing an exemption from public records requirements for juvenile information compiled by the Criminal Justice Information Program from intrastate sources; providing exceptions; providing for future review and repeal of the exemption; providing for release by the Department of Law Enforcement of the criminal history information of a juvenile which has been deemed confidential and exempt under certain circumstances; amending ss. 496.4101 and 943.056, F.S.; conforming provisions to changes made by the act; providing a statement of public necessity; providing an effective date.

By Senator Soto

A bill to be entitled

An act relating to criminal history records of minors; amending s. 943.0515, F.S.; decreasing the time that the Criminal Justice Information Program is required to retain the criminal history record of a minor; requiring that records maintained by certain entities be immediately expunged under specific circumstances; amending s. 943.0582, F.S.; revising the circumstances under which the Department of Law Enforcement must expunge the nonjudicial arrest record of a minor who has successfully completed a prearrest or postarrest diversion program; deleting a provision authorizing the department to charge a processing fee; amending s. 985.04, F.S.; providing that all juvenile proceedings are confidential; providing an exception; adding persons and entities that are required to keep certain information confidential; deleting provisions that require entering into agreements between certain persons and entities with the purpose of sharing certain information; requiring that all records of juvenile delinquency proceedings be sealed and kept confidential from the public; revising the circumstances under which certain information about a child offender is not confidential or exempt from public records requests; authorizing confidential records to be released to a party under certain circumstances; deleting a provision requiring notification to the superintendent of schools that a child is alleged to have committed a delinquent act in

certain circumstances; authorizing a court to disclose juvenile case files under certain circumstances; deleting a provision that requires a state attorney to notify the superintendent of the child’s school of certain information under certain circumstances; requiring a court to make an order specifying the information to be disclosed if the court determines that all or part of the juvenile case file may be disclosed; deleting a provision requiring the superintendent to notify other school personnel in certain circumstances; authorizing a court to issue protective orders to accompany authorized disclosure or discovery of, or access to, a juvenile case file; deleting a provision requiring the Department of Juvenile Justice to disclose to the school superintendent specified information under certain circumstances; deleting provisions providing for the preservation for a certain time of certain documents and information; deleting provisions limiting the inspection by the public of certain records; deleting a provision limiting how certain information may be used; amending ss. 985.045, 985.11, 1006.08, and 1012.797, F.S.; conforming provisions to changes made by the act; reenacting s. 985.125(3), F.S., to incorporate the amendment made to s. 943.0582, F.S., in a reference thereto; providing an effective date.

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

Section 1. Section 943.0515, Florida Statutes, is amended to read:

943.0515 Retention of criminal history records of minors.—

(1)~~(a)~~ The Criminal Justice Information Program shall retain the criminal history record of a minor until the minor is at least 21 years of age and is no longer in the custody of the Department of Juvenile Justice ~~who is classified as a serious or habitual juvenile offender or committed to a juvenile correctional facility or juvenile prison under chapter 985 for 5 years after the date the offender reaches 21 years of age~~, at which time the record shall be expunged unless it meets the criteria of paragraph (2)(a) or paragraph (2)(b).

~~(b) If the minor is not classified as a serious or habitual juvenile offender or committed to a juvenile correctional facility or juvenile prison under chapter 985, the program shall retain the minor's criminal history record for 5 years after the date the minor reaches 19 years of age, at which time the record shall be expunged unless it meets the criteria of paragraph (2)(a) or paragraph (2)(b).~~

(2)(a) If a person 18 years of age or older is charged with or convicted of a forcible felony and the person's criminal history record as a minor has not yet been destroyed, the person's record as a minor must be merged with the person's adult criminal history record and must be retained as a part of the person's adult record.

(b) If, at any time, a minor is adjudicated as an adult for a forcible felony, the minor's criminal history record before ~~prior to~~ the time of the minor's adjudication as an adult must be merged with his or her record as an adjudicated adult.

(3) A record maintained by a juvenile court, a juvenile probation officer, or a law enforcement agency which is related to a dismissed case, a case in which the minor was ruled not involved, or a case in which charges were not substantiated shall be expunged immediately following the court's discharge of the case, without any application or action necessary on the part of the minor.

(4)~~(3)~~ Notwithstanding any other provision of this section, the Criminal Justice Information Program shall retain the criminal history record of a minor adjudicated delinquent for a violation committed on or after July 1, 2007, as provided in s. 943.0435(1)(a)1.d. Such records may not be destroyed and must be merged with the person's adult criminal history record and retained as a part of the person's adult record.

Section 2. Subsections (3), (4), and (5) of section 943.0582, Florida Statutes, are amended to read:

943.0582 Prearrest, postarrest, or teen court diversion program expunction.—

(3) The department shall expunge the nonjudicial arrest record of a minor who has successfully completed a prearrest or postarrest diversion program if ~~that minor~~:

~~(a) Submits an application for prearrest or postarrest diversion expunction, on a form prescribed by the department, signed by the minor's parent or legal guardian, or by the minor if he or she has reached the age of majority at the time of applying.~~

~~(b) Submits the application for prearrest or postarrest diversion expunction no later than 12 months after completion of the diversion program.~~

~~(c) Submits to the department, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that he or she has successfully completed that county's prearrest or postarrest diversion program, that his or her participation in the program was based on an arrest for a nonviolent misdemeanor, and that he or she has not otherwise been charged by the state attorney with or found to have committed any criminal offense or comparable ordinance violation.~~

(a) ~~(d)~~ The ~~Participated in a~~ prearrest or postarrest diversion program ~~that~~ expressly authorizes or permits such expunction to occur; or~~.~~

(b) ~~(e)~~ Participation in the ~~Participated in a~~ prearrest or postarrest diversion program was based on an arrest for a nonviolent misdemeanor that would not qualify as an act of domestic violence as that term is defined in s. 741.28.

~~(f) Has never, prior to filing the application for expunction, been charged by the state attorney with or been found to have committed any criminal offense or comparable ordinance violation.~~

~~(4) The department is authorized to charge a $75 processing fee for each request received for prearrest or postarrest diversion program expunction, for placement in the Department of Law Enforcement Operating Trust Fund, unless such fee is waived by the executive director.~~

(4) ~~(5)~~ Expunction or sealing granted under this section does not prevent the minor who receives such relief from petitioning for the expunction or sealing of a later criminal history record as provided for in ss. 943.0583, 943.0585, and

943.059~~,~~ if the minor is otherwise eligible under those sections.

Section 3. Section 985.04, Florida Statutes, is amended to read:

985.04 Oaths; records; confidential information.—

(1) Except as provided in subsection (3), all juvenile proceedings are confidential. ~~subsections (2), (3), (6), and (7) and s. 943.053,~~ All information obtained under this chapter in the discharge of official duty by any judge, any employee of the court, any authorized agent of the department, the Florida Commission on Offender Review, the Department of Corrections, the juvenile justice circuit boards, any law enforcement agent, any officer of the court, the district school superintendent and his or her designees, and any treatment provider or agency participating in any aspect of a child's involvement in the juvenile justice system is confidential and may be released only to authorized court personnel and law enforcement agencies, including the department, for the execution of their duties. Confidential information may be released by court order, for good cause, and by the authorization of the individual who is the subject of the proceeding~~, or any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile is confidential and may be disclosed only to the authorized personnel of the court, the department and its designees, the Department of Corrections, the Florida Commission on Offender Review, law enforcement agents, school superintendents and their designees, any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile, and~~

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

~~others entitled under this chapter to receive that information, or upon order of the court~~. ~~Within each county, the sheriff, the chiefs of police, the district school superintendent, and the department shall enter into an interagency agreement for the purpose of sharing information about juvenile offenders among all parties. The agreement must specify the conditions under which summary criminal history information is to be made available to appropriate school personnel, and the conditions under which school records are to be made available to appropriate department personnel. Such agreement shall require notification to any classroom teacher of assignment to the teacher's classroom of a juvenile who has been placed in a probation or commitment program for a felony offense. The agencies entering into such agreement must comply with s. 943.0525, and must maintain the confidentiality of information that is otherwise exempt from s. 119.07(1), as provided by law.~~

(2) All records of juvenile delinquency proceedings must be sealed and kept confidential from the public. ~~Notwithstanding any other provisions of this chapter, the name, photograph, address, and crime or arrest report of a child:~~

~~(a) Taken into custody if the child has been taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;~~

~~(b) Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors;~~

~~(c) Transferred to the adult system under s. 985.557, indicted under s. 985.56, or waived under s. 985.556;~~

~~(d) Taken into custody by a law enforcement officer for a violation of law subject to s. 985.557(2)(b) or (d); or~~

~~(e) Transferred to the adult system but sentenced to the juvenile system under s. 985.565~~

(3) Notwithstanding any other provision of this chapter, the name, photograph, address, and crime or arrest report of a child are ~~shall~~ not ~~be~~ considered confidential and exempt from s. 119.07(1) solely because of the child's age if the child:~~.~~

(a) Is found to have committed a forcible felony;

(b) Is found to have committed juvenile sexual abuse as defined s. 39.01; or

(c) Has pled guilty or nolo contendere to, or has been found to have committed, a violation of chapter 794, chapter 796, chapter 800, s. 827.071, or s. 847.0133.

~~(3) A law enforcement agency may release a copy of the juvenile offense report to the victim of the offense. However, information gained by the victim under this chapter, including the next of kin of a homicide victim, regarding any case handled in juvenile court, must not be revealed to any outside party, except as is reasonably necessary in pursuit of legal remedies.~~

(4) Confidential records may be released to a party by court order if the party can show a legitimate interest in the records.

(a) In determining whether to authorize inspection or release of a juvenile case file, in whole or in part, the court must balance the interests of the child and other parties to the juvenile court proceeding, the interests of the petitioner, and the interests of the public. In order to grant the petition, the court must find that the need for discovery outweighs the policy considerations favoring confidentiality of juvenile case files

~~Notwithstanding any other provision of this section, when a child of any age is taken into custody by a law enforcement officer for an offense that would have been a felony if committed by an adult, or a crime of violence, the law enforcement agency must notify the superintendent of schools that the child is alleged to have committed the delinquent act~~.

(b) The court may permit disclosure of a juvenile case file only insofar as is necessary and only if the petitioner shows by a preponderance of the evidence that the record requested is necessary and has substantial relevance to the legitimate need of the petitioner ~~Notwithstanding paragraph (a) or any other provision of this section, when a child of any age is formally charged by a state attorney with a felony or a delinquent act that would be a felony if committed by an adult, the state attorney shall notify the superintendent of the child's school that the child has been charged with such felony or delinquent act~~. ~~The information obtained by the superintendent of schools under this section must be released within 48 hours after receipt to appropriate school personnel, including the principal of the school of the child and the director of transportation. The principal must immediately notify the child's immediate classroom teachers, the child's assigned bus driver, and any other school personnel whose duties include direct supervision of the child. Upon notification, the principal is authorized to begin disciplinary actions under s. 1006.09(1)-(4).~~

(c) If, after in camera review of a juvenile case file and after review of any objection to the disclosure of all or a portion of the file, the court determines that all or a portion of the juvenile case file may be disclosed, the court must make

appropriate orders, specifying the information to be disclosed and the procedure for providing access to it ~~The superintendent must notify the other school personnel whose duties include direct supervision of the child of the disposition of the charges against the child~~.

(d) The court may issue protective orders to accompany authorized disclosure or discovery of, or access to, a juvenile case file ~~The department shall disclose to the school superintendent the presence of any child in the care and custody or under the jurisdiction or supervision of the department who has a known history of criminal sexual behavior with other juveniles; is alleged to have committed juvenile sexual abuse as defined in s. 39.01; or has pled guilty or nolo contendere to, or has been found to have committed, a violation of chapter 794, chapter 796, chapter 800, s. 827.071, or s. 847.0133, regardless of adjudication~~. ~~Any employee of a district school board who knowingly and willfully discloses such information to an unauthorized person commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

~~(5) Authorized agents of the department may administer oaths and affirmations.~~

~~(6)(a) Records maintained by the department, including copies of records maintained by the court, which pertain to a child found to have committed a delinquent act which, if committed by an adult, would be a crime specified in s. 435.04 may not be destroyed under this section for 25 years after the youth's final referral to the department, except in cases of the death of the child. Such records, however, shall be sealed by the court for use only in meeting the screening requirements for~~

~~personnel in s. 402.3055 and the other sections cited above, or under departmental rule; however, current criminal history information must be obtained from the Department of Law Enforcement in accordance with s. 943.053. The information shall be released to those persons specified in the above cited sections for the purposes of complying with those sections. The court may punish by contempt any person who releases or uses the records for any unauthorized purpose.~~

~~(b) Sexual offender and predator registration information as required in ss. 775.21, 943.0435, 944.606, 944.607, 985.481, and 985.4815 is a public record pursuant to s. 119.07(1) and as otherwise provided by law.~~

~~(7)(a) Records in the custody of the department regarding children are not open to inspection by the public. Such records may be inspected only upon order of the Secretary of Juvenile Justice or his or her authorized agent by persons who have sufficient reason and upon such conditions for their use and disposition as the secretary or his or her authorized agent deems proper. The information in such records may be disclosed only to other employees of the department who have a need therefor in order to perform their official duties; to other persons as authorized by rule of the department; and, upon request, to the Department of Corrections. The secretary or his or her authorized agent may permit properly qualified persons to inspect and make abstracts from records for statistical purposes under whatever conditions upon their use and disposition the secretary or his or her authorized agent deems proper, provided adequate assurances are given that children's names and other identifying information will not be disclosed by the applicant.~~

~~(b) The destruction of records pertaining to children committed to or supervised by the department pursuant to a court order, which records are retained until a child reaches the age of 24 years or until a serious or habitual delinquent child reaches the age of 26 years, shall be subject to chapter 943.~~

~~(8) Criminal history information made available to governmental agencies by the Department of Law Enforcement or other criminal justice agencies shall not be used for any purpose other than that specified in the provision authorizing the releases.~~

Section 4. Subsection (2) of section 985.045, Florida Statutes, is amended to read:

985.045 Court records.—

(2) The clerk shall keep all official records required by this section separate from other records of the circuit court, except those records pertaining to motor vehicle violations, which shall be forwarded to the Department of Highway Safety and Motor Vehicles. Except as provided in s. 943.053 ~~ss. 943.053 and 985.04(6)(b) and (7)~~, official records required by this chapter are not open to inspection by the public, but may be inspected only upon order of the court by persons deemed by the court to have a proper interest therein, except that a child and the parents, guardians, or legal custodians of the child and their attorneys, law enforcement agencies, the Department of Juvenile Justice and its designees, the Florida Commission on Offender Review, the Department of Corrections, and the Justice Administrative Commission shall always have the right to inspect and copy any official record pertaining to the child. Public defender offices shall have access to official records of

juveniles on whose behalf they are expected to appear in detention or other hearings before an appointment of representation. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect, and make abstracts from, official records under whatever conditions upon the use and disposition of such records the court may deem proper and may punish by contempt proceedings any violation of those conditions.

Section 5. Paragraph (b) of subsection (1) of section 985.11, Florida Statutes, is amended to read:

985.11 Fingerprinting and photographing.—

(1)

(b) Unless the child is issued a civil citation or is participating in a similar diversion program pursuant to s. 985.12, a child who is charged with or found to have committed one of the following offenses shall be fingerprinted, and the fingerprints shall be submitted to the Department of Law Enforcement as provided in s. 943.051(3)(b):

1. Assault, as defined in s. 784.011.

2. Battery, as defined in s. 784.03.

3. Carrying a concealed weapon, as defined in s. 790.01(1).

4. Unlawful use of destructive devices or bombs, as defined in s. 790.1615(1).

5. Neglect of a child, as defined in s. 827.03(1)(e).

6. Assault on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a).

7. Open carrying of a weapon, as defined in s. 790.053.

8. Exposure of sexual organs, as defined in s. 800.03.

9. Unlawful possession of a firearm, as defined in s.

790.22(5).

10. Petit theft, as defined in s. 812.014.

11. Cruelty to animals, as defined in s. 828.12(1).

12. Arson, resulting in bodily harm to a firefighter, as defined in s. 806.031(1).

13. Unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property as defined in s. 790.115.

A law enforcement agency may fingerprint and photograph a child taken into custody upon probable cause that such child has committed any other violation of law, as the agency deems appropriate. Such fingerprint records and photographs shall be retained by the law enforcement agency in a separate file, and these records and all copies thereof must be marked "Juvenile Confidential." These records are not available for public disclosure and inspection under s. 119.07(1) except as provided in s. 943.053 ~~ss. 943.053 and 985.04(2)~~, but shall be available to other law enforcement agencies, criminal justice agencies, state attorneys, the courts, the child, the parents or legal custodians of the child, their attorneys, and any other person authorized by the court to have access to such records. In addition, such records may be submitted to the Department of Law Enforcement for inclusion in the state criminal history records and used by criminal justice agencies for criminal justice purposes. These records may, in the discretion of the court, be open to inspection by anyone upon a showing of cause. The fingerprint and photograph records shall be produced in the court whenever directed by the court. Any photograph taken

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

pursuant to this section may be shown by a law enforcement officer to any victim or witness of a crime for the purpose of identifying the person who committed such crime.

Section 6. Subsection (2) of section 1006.08, Florida Statutes, is amended to read:

1006.08 District school superintendent duties relating to student discipline and school safety.—

(2) Notwithstanding ~~the provisions of s. 985.04(7) or~~ any other provision of law to the contrary, the court shall, within 48 hours of the finding, notify the appropriate district school superintendent of the name and address of any student found to have committed a delinquent act, or who has had adjudication of a delinquent act withheld which, if committed by an adult, would be a felony, or the name and address of any student found guilty of a felony. Notification shall include the specific delinquent act found to have been committed or for which adjudication was withheld, or the specific felony for which the student was found guilty.

Section 7. Subsection (1) of section 1012.797, Florida Statutes, is amended to read:

1012.797 Notification of district school superintendent of certain charges against or convictions of employees.—

(1) Notwithstanding ~~the provisions of s. 985.04(7) or~~ any other provision of law to the contrary, a law enforcement agency shall, within 48 hours, notify the appropriate district school superintendent of the name and address of any employee of the school district who is charged with a felony or with a misdemeanor involving the abuse of a minor child or the sale or possession of a controlled substance. The notification shall

include the specific charge for which the employee of the school district was arrested. Such notification shall include other education providers such as the Florida School for the Deaf and the Blind, university lab schools, and private elementary and secondary schools.

Section 8. For the purpose of incorporating the amendment made by this act to section 943.0582, Florida Statutes, in a reference thereto, subsection (3) of section 985.125, Florida Statutes, is reenacted to read:

985.125 Prearrest or postarrest diversion programs.—

(3) The prearrest or postarrest diversion program may, upon agreement of the agencies that establish the program, provide for the expunction of the nonjudicial arrest record of a minor who successfully completes such a program pursuant to s. 943.0582.

Section 9. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

3-30-15
Meeting Date

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

1316
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic EXPUNGEMENT

Name SAL NUZZO

Job Title VP OF POLICY

Address 100 N DUVAL
Street

TALL FL 32301
City State Zip

Phone 850-322-9941

Email SNUZZO@JAMESMADISON.ORG

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

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

Representing THE JAMES MADISON INSTITUTE

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

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

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

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

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)

3/30/15
Meeting Date

SB 1316
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: JUVENILE RECORDS

Name: ROY MILLER

Job Title: PRESIDENT

Address: 111 SOUTH MAGNOLIA DR
Street

TALLAHASSEE FL 32301
City State Zip

Phone

Email

Speaking: [x] For [ ] Against [ ] Information

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

Representing: THE CHILDREN'S CAMPAIGN

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/30/15
Meeting Date

1316
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Criminal History Records of Minors

Name Samantha Sexton

Job Title Associate Director of Government Affairs

Address One West Adams street, Suite 301
Street

Jacksonville FL 32202
City State Zip

Phone (904) 383-9403

Email Samantha.sexton@pacecenter.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing PACE Center for Girls

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)

3·30·15
Meeting Date

SB 1316
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Criminal History Records

Name: Barney Bishop III

Job Title: Pres & CEO

Address: 204 S. Monroe
Street

Tall — FL — 32301
City — State — Zip

Phone: 577-3032

Email: barney@smartjusticealliance.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing: Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

APPEARANCE RECORD

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

March 30, 2015
Meeting Date

1316
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Criminal History Records for Minors

Name: Nancy Daniels

Job Title: Public Defender, 2nd Judicial Circuit

Address: 301 South Monroe Street
Street

Tallahassee — Florida — 32301
City — *State* — *Zip*

Phone: 850.606.1000

Email: nancy.daniels@flpd2.com

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)

3/30/15
Meeting Date

SB 1316
Bill Number (if applicable)

Topic Expungement

Amendment Barcode (if applicable)

Name Buddy Jacobs

Job Title General Counsel FPAA

Address 961687 Gateway Blvd.
Street

Fernandina Bch FL 32034
City State Zip

Phone

Email

Speaking: [ ] For [✓] Against [ ] Information

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

Representing State Attorneys

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 1324
INTRODUCER:	Criminal Justice Committee and Senator Latvala
SUBJECT:	Public Records/Agency Personnel Information
DATE:	March 31, 2015 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1324 creates exemptions from the Public Records law for personal identifying and location information of public defenders, conflict counsel, capital collateral counsel, prosecutors, law enforcement officers and other investigatory personnel, as well as their siblings, parents, and cohabitants.

The information that is exempted includes:

- Residential addresses, including former residences and residences in which the person frequently resides other than the person's home address;
- E-mail addresses;
- Driver license numbers;
- License plate numbers; and
- Banking and financial information.

Additionally, home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the parents, siblings, and cohabitants of those officers and personnel are exempt under the bill.

The public necessity for the bill is that without the exemptions the person, their parent, sibling, or cohabitant could be placed in danger of being physically and emotionally harmed or being stalked by a defendant or other person.

The bill requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption.

The bill becomes effective on July 1, 2015. The exemptions created by the bill will be repealed on October 2, 2020, unless reviewed and reenacted by the Legislature.

II. Present Situation:

Threats to and Harassment of Law Enforcement and Other Government Personnel

Events that occur in people's lives as a result of criminal cases or civil actions involving alleged child abuse or neglect, for example, tend to raise anxiety or anger. Law enforcement officers and others who work in and around the court system sometimes find that they are targeted for violence, threats, and different forms of harassment by people they come into contact with in these volatile situations.

In recent years, law enforcement has become aware of a loosely organized group of people referred to as "sovereign citizens." According to reports, the group believes the government has no authority over them. A September 2011 FBI Law Enforcement Bulletin reported that since 2000, lone-offender "sovereign citizen extremists" have killed six law enforcement officers.[1] A recent Homeland Security intelligence assessment, produced in coordination with the FBI, counts 24 violent attacks related to the sovereign citizen movement. Because law enforcement officers and other government authority figures enforce the laws and regulations, the report indicates that they will remain the primary target of violence by this extremist group.[2]

The murders of an assistant district attorney as he walked to the courthouse, and just a few weeks later, the District Attorney and his wife in their home in Kaufman County, Texas shocked the community in 2013. Reports indicate that the killings were planned and carried out by a local public official as revenge for his prosecution for theft of public property.[3]

In 2011, one man was sentenced to 30 months in prison after pleading guilty to filing false liens against federal law enforcement employees in Florida. His targets were people involved in investigating and prosecuting him for tax fraud. He filed false liens against the property of the prosecutors, investigators, and court personnel falsely claiming that he was owed $48,489 billion from each individual.[4]

A Tallahassee man first met Officer Annette Garrett in April 2007 during a trespass investigation that lasted until May 2007.[5] According to court documents, the man found Officer Garrett to be

[1] Federal Bureau of Investigation Law Enforcement Bulletin, *Sovereign Citizens: A Growing Domestic Threat to Law Enforcement*, September 2011. http://leb.fbi.gov/2011/september (site visited March 18, 2015).

[2] http://www.cnn.com/2015/02/19/politics/terror-threat-homeland-security/ (site visited March 19, 2015).

[3] http://crimeblog.dallasnews.com/2013/05/suspect-in-kaufman-county-da-murders-waives-oral-arguments-in-appeal-of-case-law-enforcement-cites-as-motive-for-killings.html/

[4] *See* Marie Yeung, *Man Sentenced for False Liens in Florida*, The Epoch Times, Oct. 3, 2011, http://www.theepochtimes.com/n2/united-states/man-sentenced-for-false-liens-in-florida-62333.html (last visited March 20, 2015).

[5] Taken from Complaint for Declaratory and Injunctive Relief in Brayshaw v. City of Tallahassee, United States District Court Northern District Of Florida, Tallahassee Division, No. 4:09-cv-373.

very rude, abusive, and unprofessional during the investigation.[6] He filed several complaints with the Tallahassee Police Department regarding Officer Garrett's conduct.[7] He was not satisfied with the department's response to his complaints.[8] In 2008, the man posted personal information about Officer Garrett on a website, Ratemycop.com.[9] The information about the officer was publicly available. The information posted on the website included the officer's marital status, number of children, home address, estimated value of her home, cell phone number, and e-mail address.[10]

Public Records

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.[11] The records of the legislative, executive, and judicial branches are specifically included.[12]

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act[13] guarantees every person's right to inspect and copy any state or local government public record[14] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[15]

Only the Legislature may create an exemption to public records requirements.[16] This exemption must be created by general law and must specifically state the public necessity justifying the

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6 *Id.*
7 *Id.*
8 *Id.*
9 A privately owned company in Los Angeles, California, that "allows registered users to leave written feedback about their interactions with police officers, and rank the officer's service based on three criteria: Professionalism, Fairness and Satisfaction." *See* http://ratemycop.com/index.php?option=com_content&task=view&id=58&Itemid=148; from Complaint for Declaratory and Injunctive Relief in Brayshaw v. City of Tallahassee, United States District Court Northern District Of Florida, Tallahassee Division, No. 4:09-cv-373
10 *Id.*
11 FLA. CONST., art. I, s. 24(a).
12 *Id.*
13 Chapter 119, F.S.
14 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).
15 Section 119.07(1)(a), F.S.
16 FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature designates confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *WFTV, Inc. v. The 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 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to

exemption.[17] Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions[18] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[19]

The Open Government Sunset Review Act[20] requires a newly created or expanded public records exemption to be repealed on October 2 of the fifth year after enactment, unless reviewed and reenacted by the Legislature.[21] It further provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves.[22]

Statutory Exemptions from Public Records Law

Section 119.07(1)(a), F.S., provides that any person is permitted to inspect and copy any public record unless the record falls under an exemption to the general rule.

Among the general exemptions set forth in s. 119.071, F.S., are exemptions for the home addresses, telephone numbers, social security numbers, dates of birth, and photographs of the following persons:
- Active or former sworn or civilian law enforcement officers, including correctional and correctional probation officers;
- Personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities;
- Personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect;
- Personnel of the Department of Revenue or local governments whose duties include revenue collection and enforcement or child support enforcement;
- Current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and
- The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, criminal conflict and civil regional counsel and their assistants.

The information exempted also includes the names, home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the persons' spouses and children, as well as the names and locations of schools and day care facilities attended by those persons' children.[23]

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anyone other than the persons or entities specifically designated in the statutory exemption. Attorney General Opinion 85-62, (August 1, 1985).

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

[18] However, the bill may contain multiple exemptions that relate to one subject.

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

[20] Section 119.15, F.S.

[21] Section 119.15(3), F.S.

[22] Section 119.15(5)(b), F.S.

[23] s. 119.071(4)(d)2.a., d., and j., F.S.

III. Effect of Proposed Changes:

The bill amends s. 119.071(4)(d)2.a., d., and j., F.S., to include the following public records exemptions relating to the officers and personnel listed above as well as the capital collateral regional counsel and their assistants:

- Residential addresses, including former residences and residences in which the person frequently resides other than the person's home address;
- E-mail addresses;
- Driver license numbers;
- License plate numbers; and
- Banking and financial information.

Additionally, home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the parents, siblings, and cohabitants of those officers and personnel are exempt under the bill.

The bill also provides a statement of public necessity for the exemptions. The specific finding relevant to the public necessity is that without the exemptions the person, their parent, sibling, or cohabitant could be placed in danger of being physically and emotionally harmed or being stalked by a defendant or other person. The bill states that the Legislature further finds that the harm that may result from the release of the identifying and location information outweighs any public benefit that may be derived from the disclosure of the information.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal though reenactment by the Legislature.

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; thus, it 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.

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:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Criminal Justice on March 30, 2015:

- The CS exempts from public records the residential addresses, e-mail addresses, driver license numbers, license plate numbers, and banking and financial information of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, assistant criminal conflict and civil regional counsel, capital collateral regional counsels, and assistant capital collateral regional counsel. The home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of their parents, siblings, or cohabitants are also made exempt by the CS.

- The statement of public necessity reflects the inclusion of the information listed above for the public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel and their assistants.
- References to information identifying former places of employment are eliminated by the CS.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2015	.	
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	.	

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

Senate Amendment

Delete lines 54 - 55
and insert:
license plate numbers, and banking and financial information of active or

Delete lines 108 - 109
and insert:
license plate numbers, and banking and financial information of current

638378

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 211 - 288
and insert:
(III) Residential addresses, including former residences and residences in which the person frequently resides other than the person’s home address, e-mail addresses, driver license numbers, license plate numbers, and banking and financial information of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel,

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assistant criminal conflict and civil regional counsel, capital collateral regional counsels, and assistant capital collateral regional counsel, and the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the parents, siblings, and cohabitants of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, assistant criminal conflict and civil regional counsel, capital collateral regional counsels, and assistant capital collateral regional counsel are exempt from s. 24(a), Art. I of the State Constitution. This sub-sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

k. The home addresses, telephone numbers, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the investigator or inspector has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

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l. The home addresses and telephone numbers of county tax collectors; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the county tax collector has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

m. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the Department of Health; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the personnel have made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act

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in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

4. The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the exemption.

5. Except as otherwise expressly provided in this paragraph, this paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the residential addresses, e-mail addresses, driver license numbers, license plate numbers, and banking and financial information of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect,

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personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement, current or former state attorneys, assistant state attorneys, statewide prosecutors, assistant statewide prosecutors, public defenders, assistant public defenders, criminal conflict and civil regional counsel, assistant criminal conflict and civil regional counsel, capital collateral regional counsels, and assistant capital collateral regional counsel be made exempt

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

And the title is amended as follows:

Delete lines 8 - 9

and insert:

statewide prosecutors, assistant statewide prosecutors, public defenders, assistant public defenders, criminal conflict and civil regional counsel, assistant criminal conflict and civil regional counsel, capital collateral regional counsels, and assistant capital collateral regional counsel and their parents, siblings, or

795432

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/27/2015	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 54 - 55
and insert:
<u>license plate numbers, and banking and financial information of active or</u>
Delete lines 108 - 109
and insert:
<u>license plate numbers, and banking and financial information of current</u>

795432

Delete lines 276 - 277
and insert:
<u>driver license numbers, license plate numbers, and banking and financial information of active</u>

518382

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/30/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 211 - 288
and insert:

(III) Residential addresses, including former residences and residences in which the person frequently resides other than the person’s home address, e-mail addresses, driver license numbers, license plate numbers, and banking and financial information of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel,

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and assistant criminal conflict and civil regional counsel, and the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the parents, siblings, and cohabitants of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel are exempt from s. 24(a), Art. I of the State Constitution. This sub-sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

k. The home addresses, telephone numbers, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the investigator or inspector has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

l. The home addresses and telephone numbers of county tax collectors; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such tax

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collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the county tax collector has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

m. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the Department of Health; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the personnel have made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

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3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

4. The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the exemption.

5. Except as otherwise expressly provided in this paragraph, this paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the residential addresses, e-mail addresses, driver license numbers, license plate numbers, and banking and financial information of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement, current or former

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state attorneys, assistant state attorneys, statewide prosecutors, assistant statewide prosecutors, and current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel be made exempt

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

And the title is amended as follows:

Delete lines 8 - 9

and insert:

statewide prosecutors, assistant statewide prosecutors, public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel, and their parents, siblings, or

By Senator Latvala

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; providing exemptions from public records requirements for certain information related to active or former sworn or civilian law enforcement personnel and specified agency personnel, current and former state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors, and their parents, siblings, or cohabitants; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

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

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term “telephone numbers” includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

2.a.(I) The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, personnel of

the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1).

(II) The names of the spouses and children of active or former sworn or civilian law enforcement personnel and the other specified agency personnel identified in sub-sub-subparagraph (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(III) Sub-sub-subparagraph (II) is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

(IV) Residential addresses, including former residences and residences in which the person frequently resides other than the person’s home address, e-mail addresses, driver license numbers, license plate numbers, banking and financial information, and information identifying former places of employment of active or former sworn or civilian law enforcement personnel and the other specified agency personnel identified in sub-sub-subparagraph (I) and the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the parents, siblings, and cohabitants of active or former sworn or civilian law enforcement personnel and the other specified agency personnel identified in sub-sub-subparagraph (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

b. The home addresses, telephone numbers, dates of birth, and photographs of firefighters certified in compliance with s. 633.408; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1).

c. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges are exempt from s. 119.07(1).

d.(I) The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the home

addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(II) The names of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(III) Sub-sub-subparagraph (II) is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

(IV) Residential addresses, including former residences and residences in which the person frequently resides other than the person’s home address, e-mail addresses, driver license numbers, license plate numbers, banking and financial information, and information identifying former places of employment of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors and the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the parents, siblings, and cohabitants of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and

s. 24(a), Art. I of the State Constitution. This sub-sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

e. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer provides a written statement that the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer has made reasonable efforts to protect such information from being accessible through other means available to the public.

f. The home addresses, telephone numbers, dates of birth, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

g. The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

h. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if the guardian ad litem provides a written statement that the guardian ad litem has made reasonable efforts to protect such information from being accessible through other means available to the public.

i. The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

j.(I) The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such defenders or counsel; and the names and locations of schools and day care facilities attended by the children of such defenders or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(II) The names of the spouses and children of the specified agency personnel identified in sub-sub-subparagraph (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

k. The home addresses, telephone numbers, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the investigator or inspector has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

l. The home addresses and telephone numbers of county tax collectors; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the county tax collector has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

m. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the Department of Health; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the personnel have made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. shall maintain the exempt status of that

information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

4. The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the exemption.

5. Except as otherwise expressly provided in this paragraph, this paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the residential addresses, e-mail addresses, driver license numbers, license plate numbers, banking and financial information, and former places of employment of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement, current or former state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature further finds that it is a public necessity that the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the parents, siblings, and cohabitants of such persons be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature finds that the release of such identifying and location information could place the person, or a parent, sibling, or cohabitant of the person, in danger of being physically and emotionally harmed or being stalked by a defendant or other person. The Legislature finds that the harm that may result from the release of such identifying and location information outweighs any public benefit that may be derived from the disclosure of the information.

Section 3. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on
Transportation, Tourism, and Economic
Development, *Chair*
Appropriations
Commerce and Tourism
Governmental Oversight and Accountability
Regulated Industries
Rules

SENATOR JACK LATVALA
20th District

March 2, 2015

The Honorable Greg Evers, Chairman
Senate Committee on Criminal Justice
510 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Evers:

I respectfully request consideration of Senate Bill 1324/Public Records/Agency Personnel Information by the Senate Criminal Justice Committee at your earliest convenience.

This bill would provide a public records exemption for information relating to law enforcement personnel, state attorneys, statewide prosecutors, and others and includes their parents, siblings, or cohabitants. Release of such information could place the person or family member in danger of being harmed or stalked by a defendant or others.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

Jack

Jack Latvala
State Senator
District 20

Cc: Sandra Stovall, Staff Director; Celia Georgiades, Administrative Assistant

REPLY TO:
❐ 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
❐ 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

March 30, 2015
Meeting Date

1324
Bill Number (if applicable)

526940
Amendment Barcode (if applicable)

Topic Public Records Exemption-Personnel Information

Name Nancy Daniels

Job Title Public Defender, 2nd Judicial Circuit

Address 301 S. Monroe Street
Street

Tallahassee Florida 32301
City *State* *Zip*

Phone 850.606.1000

Email nancy.daniels@flpd2.com

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

638378 ?

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

March 30, 2015
Meeting Date

1324
Bill Number (if applicable)

518382
Amendment Barcode (if applicable)

Topic: Public Records Exemption-Personnel Information

Name: Nancy Daniels

Job Title: Public Defender, 2nd Judicial Circuit

Address: 301 S. Monroe Street
Street

Tallahassee, Florida 32301
City, State, Zip

Phone: 850.606.1000

Email: nancy.daniels@flpd2.com

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

3-30-15
Meeting Date

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

1324
Bill Number (if applicable)

638378
Amendment Barcode (if applicable)

Topic PUBLIC RECORDS

Name NEAL DUPREE

Job Title CAPITAL COLLATERAL REGIONAL COUNSEL

Address 1 EAST BROWARD BLVD
Street

Phone (954)713-1284

FT LAUD FLORIDA 33301
City State Zip

Email DUPREEN@CCSR.STATE.FL.US

Speaking: [ ] For [ ] Against [ ] Information

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

Representing CAPITAL COLLATERAL REGIONAL COUNSELS

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/30/2015
Meeting Date

1324
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Public Records / Agency Personnel Information

Name Matt Puckett

Job Title Lobbyist

Address 300 East Brevard St.
Street

Tallahassee FL 32301
City State Zip

Phone 850-222-3329

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Police Benevolent Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/30/2015
Meeting Date

1324
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Public Records/Agency Personnel Information

Name: Frank Fabrizio

Job Title: Police Chief

Address: 4301 S. Peninsula Drive
Street

Ponce Inlet, FL 32127
City, State, Zip

Phone: #386-275-9377

Email: ffabrizio@ponce-inlet.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing: The Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

The Florida Senate

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 1376

INTRODUCER: Senator Evers

SUBJECT: Traffic Offenses

DATE: March 27, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	**Favorable**
2.			TR	
3.			AP	

I. Summary:

SB 1376 provides that it is a second degree misdemeanor for a person to commit a specified moving violation that causes serious bodily injury to a vulnerable road user. The violator must also pay a fine of up to $1,500, serve a minimum of 30 days of house arrest, and attend a driver improvement course. The court must also revoke the violator's license for at least 30 days.

The bill also provides that it is a first degree misdemeanor if the moving violation causes the death of a vulnerable road user. The violator must also pay a fine of up to $5,000, serve a minimum of 180 days of house arrest, and attend a driver improvement course. The court must also revoke the violator's license for at least one year.

II. Present Situation:

With some specified exceptions, a person who commits a noncriminal traffic infraction in which a person dies as a result of the infraction may be required to perform 120 community service hours in addition to any other penalties.[1]

Any traffic infraction which results in a crash that causes the death of another requires a mandatory hearing.[2]

The Department of Highway Safety and Motor Vehicles (DHSMV) may require an examination or reexamination to determine the competence and driving ability of any driver causing or contributing to the cause of any crash resulting in death or personal injury.[3] The DHSMV may also suspend the license or identification card of any person without preliminary hearing upon a showing of its records or other sufficient evidence that the licensee or cardholder has been

[1] Section 318.14(1), F.S.
[2] Section 318.19(1), F.S.
[3] Section 322.221(2)(a), F.S.

convicted of a violation of any traffic law which resulted in a crash that caused the death or personal injury of another.[4]

A driver convicted of, or who pled nolo contendere to, a traffic offense giving rise to a crash involving death or a bodily injury requiring transport to a medical facility must attend a driver improvement course to maintain his or her driving privileges.[5]

III. Effect of Proposed Changes:

The bill creates s. 318.195, F.S., which provides that it is a second degree misdemeanor[6] for a person to commit a moving violation that causes serious bodily injury, as defined in s. 316.027(1), F.S.,[7] to a vulnerable road user, as that term is defined in s. 316.027(1), F.S.[8] The violator must also pay a fine of up to $1,500, serve a minimum of 30 days of house arrest,[9] and attend a driver improvement course. The court must also revoke the violator's license for at least 30 days.

The bill also provides that it is a first degree misdemeanor[10] if the moving violation causes the death of a vulnerable road user. The violator must also pay a fine of up to $5,000, serve a minimum of 180 days of house arrest, and attend a driver improvement course. The court must also revoke the violator's license for at least one year.

The bill provides that s. 318.195, F.S., does not prohibit a person from being charged with, convicted of, or punished for any other violation of law.

The bill takes effect on October 1, 2015.

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[4] Section 377.27(1)(b), F.S.

[5] Section 322.0261, F.S.

[6] A second degree misdemeanor is punishable by up to 60 days in jail, a fine of up to $500, or both. Sections 775.082 and 775.083, F.S. The bill provides for a fine of up to $1,500. Section 775.083, F.S., provides that a higher amount may be imposed when specifically authorized by statute.

[7] Section 316.027(1)(a), F.S., defines "serious bodily injury" as an injury to a person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

[8] Section 316.027(1)(b), F.S., defines "vulnerable road user" as: a pedestrian, including a person actually engaged in work upon a highway, or in work upon utility facilities along a highway, or engaged in the provision of emergency services within the right-of-way; a person operating a bicycle, motorcycle, scooter, or moped lawfully on the roadway; a person riding an animal; or a person lawfully operating on a public right-of-way, crosswalk, or shoulder of the roadway, a farm tractor (or similar vehicle designed primarily for farm use), a skateboard, roller skates, in-line skates, a horse-drawn carriage, an electric personal assistive mobility device, or a wheelchair.

[9] Florida law does not use the term "house arrest." Under s. 948.10, F.S., community control is an alternative, community-based method to punish an offender in lieu of incarceration. Generally, misdemeanor violators are not a target group for community control. Confinement to an agreed-upon residence during hours away from employment and public service activities is a community control condition the court may impose. Section 948.101, F.S. Unless the requirement for "house arrest" in the bill is an indirect amendment or expansion of community control, it appears to be a sanction specific to the misdemeanor offenses created by the bill.

[10] A first degree misdemeanor is punishable by up to one year in jail, a fine of up to $1,000, or both. Sections 775.082 and 775.083, F.S. The bill provides for a fine of up to $5,000. Section 775.083, F.S., provides that a higher amount may be imposed when specifically authorized by statute.

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 operators of motor vehicles who commit traffic infractions that cause serious bodily injury or death to a vulnerable road user: payment of a fine; the potential for lost wages (house arrest) and costs that may arise from attending a driver improvement course and driver license revocation/reinstatement.

An analysis of the bill by DHSMV was requested but not received at the time this analysis was completed. In analyzing an identical bill introduced in the 2014 Session (SB 1312), the DHSMV indicated the bill might generate additional revenue for organizations that already teach traffic safety courses.[11]

C. Government Sector Impact:

In its analysis of SB 1312 (2014 Session), the DHSMV indicated that the bill might have a positive indeterminate impact on revenues due to the reinstatement of driver license revocations and required driver improvement courses. The DHSMV also indicated that that the bill would have required non-recurring programing costs that the DHSMV would have absorbed.[12]

VI. Technical Deficiencies:

In its analysis of SB 1312 (2014 Session), the DHSMV proposed changes to that bill to effectuate its implementation.[13]

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[11] Analysis of SB 1312 (July 1, 2014), Department of Highway Safety and Motor Vehicles (on file with the Senate Committee on Criminal Justice).
[12] *Id.*
[13] *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 318.195 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 Evers

2-00663-15 20151376__

A bill to be entitled

An act relating to traffic offenses; creating s. 318.195, F.S.; providing criminal penalties for a person who commits a moving violation that causes serious bodily injury to, or causes the death of, a vulnerable road user; requiring that the person pay a specified fine, serve a minimum period of house arrest, and attend a driver improvement course; requiring that the court revoke the person’s driver license for a minimum specified period; providing that the act does not prohibit the person from being charged with, convicted of, or punished for any other violation of law; providing an effective date.

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

Section 1. Section 318.195, Florida Statutes, is created to read:

318.195 Enhanced penalties for moving violations causing serious bodily injury or death.—

(1) A person who commits a moving violation that causes serious bodily injury, as defined in s. 316.027(1), to a vulnerable road user, as that term is defined in s. 316.027(1), commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and, upon conviction, shall pay a fine of at least $1,500, serve a minimum of 30 days of house arrest, and attend a driver improvement course. The court shall also revoke the person’s driver license for at least 30 days.

(2) A person who commits a moving violation that causes the death of a vulnerable road user commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and, upon conviction, shall pay a fine of at least $5,000, serve a minimum of 180 days of house arrest, and in lieu of the requirements of s. 322.0261, attend an advanced driver improvement course. The court shall also revoke the person’s driver license for at least 1 year.

(3) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law.

Section 2. This act shall take effect October 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/30/15
Meeting Date

1376
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Traffic

Name James D "Doc" Reichenbach

Job Title State President

Address PO Box 712
Street

Silver Springs FL 34489
City State Zip

Phone (352) 342-2155

Email abatefl@att.net

Speaking: [x] For [ ] Against [ ] Information

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

Representing ABATE of Florida, Inc.

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

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

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

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

S-001 (10/14/14)

Doc Reichenback Handout 1376

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 1534

INTRODUCER: Senator Brandes

SUBJECT: Disposition of Liens and Forfeited Property

DATE: March 27, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	**Favorable**
2.			ACJ	
3.			AP	

I. Summary:

SB 1534 amends s. 932.7055, F.S., by revising the authorized distribution and use of contraband forfeiture funds under the act as follows.

It prohibits a seizing agency from retaining the forfeited property for the agency's use.

It requires the seizing agency to deposit into the Crimes Compensation Trust Fund the forfeiture proceeds which remain after all liens and debts are paid as follows:

- All remaining proceeds, if it is a state agency; or
- Fifty percent of remaining proceeds, if it is a local law enforcement agency.

(Currently a seizing agency can retain these proceeds).

Additionally, the bill provides that the other 50 percent of forfeiture proceeds retained by a local law enforcement agency can only be used for school resource officers, crime prevention, safe neighborhood, or drug abuse education and prevention programs.

The bill also requires any local law enforcement agency that acquires at least $15,000 under the act within a fiscal year to expend or donate 50 percent of the proceeds in excess of $15,000 for these designated programs (currently a minimum of 15 percent is required).

II. Present Situation:

The Contraband Forfeiture Act, ss. 932.701-932.706, F.S., prescribes procedures for law enforcement agencies to follow when seizing, forfeiting, and disposing of property under the act. Currently, under s. 932.703, F.S., any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of the act, or in, upon, or by means of which any violation of the act has taken or is taking place, may be seized and shall be forfeited subject to the provisions of the act.[1]

Section 932.704, F.S., provides that the Department of Law Enforcement (FDLE), in consultation with the Florida Sheriffs Association and the Florida Police Chiefs Association, shall develop guidelines and training procedures to be used by state and local law enforcement agencies and state attorneys in implementing the act. Each agency that seizes property shall periodically review its seizures, settlements, and forfeiture proceedings to determine whether they comply with the act and the adopted guidelines. The determination of whether an agency will file a forfeiture action must be the sole responsibility of the head of the agency or his or her designee. The determination of whether to seize currency must be made by supervisory personnel. The agency's legal counsel must be notified as soon as possible.[2]

Section 932.7055, F.S., provides for the disposition of liens and forfeited property under the act. The seizing agency may do any of the following when a final judgment of forfeiture is granted:

- Retain the property for the agency's use;
- Sell the property at a public auction or by sealed bid to the highest bidder; or
- Salvage, trade, or transfer the property to any public or nonprofit organization.[3]

If the property has a lien attached and the agency sells the property, the proceeds of the sale are to be distributed in this order:

- Payment of the balance due on any lien preserved by the court in the forfeiture proceedings.
- Payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property.
- Payment of court costs incurred in the forfeiture proceeding.[4]

The proceeds which remain after all liens and debts against the forfeited property are paid are then deposited into a special law enforcement trust fund and may be used to fund school resource officers, crime prevention, safe neighborhood, drug abuse education and prevention programs, or other law enforcement purposes, including defraying the cost of protracted or complex investigations, providing additional equipment or expertise, purchasing automated external defibrillators for law enforcement vehicles, and providing matching funds to obtain federal grants. These proceeds and interest may not be used to meet normal operation expenses.[5]

Additionally, any local law enforcement agency that acquires at least $15,000 under the act within a fiscal year must expend or donate no less than 15 percent of these proceeds for the support or operation of any drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer program. The agency has discretion to determine which program receives the funds.[6]

[1] Section 932.703(1), F.S. The constitutionality of the act was upheld by the Florida Supreme Court in *Department of Law Enforcement v. Real Property,* 588 So.2d 957 (Fla. 1991).
[2] Section 932.704(11), F.S.
[3] Section 932.7055(1), F.S.
[4] Sections 932.7055(3) and (4), F.S.
[5] Section 932.7055(5), F.S.
[6] Section 932.7055(5)(c)3., F.S.

An agency or organization, other than the seizing agency, that wishes to receive such funds shall apply to the sheriff or chief of police for an appropriation. If the agency or organization receives funding under the act, it must provide an accounting, indicating that the funds were only used for the above stated purposes.[7]

If the seizing agency is a local law enforcement agency, the proceeds are deposited into a special law enforcement trust fund established by the governing body of a county or municipality. The funds may be appropriated only to the sheriff's office by the board of county commissioners or to the police department by the governing body of the municipality when the sheriff or police chief has certified that the request for funds will be used in compliance with the act.[8]

If the seizing agency is a state agency, the remaining proceeds are deposited into the General Revenue Fund, except that some agencies have their own forfeiture trust fund, including:

- FDLE;
- Division of Alcoholic Beverages and Tobacco;
- Department of Highway Safety and Motor Vehicles;
- Fish and Wildlife Conservation Commission;
- State Attorney Offices;
- School Board Security Agencies;
- State University System Police Departments;
- Department of Agriculture and Consumer Services;
- Department of Military Affairs;
- Medicaid Fraud Control Unit of the Department of Legal Affairs;
- Division of State Fire Marshal of the Department of Financial Services; and
- Division of Insurance Fraud of the Department of Financial Services.[9]

III. Effect of Proposed Changes:

The bill amends s. 932.7055, F.S., by revising the authorized distribution and use of contraband forfeiture funds under the act as follows.

It prohibits a seizing agency from retaining the forfeited property for the agency's use.

It requires the seizing agency to deposit into the Crimes Compensation Trust Fund the forfeiture proceeds which remain after all liens and debts are paid as follows:

- All remaining proceeds, if it is a state agency; or
- Fifty percent of remaining proceeds, if it is a local law enforcement agency.

(Currently a seizing agency can retain these proceeds.)

Additionally, the bill provides that the other 50 percent of forfeiture proceeds retained by a local law enforcement agency can only be used for school resource officers, crime prevention, safe neighborhood, or drug abuse education and prevention programs. Under the bill, it can no longer be used for other law enforcement purposes, including defraying the cost of protracted or

[7] Section 932.7055(5)(c), F.S.
[8] Section 932.7055(5), F.S.
[9] Section 932.7055(6), F.S.

complex investigations, providing additional equipment or expertise, purchasing automated external defibrillators, or providing matching funds for federal grants.

The bill requires any local law enforcement agency that acquires at least $15,000 under the act within a fiscal year to expend or donate 50 percent of the proceeds in excess of $15,000 for these designated programs (currently a minimum of 15 percent is required). The bill also requires any other agency or organization that requests to receive such funds to provide a detailed accounting, indicating that the funds will only be used for the above stated purposes. The bill states that these requests are public records as defined in ch. 119, F.S.

The bill deletes the current provisions establishing forfeiture trust funds for numerous specified state agencies. It also deletes obsolete language in paragraph (4)(d) of s. 932.7055, F.S.

The effective date of the bill is July 1, 2015.

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:

Persons who receive funding from the Crimes Compensation Trust Fund may be positively impacted as a result of the bill's mandate that seizing agencies deposit forfeiture funds into that trust fund rather than the currently authorized forfeiture trust funds.

C. Government Sector Impact:

Local law enforcement and state agencies that seize and forfeit property under the act will be negatively impacted by the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 932.7055 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 381.0081, 895.09, and 932.703.

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 Brandes

22-00308D-15 20151534__

A bill to be entitled

An act relating to the disposition of liens and forfeited property; amending s. 932.7055, F.S.; deleting a provision authorizing a seizing agency to retain seized property for its use; deleting an obsolete provision; revising the distribution and the use of proceeds from the sales of forfeited property seized by a county or municipal agency; authorizing an agency or organization, other than a seizing agency, to apply for funds from specified proceeds; requiring that funding requests be made in writing and include a certification that the expenditure meets certain requirements; specifying that such requests are public records; deleting a provision relating to certain expenditure or donation of forfeiture proceeds; requiring certain proceeds to be deposited into the Crimes Compensation Trust Fund, rather than the General Revenue Fund; deleting provisions that exempt certain agencies of the state from depositing proceeds from seizures into the General Revenue Fund; making technical changes; reenacting ss. 381.0081(5)(b), 895.09(2)(c), and 932.703(6)(b), F.S., relating to the allocations of proceeds from the sales of property in a migrant labor camp or residential migrant housing, the disposition of funds obtained through forfeiture proceedings, and the forfeiture of contraband articles, respectively, to incorporate the amendment made to s. 932.7055, F.S., in references thereto; providing an effective date.

Florida Senate - 2015 **SB 1534**

22-00308D-15 20151534__

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

Section 1. Section 932.7055, Florida Statutes, is amended to read:

932.7055 Disposition of liens and forfeited property.—

(1) When a seizing agency obtains a final judgment granting forfeiture of real property or personal property, it may elect to:

~~(a) Retain the property for the agency's use;~~

(a) ~~(b)~~ Sell the property at public auction or by sealed bid to the highest bidder, except for real property, which must ~~should~~ be sold in a commercially reasonable manner after appraisal by listing on the market; or

(b) ~~(c)~~ Salvage, trade, or transfer the property to any public or nonprofit organization.

(2) Notwithstanding subsection (1), a seizing agency must destroy any image and the medium on which the image is recorded, including, but not limited to, a photograph, video tape, diskette, compact disc, or fixed disk made in violation of s. 810.145 when the image and the medium on which it is recorded is no longer needed for an official purpose. The agency may not sell or retain any image.

(3) If the forfeited property is subject to a lien preserved by the court as provided in s. 932.703(6)(b), the agency shall:

(a) Sell the property with the proceeds being used towards satisfaction of any liens; or

(b) Have the lien satisfied prior to taking any action authorized by subsection (1).

(4) The proceeds from the sale of forfeited property shall be disbursed in the following priority:

(a) Payment of the balance due on any lien preserved by the court in the forfeiture proceedings.

(b) Payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property.

(c) Payment of court costs incurred in the forfeiture proceeding.

~~(d) Notwithstanding any other provision of this subsection, and for the 2014-2015 fiscal year only, the funds in a special law enforcement trust fund established by the governing body of a municipality may be expended to reimburse the general fund of the municipality for moneys advanced from the general fund to the special law enforcement trust fund before October 1, 2001. This paragraph expires July 1, 2015.~~

(5)(a) If the seizing agency is a county or municipal agency, 50 percent of the ~~remaining~~ proceeds shall be deposited into ~~in~~ a special law enforcement trust fund established by the board of county commissioners or the governing body of the municipality. Such proceeds and interest earned therefrom shall be used for school resource officer, crime prevention, safe neighborhood, or drug abuse education and prevention programs. The remaining 50 percent of the proceeds shall be deposited into the Crimes Compensation Trust Fund~~, or for other law enforcement purposes, which include defraying the cost of protracted or complex investigations, providing additional equipment or expertise, purchasing automated external defibrillators for use

in law enforcement vehicles, and providing matching funds to obtain federal grants~~. ~~The proceeds and interest may not be used to meet normal operating expenses of the law enforcement agency.~~

(b) These funds may be expended upon request by the sheriff to the board of county commissioners or by the chief of police to the governing body of the municipality, accompanied by a written certification that the request complies with the provisions of this subsection, and only upon appropriation to the sheriff's office or police department by the board of county commissioners or the governing body of the municipality.

(c) An agency or organization, other than the seizing agency, which ~~that~~ wishes to receive such funds shall apply to the sheriff or chief of police for an appropriation. The ~~and its~~ application shall be accompanied by a written certification that the moneys will be used for an authorized purpose. Such requests for expenditures shall include a statement describing anticipated recurring costs for the agency for subsequent fiscal years. An agency or organization that receives money pursuant to this subsection shall provide an accounting for such moneys and shall furnish the same reports as an agency of the county or municipality that receives public funds. Such funds may be ~~expended in accordance with the following procedures:~~

~~1. Such funds may be~~ used only for school resource officer, crime prevention, safe neighborhood, drug abuse education, or drug prevention programs ~~or such other law enforcement purposes as the board of county commissioners or governing body of the municipality deems appropriate~~.

~~2. Such funds shall not be a source of revenue to meet normal operating needs of the law enforcement agency.~~

(d)~~3.~~ ~~After July 1, 1992, and~~ During each ~~every~~ fiscal year ~~thereafter~~, any local law enforcement agency that acquires at least $15,000 pursuant to the Florida Contraband Forfeiture Act within a fiscal year must expend or donate 50 ~~no less than 15~~ percent of such proceeds in excess of $15,000 pursuant to the Florida Contraband Forfeiture Act for the support or operation of ~~any~~ drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer programs ~~program(s)~~. An agency or organization, other than the seizing agency, which wishes to receive such funds must apply to the seizing local law enforcement agency for an appropriation. Funding requests by such agencies or organizations must be accompanied by a written certification stating that the moneys will be used for an authorized purpose, detailing how the funds will be used, and affirming that the expenditure will be used for only the support of drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer programs. Such requests are public records as defined in chapter 119. The local law enforcement agency has the discretion to determine which programs ~~program(s)~~ will receive the designated proceeds.

(e) Notwithstanding the drug abuse education, drug treatment, drug prevention, crime prevention, safe neighborhood, or school resource officer programs minimum expenditures or donations, the sheriff and the board of county commissioners or the chief of police and the governing body of the municipality may agree to expend or donate such funds over a period of years if the expenditure or donation of the ~~such~~ minimum amount in any given fiscal year would exceed the needs of the county or

municipality for such programs ~~program(s)~~. ~~Nothing in this section precludes the expenditure or donation of forfeiture proceeds in excess of the minimum amounts established herein.~~

(6) If the seizing agency is a state agency, all remaining proceeds shall be deposited into the Crimes Compensation Trust Fund ~~General Revenue Fund~~. ~~However, if the seizing agency is:~~

~~(a) The Department of Law Enforcement, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into the Forfeiture and Investigative Support Trust Fund as provided in s. 943.362 or into the department's Federal Law Enforcement Trust Fund as provided in s. 943.365, as applicable.~~

~~(b) The Division of Alcoholic Beverages and Tobacco, the proceeds accrued pursuant to the Florida Contraband Forfeiture Act shall be deposited into the Alcoholic Beverage and Tobacco Trust Fund or into the department's Federal Law Enforcement Trust Fund as provided in s. 561.027, as applicable.~~

~~(c) The Department of Highway Safety and Motor Vehicles, the proceeds accrued pursuant to the Florida Contraband Forfeiture Act shall be deposited into the Department of Highway Safety and Motor Vehicles Law Enforcement Trust Fund as provided in s. 932.705(1)(a) or into the department's Federal Law Enforcement Trust Fund as provided in s. 932.705(1)(b), as applicable.~~

~~(d) The Fish and Wildlife Conservation Commission, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into the State Game Trust Fund as provided in ss. 379.338, 379.339, and 379.3395 or into the Marine Resources Conservation Trust Fund as provided in~~

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

~~s. 379.337.~~

~~(e) A state attorney's office acting within its judicial circuit, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into the State Attorney's Forfeiture and Investigative Support Trust Fund to be used for the investigation of crime and prosecution of criminals within the judicial circuit.~~

~~(f) A school board security agency employing law enforcement officers, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into the School Board Law Enforcement Trust Fund.~~

~~(g) One of the State University System police departments acting within the jurisdiction of its employing state university, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into that state university's special law enforcement trust fund.~~

~~(h) The Department of Agriculture and Consumer Services, the proceeds accrued pursuant to the Florida Contraband Forfeiture Act shall be deposited into the General Inspection Trust Fund or into the department's Federal Law Enforcement Trust Fund as provided in s. 570.205, as applicable.~~

~~(i) The Department of Military Affairs, the proceeds accrued from federal forfeiture sharing pursuant to 21 U.S.C. ss. 881(e)(1)(A) and (3), 18 U.S.C. s. 981(e)(2), and 19 U.S.C. s. 1616a shall be deposited into the Armory Board Trust Fund and used for purposes authorized by such federal provisions based on the department's budgetary authority or into the department's Federal Law Enforcement Trust Fund as provided in s. 250.175, as applicable.~~

~~(j) The Medicaid Fraud Control Unit of the Department of Legal Affairs, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into the Department of Legal Affairs Grants and Donations Trust Fund to be used for investigation and prosecution of Medicaid fraud, abuse, neglect, and other related cases by the Medicaid Fraud Control Unit.~~

~~(k) The Division of State Fire Marshal in the Department of Financial Services, the proceeds accrued under the Florida Contraband Forfeiture Act shall be deposited into the Insurance Regulatory Trust Fund to be used for the purposes of arson suppression, arson investigation, and the funding of anti-arson rewards.~~

~~(l) The Division of Insurance Fraud of the Department of Financial Services, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into the Insurance Regulatory Trust Fund as provided in s. 626.9893 or into the Department of Financial Services' Federal Law Enforcement Trust Fund as provided in s. 17.43, as applicable.~~

(7) If more than one law enforcement agency is acting substantially to effect the forfeiture, the court having jurisdiction over the forfeiture proceedings shall, upon motion, equitably distribute all proceeds and other property among the seizing agencies.

(8) Upon the sale of any motor vehicle, vessel, aircraft, real property, or other property requiring a title, the appropriate agency shall issue a title certificate to the purchaser. Upon the request of any law enforcement agency which

elects to retain titled property after forfeiture, the appropriate state agency shall issue a title certificate for such property to said law enforcement agency.

(9) A ~~Neither the~~ law enforcement agency, or ~~nor~~ the entity having budgetary control over the law enforcement agency, may not ~~shall~~ anticipate future forfeitures or the proceeds from those forfeitures ~~therefrom~~ in the adoption and approval of the agency's budget ~~for the law enforcement agency~~.

Section 2. For the purpose of incorporating the amendment made by this act to section 932.7055, Florida Statutes, in a reference thereto, paragraph (b) of subsection (5) of section 381.0081, Florida Statutes, is reenacted to read:

381.0081 Permit required to operate a migrant labor camp or residential migrant housing; penalties for unlawful establishment or operation; allocation of proceeds.—

(5) SEIZURE.—

(b) After satisfying any liens on the property, the remaining proceeds from the sale of the property seized under this section shall be allocated as follows if the department participated in the inspection or investigation leading to seizure and forfeiture under this section:

1. One-third of the proceeds shall be allocated to the law enforcement agency involved in the seizure, to be used as provided in s. 932.7055.

2. One-third of the proceeds shall be allocated to the department, to be used for purposes of enforcing the provisions of this section.

3. One-third of the proceeds shall be deposited in the State Apartment Incentive Loan Fund, to be used for the purpose

of providing funds to sponsors who provide housing for farmworkers.

Section 3. For the purpose of incorporating the amendment made by this act to section 932.7055, Florida Statutes, in a reference thereto, paragraph (c) of subsection (2) of section 895.09, Florida Statutes, is reenacted to read:

895.09 Disposition of funds obtained through forfeiture proceedings.—

(2)

(c) Any funds distributed to an investigating law enforcement agency under paragraph (a) shall be deposited in the applicable law enforcement trust fund established for that agency pursuant to s. 932.7055 and expended for the purposes and in the manner authorized in that section. In addition, any funds distributed to an investigating law enforcement agency pursuant to this section may be used to pay the costs of investigations of violations of this chapter and the criminal prosecutions and civil actions related thereto, pursuant to s. 932.7055. Such costs may include all taxable costs; costs of protecting, maintaining, and forfeiting the property; employees' base salaries and compensation for overtime; and such other costs directly attributable to the investigation, prosecution, or civil action.

Section 4. For the purpose of incorporating the amendment made by this act to section 932.7055, Florida Statutes, in a reference thereto, paragraph (b) of subsection (6) of section 932.703, Florida Statutes, is reenacted to read:

932.703 Forfeiture of contraband article; exceptions.—

(6)

(b) A bona fide lienholder's interest that has been perfected in the manner prescribed by law prior to the seizure may not be forfeited under the Florida Contraband Forfeiture Act unless the seizing agency establishes by a preponderance of the evidence that the lienholder had actual knowledge, at the time the lien was made, that the property was being employed or was likely to be employed in criminal activity. If a lienholder's interest is not subject to forfeiture under the requirements of this section, such interest shall be preserved by the court by ordering the lienholder's interest to be paid as provided in s. 932.7055.

Section 5. This act shall take effect July 1, 2015.

The Florida Senate

Committee Agenda Request

To: Senator Greg Evers, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: March 4, 2015

I respectfully request that **Senate Bill #1534**, relating to **Disposition of Liens and Forfeited Property**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 22

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/30/15
Meeting Date

1534
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic

Name Greg Pound

Job Title

Address 9166 Sunrise Dr.
Street

Largo Fl. 33773
City State Zip

Phone

Email

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

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

Representing Florida Families.

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

03/30/15
Meeting Date

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

1534
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 1534 / Civil Forfeiture

Name Justin Pearson

Job Title Managing Attorney / Institute for Justice

Address 999 Brickell Ave, Suite 999
Street

Phone (305) 721-1600

Miami, FL 33131
City State Zip

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Institute for Justice

Appearing at request of Chair: ☑ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/30/15
Meeting Date

1534
Bill Number (if applicable)

Topic Forfeiture

Amendment Barcode (if applicable)

Name Sheriff Bob Gualtieri

Job Title Pinellas County Sheriff

Address 10750 Ulmerton Road
Street

Phone 727-582-6206

Largo FL 34677
City State Zip

Email Rgualtieri@pcsoweb.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Sheriff's Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

The Florida Senate

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 1536

INTRODUCER: Criminal Justice Committee and Senator Flores

SUBJECT: Public Records/Florida RICO Act Investigations

DATE: March 31, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	**Fav/CS**
2.			GO	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1536 makes confidential and exempt from public disclosure information held by an investigative agency pursuant to an investigation of a violation of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act. Because the bill creates a new public record exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

This confidential and exempt information may be disclosed by the investigative agency to a governmental entity in the performance of its official duties and to a court or tribunal.

The information is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity for the exemption.

II. Present Situation:

Florida RICO Act

The "Florida RICO Act" is the short title for ss. 895.01-895.06, F.S. "Racketeering activity" means committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any of a number of offenses listed in the definition.[1]

Section 893.04, F.S., punishes as a first degree felony:

- With criminal intent, receiving any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt[2] to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise;[3]
- Through a pattern of racketeering activity or through the collection of an unlawful debt, acquiring or maintaining, directly or indirectly, any interest in or control of any enterprise or real property;
- If employed by, or associated with, any enterprise, conducting or participating, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt; and
- Conspiring or endeavoring to violate any of the aforementioned unlawful acts.[4]

In addition to criminal penalties under s. 893.04, F.S., s. 895.05, F.S., imposes civil liability for violations of the Florida RICO Act, including forfeiture to the state of all property, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of the act.[5]

Investigative Subpoenas

Under 895.06, F.S., an investigative agency[6] may, during the course of an investigation into civil violations of the act, subpoena witnesses and material if the agency has reason to believe that a person or other enterprise has engaged in conduct that violates the RICO Act. "The purpose of the subpoena power under section 895.06 is to allow an investigative agency to investigate,

---

[1] Section 895.02(1), F.S. These offenses include violations of specified Florida laws (e.g., Medicaid fraud, kidnapping, human trafficking, and drug offenses) as well as any conduct defined as "racketeering activity" under 18 U.S.C. § 1961(1).

[2] An "unlawful debt" is any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted in violation of any law listed in the definition. Section 895.02(2), F.S. These offenses include violations of specified Florida laws (e.g., various gambling offenses) as well as any gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law.

[3] An "enterprise" is any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity. The definition includes: illicit as well as licit enterprises; governmental, as well as other, entities; and a criminal gang, as defined in s. 874.03, F.S. Section 895.02(3), F.S.

[4] Section 895.03, F.S. (prohibited activities).

[5] Section 895.05(2), F.S.

[6] An "investigative agency" is the Department of Legal Affairs, the Office of Statewide Prosecution, or the office of a state attorney. Section 895.02(7), F.S.

collect evidence and determine if a RICO violation has occurred."[7] An investigative agency may apply ex parte to a circuit court for an order directing that a person or entity who has been subpoenaed not disclose the existence of the subpoena for a period of 90 days to anyone except for the attorney for the subpoenaed person or entity.[8] The 90-day time limit may be extended by the court for good cause shown by the investigative agency.[9]

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.[10] The records of the legislative, executive, and judicial branches are specifically included.[11]

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act[12] guarantees every person's right to inspect and copy any state or local government public record[13] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[14]

Only the Legislature may create an exemption to public records requirements.[15] This exemption must be created by general law and must specifically state the public necessity justifying the exemption.[16] Relevant to the bill, there is a difference between records the Legislature designates exempt from public records requirements and those the Legislature designates confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances.[17] If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption.[18] Further, the

[7] *Check 'N Go of Florida, Inc. v. State*, 790 So.2d 454, 457 (Fla. 5th DCA 2001).
[8] Section 895.06(3), F.S. "Investigative subpoenas issued by the enforcement agency can be disclosed unless the agency obtains a court order preventing disclosure of the subpoena for 90 days." Department of Legal Affairs Analysis.
[9] Section 895.06(3), F.S.
[10] FLA. CONST., art. I, s. 24(a).
[11] *Id.*
[12] Chapter 119, F.S.
[13] 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).
[14] Section 119.07(1)(a), F.S.
[15] FLA. CONST., art. I, s. 24(c).
[16] *Id.*
[17] *See WFTV, Inc. v. The 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 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). *See also* Attorney General Opinion 85-62 (August 1, 1985).
[18] *See WFTV, Inc. v. The School Board of Seminole, supra*, and *Wait v. Florida Power and Light Co*., 372 So.2d 420 (Fla. 1979).

exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions[19] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[20]

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[21] 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.[22]

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than necessary.[23] An exemption serves an identifiable purpose if it meets one of the following purposes and cannot be accomplished without the exemption:

- Allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;[24]
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals;[25] or
- Protects trade or business secrets.[26]

Additionally, the Legislature must find that the purpose of the exemption overrides Florida's public policy strongly favoring open government.[27] The OGSR also requires specified questions to be considered during the review process. In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?

[19] However, the bill may contain multiple exemptions that relate to one subject.
[20] FLA. CONST., art. I, s. 24(c).
[21] 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.
[22] Section 119.15(3), F.S.
[23] Section 119.15(6)(b), F.S.
[24] Section 119.15(6)(b)1., F.S.
[25] Section 119.15(6)(b)2., F.S. If this public purpose is cited as the basis of an exemption, only personal identifying information is exempt. *Id.*
[26] Section 119.15(6)(b)3., F.S.
[27] Section 119.15(6)(b), F.S.

- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?[28]

III. Effect of Proposed Changes:

The bill makes confidential and exempt from public disclosure information held by an investigative agency pursuant to an investigation of a violation of the Florida RICO Act. Because the bill creates a new public record exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

This confidential and exempt information may be disclosed by the investigative agency to a governmental entity in the performance of its official duties and to a court or tribunal.

The information is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law. An investigation is considered complete once the investigative agency either files an action or closes its investigation without filing an action.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity for the exemption.

This bill is linked to SB 1514, which makes substantial changes to civil enforcement provisions of the Florida RICO Act. Relevant to SB 1536, SB 1514 amends s. 895.06, F.S., to make an investigative subpoena issued pursuant to the Florida RICO Act automatically confidential for 120 days after the date of its issuance, unless this period is extended by the court upon a showing of good cause by the investigating agency. SB 1514 also prohibits a subpoenaed person or entity from disclosing the existence of the subpoena to any person or entity other than the attorney of the subpoenaed person or entity during the period in which the subpoena is confidential.

The bill provides a statement of public necessity for the exemption, which includes the following findings:

- Because a Florida RICO Act investigation conducted by an investigative agency may lead to the filing of a civil action, the premature release of the information held by such investigative agency could frustrate or thwart the investigation and impair the ability of the investigative agency to effectively and efficiently administer its duties under the act;
- The exemption protects the reputation of the potential defendant in the event the investigation is closed without the filing of a civil action; and
- Without the exemption, a potential defendant under the Florida RICO Act may learn of the investigation and dissipate his or her assets and thwart any future enforcement action under the act.

The bill provides that “[t]his act shall take effect on the same date that SB 1514 or similar legislation relating to offenses concerning racketeering and illegal debts take effect, if such legislation is enacted in the same legislative session or an extension thereof and becomes law.”

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[28] Section 119.15(6)(a)1.-6., F.S.

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. The bill 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.

The bill makes confidential and exempt from public disclosure information held by an investigative agency pursuant to an investigation of a violation of the Florida RICO Act. However, the information only remains confidential and exempt until all investigations to which the information pertains are completed, unless the information is otherwise protected by law. An investigation is considered complete once the investigative agency either files an action or closes its investigation without filing an action.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Like any other public records exemption, the bill may lead to a minimal fiscal impact on the affected portions of the government (the Department of Legal Affairs and law enforcement agencies). Staff responsible for complying with public record requests could require training related to expansion of the public record exemption, and court and clerk offices could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 895.06 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 30, 2015:
Rewords and restructures the bill but does not make any substantive changes except for deleting a finding in the statement of public necessity and correcting a deficient effective date.

B. Amendments:

None.

601734

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (7) is added to section 895.06, Florida Statutes, to read:

895.06 Civil investigative subpoenas; public records exemption.—

(7)(a) Information held by an investigative agency pursuant to an investigation of a violation of s. 895.03 is confidential

601734

and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Information made confidential and exempt under paragraph (a) may be disclosed by the investigative agency to:

1. A government entity in the performance of its official duties.

2. A court or tribunal.

(c) Information made confidential and exempt under paragraph (a) is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law.

(d) For purposes of this subsection, an investigation is considered complete once the investigative agency either files an action or closes its investigation without filing an action.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the information held by an investigative agency pursuant to an investigation of a violation of s. 895.03, Florida Statutes, relating to an activity prohibited under the Florida RICO Act, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Because a Florida RICO Act investigation conducted by an investigative agency may lead to the filing of a civil action, the premature release of the information held by such investigative agency could frustrate or thwart the investigation and impair the ability of the investigative agency

601734

to effectively and efficiently administer its duties under the Florida RICO Act, ss. 895.01-895.09, Florida Statutes. This exemption also protects the reputation of the potential defendant in the event that the investigation is closed without the filing of a civil action. Further, without this exemption, a potential defendant under the Florida RICO Act may learn of the investigation and dissipate his or her assets and thwart any future enforcement action under the act. Therefore, the Legislature finds that it is a public necessity that the documents and information held by the investigative agency pursuant to an investigation of a violation of s. 895.03, Florida Statutes, relating to an activity prohibited under the Florida RICO Act, be made confidential and exempt from public records requirements.

Section 3. This act shall take effect on the same date that SB 1514 or similar legislation relating to offenses concerning racketeering and illegal debts takes effect, if such legislation is enacted in the same legislative session or an extension thereof and becomes 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 public records; amending s. 895.06, F.S.; providing an exemption from public records requirements for certain documents and information held by an investigative agency pursuant to an investigation relating to an activity prohibited under

601734

the Florida RICO Act; authorizing disclosure of such documents and information under certain conditions; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

By Senator Flores

37-01491-15 20151536__

A bill to be entitled

An act relating to public records; amending s. 895.06, F.S.; providing that certain documents and information held by an investigative agency pursuant to an investigation relating to an activity prohibited under the Florida RICO Act are confidential and exempt; providing for legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing exceptions to the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsection (8) is added to section 895.06, Florida Statutes, to read:

895.06 Civil investigative subpoenas.—

(8)(a) Except as otherwise provided in this subsection, the documents and information held by the investigative agency pursuant to an investigation of a violation of s. 895.03 are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on July 1, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

(b) Information made confidential and exempt under paragraph (a) may be disclosed by the investigative agency to a law enforcement agency or another administrative agency in the performance of its official duties and responsibilities.

37-01491-15 20151536__

(c) Information made confidential and exempt under paragraph (a) may be disclosed by the investigative agency to a court or tribunal.

(d) Information made confidential and exempt under paragraph (a) is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law.

(e) For purposes of this subsection, an investigation is considered complete once the investigative agency either files an action or closes its investigation without filing an action.

Section 2. The Legislature finds that it is a public necessity that the documents and other information held by an investigative agency pursuant to an investigation of a violation of s. 895.03, Florida Statutes, relating to an activity prohibited under the Florida RICO Act, be held confidential and exempt from public records requirements. Because a Florida RICO Act investigation conducted by an investigative agency may lead to the filing of a civil action, the premature release of the documents or information held by such investigative agency could frustrate or thwart the investigation and impair the ability of the investigative agency to effectively and efficiently administer its duties under the Florida RICO Act, ss. 895.01-895.09, Florida Statutes. This exemption also protects the reputation of the potential defendant in the event the investigation is closed without the filing of a civil action. Further, without this exemption, a potential defendant under the Florida RICO Act may learn of the investigation and dissipate his or her assets and thwart any future enforcement action under the act. Additionally, this exemption substantially mirrors the existing statutory exemption in ss. 68.083(8) and 68.0831(10), Florida Statutes, for information obtained during investigations of violations of the Florida False Claims Act, ss. 68.081-68.092, Florida Statutes. Therefore, the Legislature finds that it is a public necessity that the documents and information held by the investigative agency pursuant to an investigation of a violation of s. 895.03, Florida Statutes, relating to an activity prohibited under the Florida RICO Act, be held confidential and exempt from public records requirements.

Section 3. This act shall take effect on the same date that SB ____ or similar legislation takes effect, if such legislation is enacted in the same legislative session or an extension thereof and becomes law.

The Florida Senate

Committee Agenda Request

To: Senator Greg Evers, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: March 9, 2015

I respectfully request that **Senate Bill #1536**, relating to Public Records/Florida RICO Act Investigations, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Anitere Flores

Senator Anitere Flores
Florida Senate, District 37

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/30/15
Meeting Date

1536 ~~1556~~
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: RFLO Re exemption

Name: Andrew Fay

Job Title: Special Counsel

Address: PL 02
Street

City State Zip

Phone

Email

Speaking: [x] For [ ] Against [ ] Information

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

Representing: Department of Legal Affairs

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ANITERE FLORES
37th District

COMMITTEES:
Fiscal Policy, *Chair*
Appropriations
Appropriations Subcommittee on Criminal and Civil Justice
Ethics and Elections
Finance and Tax
Health Policy
Regulated Industries

March 30, 2015

The Honorable Greg Evers
Chair of Senate Committee on Criminal Justice
510 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Evers:

Due to a scheduling conflict, I request that in my absence, my legislative assistant, William McRea present SB 1536.

Please do not hesitate to contact me should you have any questions.

Sincerely,

Anitere Flores

Anitere Flores

CC: Amanda Cannon, Staff Director, Committee on Criminal Justice, 510 Knott Building

REPLY TO:
- 10691 North Kendall Drive, Suite 309, Miami, Florida 33176 (305) 270-6550
- 413 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5037

Senate's Website: *www.flsenate.gov*

CourtSmart Tag Report

Room: LL 37	**Case:**	**Type:**
Caption: Senate Criminal Justice Committee	**Judge:**	

Started: 3/30/2015 4:03:45 PM
Ends: 3/30/2015 6:01:31 PM Length: 01:57:47

4:03:47 PM	Meeting called to order. Roll call
4:05:12 PM	Tab 3 - SB 282 by Senator Hukill—Tracking Devices or Applications
4:05:57 PM	Amendment Barcode 612458, Senator Bradley
4:06:38 PM	Senator Gibson has a question on the amendment.
4:07:40 PM	Senator Hukill responds.
4:11:18 PM	Roll Call for SB 282
4:11:49 PM	Tab 7 - SB 538 by Senator Simmons—Disclosure of Sexually Explicit Images
4:13:01 PM	Late file amendment Barcode 595288
4:14:59 PM	Senator Gibson asks a question of Senator Simmons.
4:16:57 PM	Roll call for SB 538
4:17:23 PM	Tab 15 - SB 1174 by Senator Simmons—Trespass on Airport Property
4:18:24 PM	Roll call for SB 1174
4:18:54 PM	Tab 16 - SB 1182 by Senator Latvala—Terroristic Threats
4:19:15 PM	Tp'd SB1182
4:19:52 PM	Tab 19 - SB 1324 by Senator Latvala—Public Records/Agency Personnel Information
4:22:22 PM	Amendment Barcode 526940, Senator Bradley
4:23:09 PM	Late file 638378
4:24:24 PM	Senator Gibson asks a question of Senator Latvala. Senator Latvala responds.
4:26:10 PM	Roll call for SB 1324
4:26:41 PM	Tab 6 - SB 464 by Senator Joyner—Controlled Substances
4:27:38 PM	Senator Bradley asks Senator Joyner a question. Senator Joyner responds.
4:28:54 PM	Roll call for SB 464
4:29:23 PM	SB 1188 tp'd
4:29:49 PM	Tab 13 - SB 1010 by Senator Braynon—False Personation
4:30:37 PM	Roll call for SB 1010
4:31:04 PM	Tab 12 - SB 1000 by Senator Hays—Slungshot
4:31:32 PM	Senator Gibson asks a question. Senator Hays responds.
4:34:08 PM	Roll call for SB 1000
4:34:38 PM	Tab 8 - SB 732 by Senator Abruzzo—Sentencing
4:35:33 PM	Roll call for SB 732
4:36:03 PM	Tab 9 - SB 804 by Senator Abruzzo—Violation of an Injunction for Protection Against Domestic Violence
4:36:47 PM	Senator Abruzzo closes on SB 804
4:37:13 PM	Roll call for SB 804
4:37:31 PM	Tab 14 - SB 1112 by Senator Abruzzo—Sexting
4:38:43 PM	Amendment Barcode 917056, Senator Brandes
4:40:21 PM	Roll call for SB 1112
4:41:20 PM	Tab 2 - Richard D. Davison, Florida Commission on Offender Review - Term Ending: 06/30/2020
4:42:59 PM	Roll call for confirmation of Richard D. Davison
4:43:34 PM	Senator Gibson makes a comment to Mr. Davison.
4:44:33 PM	Tab 10 - SB 902 by Senator Clemens—Hemp Production
4:45:43 PM	Ron Watson, Watson Strategies, speaks
4:46:39 PM	Michael Krehl, Brick Mason Industries, speaks.
4:48:18 PM	Roll call for SB 902
4:48:52 PM	Tab 4 - CS/SB 390 by Judiciary / Senator Richter—Fraud. Becky explains the bill.
4:49:47 PM	Amendment Barcode 145370, Senator Bradley
4:50:02 PM	Amendment Barcode 488270, Senator Bradley
4:50:22 PM	Amendment Barcode 538950, Senator Bradley
4:50:35 PM	Amendment Barcode 376766, Senator Bradley
4:52:55 PM	Amendment 376766 withdrawn
4:53:46 PM	Jorge Chamizo, Attorney, ADT, speaks
4:54:56 PM	Roll call for CS/SB 390

4:55:29 PM	Tab 22 - SB 1536 by Senator Flores—Public Records/Florida RICO Act Investigations, presented by William McRea
4:55:41 PM	Amendment Barcode 601734, Senator Bradley
4:57:22 PM	Andrew Fay, Dept. of Legal Affairs, Attorney General Office speaks on amendment 601734
4:58:04 PM	Amendment explained by William.
4:58:55 PM	Roll call for SB 1536
4:59:28 PM	Tab 5 - SB 440 by Senator Bean—Contraband Forfeiture
5:00:59 PM	Amendment Barcode 757076, Senator Bradley
5:02:51 PM	Amendment Barcode 323508, Senator Bradley
5:03:15 PM	Senator Bradley withdraws the amendment 323508
5:03:50 PM	Senator Gibson asks a question. Senator Bean responds.
5:06:46 PM	Senator Bean closes on SB 440
5:07:10 PM	Roll call for SB 440
5:07:40 PM	Tab 11 - SB 944 by Senator Soto—Secondhand Dealers, presented by Christine Biron
5:08:24 PM	Roll call for SB 944
5:08:53 PM	Tab 18 - SB 1316 by Senator Soto—Criminal History Records of Minors, presented by Christine Biron
5:09:09 PM	Amendment Barcode 767816, Senator Clemens
5:11:03 PM	Senator Bradley asks a question
5:12:07 PM	Buddy Jacobs, General Counsel, FPAA speaks.
5:12:39 PM	Roll call for SB 1316
5:13:00 PM	Tab 20 - SB 1376 by Senator Evers—Traffic Offenses
5:13:12 PM	Chair turned over to Senator Gibson
5:13:28 PM	Senator Evers explains the bill.
5:14:18 PM	Senator Clemens asked Senator Evers a question
5:16:48 PM	Senator Gibson asks a question of Senator Evers. Senator Evers responds.
5:18:32 PM	Senator Bradley asks a question. Senator Evers responds.
5:19:20 PM	James "Doc" Reichenbach II, State President, Abate of Florida, Inc. speaks.
5:22:13 PM	Senator Brandes asks a question. Mr. Reichenbach II responds.
5:27:12 PM	Senator Bradley makes a statement.
5:27:38 PM	Senator Brandes makes a statement about SB 1376.
5:28:08 PM	Senator Evers closes on SB 1376.
5:29:39 PM	Roll call for SB 1376
5:30:07 PM	Chair turned back over to Senator Evers
5:30:25 PM	Tab 21 - SB 1534 by Senator Brandes—Disposition of Liens and Forfeited Property
5:31:58 PM	Senator Gibson asks a question. Senator Brandes responds.
5:38:43 PM	Bob Gualtieri, Florida Sheriff's Association speaks
5:45:04 PM	Justin Pearson, Institute for Justice, Miami, FL
5:47:47 PM	Greg Pound, Florida Families speaks, Largo, FL
5:49:24 PM	Senator Clemens makes a statement about seizing property.
5:51:03 PM	Senator Gibson makes statement about bill. Senator Brandes responds.
5:55:33 PM	Roll call for SB 1534
5:56:02 PM	Christina Bullins speaking on DOC
5:58:41 PM	Stacy L. Harris, DOC
6:00:07 PM	Meeting Adjourned