

SB 164 by **Evers (CO-INTRODUCERS) Grimsley**; (Identical to H 0193) Crime Stoppers Trust Fund**CS/SB 282** by **CJ, Hukill**; (Compare to CS/CS/H 0197) Tracking Devices or Tracking Applications

557242	A	S	RCS	ACJ, Bradley	Delete L.70 - 74:	04/08 05:56 PM
138500	A	S L	RCS	ACJ, Bradley	btw L.72 - 73:	04/08 05:56 PM

SB 368 by **Abruzzo (CO-INTRODUCERS) Smith**; (Compare to CS/CS/H 0149) Rights of Grandparents and Great-grandparents

699868	D	S	RCS	ACJ, Soto	Delete everything after	04/08 05:56 PM
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CS/CS/SB 390 by **CJ, JU, Richter**; (Similar to CS/CS/CS/H 0157) Fraud**SB 464** by **Joyner**; (Identical to H 0741) Controlled Substances

529112	A	S	RCS	ACJ, Joyner	Delete L.30:	04/08 05:56 PM
459042	A	S	RCS	ACJ, Joyner	Delete L.44:	04/08 05:56 PM
750164	A	S	RCS	ACJ, Joyner	Delete L.63 - 64:	04/08 05:56 PM

CS/SB 922 by **JU, Latvala**; (Similar to CS/CS/CS/H 0775) Appointment of an Ad Litem**CS/SB 1082** by **CJ, Altman (CO-INTRODUCERS) Soto, Gibson**; (Similar to CS/H 0783) Juvenile Justice

820944	A	S L	RCS	ACJ, Evers	Delete L.61 - 121.	04/08 05:56 PM
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CS/SB 1098 by **CJ, Bradley**; (Identical to CS/H 0897) Controlled Substances**SB 1106** by **Flores**; (Compare to CS/CS/H 0465) Human Trafficking

328998	A	S	RCS	ACJ, Flores	Delete L.165 - 170:	04/08 05:56 PM
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SB 1170 by **Bradley**; (Similar to H 1187) Problem-solving Courts

231456	D	S	RCS	ACJ, Bradley	Delete everything after	04/08 05:56 PM
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CS/SB 1248 by **JU, Stargel**; (Similar to CS/CS/H 0943) Family Law**SB 1270** by **Soto**; (Identical to CS/H 0133) Sexual Offenses

118986	A	S	RCS	ACJ, Soto	Delete L.36:	04/08 05:56 PM
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SB 1414 by **Bradley**; (Compare to H 5201) Juvenile Detention Costs

626950	A	S	RCS	ACJ, Bradley	Delete L.49 - 118:	04/10 05:45 PM
851326	A	S		ACJ, Bradley	Delete L.139 - 140:	04/07 09:58 AM
952616	SA	S	RCS	ACJ, Bradley	Delete L.139 - 140:	04/10 05:45 PM

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

907400	A	S	RCS	ACJ, Evers	Delete L.33 - 240:	04/08 05:56 PM
322218	AA	S	RCS	ACJ, Evers	btw L.258 - 259:	04/08 05:56 PM
270994	AA	S L	RCS	ACJ, Evers	Delete L.116:	04/08 05:56 PM
175258	AA	S L	RCS	ACJ, Evers	Delete L.146:	04/08 05:56 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
APPROPRIATIONS SUBCOMMITTEE ON CRIMINAL AND
CIVIL JUSTICE
Senator Negrón, Chair
Senator Joyner, Vice Chair

MEETING DATE: Wednesday, April 8, 2015
TIME: 10:00 a.m.—12:00 noon
PLACE: Mallory Horne Committee Room, 37 Senate Office Building

MEMBERS: Senator Negrón, Chair; Senator Joyner, Vice Chair; Senators Bradley, Evers, Flores, and Soto

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 164 Evers (Identical H 193)	Crime Stoppers Trust Fund; Authorizing a county that is awarded a grant from the trust fund to use such funds for the purchase and distribution of promotional items, etc. CJ 03/02/2015 Favorable CA 03/31/2015 Favorable ACJ 04/08/2015 Favorable FP	Favorable Yeas 6 Nays 0
2	CS/SB 282 Criminal Justice / Hukill (Compare CS/CS/H 197)	Tracking Devices or Tracking Applications; 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, etc. CJ 03/30/2015 Fav/CS ACJ 04/08/2015 Fav/CS RC	Fav/CS Yeas 6 Nays 0
3	SB 368 Abruzzo (Compare CS/CS/H 149)	Rights of Grandparents and Great-grandparents; Redefining the term "next of kin" to include great-grandparents; providing great-grandparents the same visitation rights as grandparents; authorizing the grandparent of a minor child to petition a court for visitation under certain circumstances; providing for application of the Uniform Child Custody Jurisdiction and Enforcement Act; authorizing, after petition, a court to terminate a grandparent visitation order upon adoption of a minor child by a stepparent or close relative, etc. JU 03/10/2015 Favorable CF 03/26/2015 Favorable ACJ 04/08/2015 Fav/CS FP	Fav/CS Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDAAppropriations Subcommittee on Criminal and Civil Justice
Wednesday, April 8, 2015, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/CS/SB 390 Criminal Justice / 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; including counties and other political subdivisions in provisions prohibiting the false marking of goods or packaging with a location of origin; 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 04/08/2015 Favorable FP	Favorable Yeas 6 Nays 0
5	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 04/08/2015 Fav/CS FP RC	Fav/CS Yeas 6 Nays 0
6	CS/SB 922 Judiciary / Latvala (Similar CS/CS/H 775)	Appointment of an Ad Litem; Authorizing a court to appoint an ad litem for certain parties upon whom service of process by publication is made; prohibiting a court from appointing an ad litem to represent an interest for which a personal representative, guardian of property, or trustee is serving; prohibiting a court from requiring an ad litem to post a bond or designate a resident agent, etc. JU 03/17/2015 JU 03/24/2015 Fav/CS ACJ 04/08/2015 Favorable FP	Favorable Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDAAppropriations Subcommittee on Criminal and Civil Justice
Wednesday, April 8, 2015, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/SB 1082 Criminal Justice / Altman (Similar CS/H 783)	Juvenile Justice; Deleting provisions requiring the court to order the delivery of a child to a jail or other facility intended or used to detain adults; revising the circumstances under which the state attorney is authorized to file an information when a child of a certain age range commits or attempts to commit specified crimes; revising the criteria in determining whether to impose juvenile or adult sanctions, etc. CJ 03/23/2015 Fav/CS ACJ 04/08/2015 Fav/CS AP	Fav/CS Yeas 4 Nays 2
8	CS/SB 1098 Criminal Justice / Bradley (Identical CS/H 897)	Controlled Substances; Adding certain substances to the Schedule I list of controlled substances, etc. CJ 03/23/2015 Fav/CS ACJ 04/08/2015 Favorable FP	Favorable Yeas 5 Nays 0
9	SB 1106 Flores (Compare CS/CS/H 465, H 467, H 469, CS/S 1108, CS/S 1110)	Human Trafficking; Providing enhanced criminal penalties for soliciting another to commit prostitution and similar offenses; providing for impoundment of a vehicle used in soliciting another to commit prostitution and similar offenses; requiring a judge to allow an advocate to be present with a human trafficking victim in an expunction hearing in certain circumstances, etc. CJ 03/23/2015 Favorable ACJ 04/08/2015 Fav/CS AP	Fav/CS Yeas 6 Nays 0
10	SB 1170 Bradley (Similar H 1187, Compare CS/CS/H 1069, CS/H 7113, S 1452)	Problem-solving Courts; Defining the term "problem-solving court"; authorizing a person eligible for participation in a problem-solving court to transfer his or her case to another county's problem-solving court under certain circumstances, etc. JU 03/10/2015 Favorable ACJ 04/02/2015 Not Considered ACJ 04/08/2015 Fav/CS FP	Fav/CS Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations Subcommittee on Criminal and Civil Justice
 Wednesday, April 8, 2015, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	CS/SB 1248 Judiciary / Stargel (Similar CS/CS/H 943)	Family Law; Prohibiting a court from using certain presumptive alimony guidelines in calculating alimony pendente lite; providing presumptions concerning alimony awards depending on the duration of marriages; prohibiting a combined award of alimony and child support from constituting more than a specified percentage of a payor's net income; creating a presumption that approximately equal time-sharing by both parents is in the best interests of the child; providing that a party may pursue an immediate modification of alimony in certain circumstances, etc. JU 03/24/2015 Fav/CS ACJ 04/08/2015 Favorable AP	Favorable Yeas 5 Nays 1
12	SB 1270 Soto (Identical CS/H 133)	Sexual Offenses; Citing this act as the "43 Days Initiative Act"; revising time limitations for the criminal prosecution of specified sexual battery offenses if the victim is 16 years of age or older, etc. CJ 03/23/2015 Favorable ACJ 04/08/2015 Fav/CS FP	Fav/CS Yeas 6 Nays 0
13	SB 1414 Bradley (Compare H 5201)	Juvenile Detention Costs; Revising the responsibilities of specified counties and the state relating to paying for juvenile detention care; requiring the Department of Juvenile Justice to make certain determinations and then provide usage and cost information to certain counties; deleting a provision requiring a county to make a certain payment to the department, etc. ACJ 04/08/2015 Fav/CS AP RC	Fav/CS Yeas 6 Nays 0
14	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 04/08/2015 Fav/CS AP	Fav/CS Yeas 5 Nays 1

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: SB 164

INTRODUCER: Senators Evers and Grimsley

SUBJECT: Crime Stoppers Trust Fund

DATE: April 7, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Wagoner</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	Favorable
4.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 164 authorizes counties that are awarded a grant from the Crime Stoppers Trust Fund to use the funds for the purchase and distribution of promotional items to increase public awareness and educate the public about Crime Stoppers.

The express authorization to use grant funds for certain expenditures does not have a fiscal impact.

The bill has an effective date of July 1, 2015.

II. Present Situation:

Section 16.555, F.S., provides a funding mechanism for Crime Stopper programs. The Department of Legal Affairs is required to make applications for all federal and state or private grants which meet the purposes of advancing Crime Stoppers in the state; establish a trust fund to administer grants to fund Crime Stoppers and its crime fighting programs within the units of local government; and administer and disburse the funds.

In 1998, the Legislature added a funding source in s. 938.06, F.S., by imposing a \$20 court cost on persons convicted of any criminal offense.¹ The proceeds from the \$20 court cost are deposited in a separate account within the trust fund. The clerks retain \$3 per assessment as a service charge and forward the money to the Department of Revenue for deposit in the Crime Stoppers Trust Fund. The funds are to be designated according to the judicial circuit where it was collected. However, grants may be awarded only to counties which are served by an official

¹ Ch. 98-319, L.O.F.

member of the Florida Association of Crime Stoppers. Approximately \$4.4 million in grants were awarded to the Crime Stoppers Trust Fund during Fiscal Year 2013-2014.²

Crime Stoppers began in Albuquerque, New Mexico in 1976. A homicide detective with the Albuquerque Police asked a local television station to broadcast a re-enactment of an unsolved murder on its newscast. A reward was offered and a caller contacted the police the next day with a tip that led the police to the two men who were responsible. The success of this concept launched a program which is now internationally known as "Crime Stoppers." There are now over 1,200 Crime Stoppers programs worldwide.³

The Central Florida Crime Watch Program, now Central Florida Crimeline, was formed one year after the first Crime Stoppers program. Today there are 32 programs in Florida operating under the name Florida Association of Crime Stoppers, Inc.⁴ Florida Crime Stoppers programs reported 56,069 crime tips, 9,857 cleared cases, 4,679 arrests, and 3,885 approved rewards for tipsters during Fiscal Year 2013-2014.⁵

III. Effect of Proposed Changes:

The bill amends s. 16.555, F.S., to authorize counties that are awarded a grant from the Crime Stoppers Trust Fund to use the funds for the purchase and distribution of promotional items to increase public awareness and educate the public about Crime Stoppers.

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:

The bill would allow for trust funds to be used to purchase and distribute promotional items.

² Department of Legal Affairs, *Division of Victim Services and Criminal Justice Programs Annual Report 2013-2014*, pg. 11, available at [http://myfloridalegal.com/webfiles.nsf/WF/RMAS-9S3LLL/\\$file/2013-2014AnnualReport.pdf](http://myfloridalegal.com/webfiles.nsf/WF/RMAS-9S3LLL/$file/2013-2014AnnualReport.pdf) (last visited March 26, 2015).

³ Florida Association of Crime Stoppers, *Where It All Started*, <http://www.floridacrimestoppers.com/pages/where> (last visited March 24, 2015).

⁴ Florida Association of Crime Stoppers, *Who We Are*, <http://www.floridacrimestoppers.com/pages/who> (last visited March 24, 2015).

⁵ *Division of Victim Services and Criminal Justice Programs Annual Report 2013-2014*, pg. 10.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

SB 164 expressly authorizes the use of grant funds from the Crime Stoppers Trust Fund for certain expenditures. This bill has no fiscal impact.

VI. Technical Deficiencies:

It is possible that the bill could be interpreted to limit use of grant funds to the purchase and distribution of promotional items. It is recommended that the bill be amended to remove any ambiguity.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 16.555 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

2-00188-15

2015164__

1 A bill to be entitled
 2 An act relating to the Crime Stoppers Trust Fund;
 3 amending s. 16.555, F.S.; authorizing a county that is
 4 awarded a grant from the trust fund to use such funds
 5 for the purchase and distribution of promotional
 6 items; making technical changes; providing an
 7 effective date.
 8
 9 Be It Enacted by the Legislature of the State of Florida:
 10
 11 Section 1. Subsection (5) of section 16.555, Florida
 12 Statutes, is amended to read:
 13 16.555 Crime Stoppers Trust Fund; rulemaking.-
 14 (5) (a) The department shall be the disbursing authority for
 15 the distribution of funding to units of local government which
 16 ~~apply, upon their application~~ to the department for funding
 17 assistance.
 18 (b) Funds deposited in the trust fund pursuant to paragraph
 19 (4) (b) shall be disbursed as provided in this paragraph. A ~~Any~~
 20 county may apply to the department under s. 938.06 for a grant
 21 from the funds collected in the judicial circuit in which the
 22 county is located ~~under s. 938.06~~. A grant may be awarded only
 23 to counties ~~that which~~ are served by an official member of the
 24 Florida Association of Crime Stoppers and may ~~only~~ be used only
 25 to support Crime Stoppers and its ~~their~~ crime fighting programs.
 26 Only one such official member is ~~shall be~~ eligible for support
 27 within any county. ~~In order~~ To aid the department in determining
 28 eligibility, the secretary of the Florida Association of Crime
 29 Stoppers shall furnish the department with a schedule of

Page 1 of 2

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

2-00188-15

2015164__

30 authorized crime stoppers programs and shall update the schedule
 31 as necessary. The department shall award grants to eligible
 32 counties from available funds and shall distribute funds as
 33 equitably as possible, based on amounts collected within each
 34 county, ~~if when~~ more than one county is eligible within a
 35 judicial circuit.
 36 (c) A county that is awarded a grant under this section may
 37 use such funds to purchase and distribute promotional items to
 38 increase public awareness of, and to educate the public about,
 39 Crime Stoppers.
 40 Section 2. This act shall take effect July 1, 2015.

Page 2 of 2

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

APPEARANCE RECORD

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

4/8/15
Meeting Date

164
Bill Number (if applicable)

Topic Crime Stoppers Trust Fund

Amendment Barcode (if applicable)

Name Nicole Wagner

Job Title Law Enforcement Coordinator Emerald Coast Crime Stoppers

Address P.O. Box 2335
Street

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City State Zip

Email nwagner@sheriff-okalusa.org

Speaking: For Against Information

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

Representing Emerald Coast Crime Stoppers

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

APPEARANCE RECORD

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

4/8/15
Meeting Date

H.B. 193
Bill Number (if applicable)

Topic Crime Stoppers Fund

Amendment Barcode (if applicable)

Name DENNIS STRANGE

Job Title Lt.

Address 2500 West Colonial Dr.
Street

Phone 407 254-7000

Deland FL 32804
City State Zip

Email dennis.strange@dc.fl.net

Speaking: For Against Information

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

Representing Orange County Sheriff's Office

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)

4/8/2015

Meeting Date

164

Bill Number (if applicable)

Topic Crime Stoppers Trust Fund

Amendment Barcode (if applicable)

Name Bernadette Howard

Job Title Professional Development Assistant

Address 924 N. Gadsden Street

Phone 219-3631

Street

Tallahassee

FL

32303

Email bhoward@fpca.com

City

State

Zip

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

4-8-15

Meeting Date

164

Bill Number (if applicable)

Topic CRIME STOPPERS

Amendment Barcode (if applicable)

Name LAURA YOUMANS

Job Title LEGISLATIVE ADVOCATE

Address 100 N. MONROE ST

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TAL

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City

State

Zip

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.

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/CS/SB 282 (692926)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; Criminal Justice Committee; and Senator Hukill

SUBJECT: Tracking Devices or Tracking Applications

DATE: April 10, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 282 creates a noncriminal infraction, punishable by a \$250 fine, applicable to persons who install a tracking device or tracking application on the property of another person without their consent. A second or subsequent offense is a second degree misdemeanor.

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 will have no impact on the state prison population. It is not known how many noncriminal infractions will occur or how many misdemeanor criminal prosecutions will be brought for subsequent offenses.

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 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

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.ieeeeghn.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 device²⁰).

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 *Supra* note 15.

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 standard²⁶ 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 felony³⁰ 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

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 noncriminal infraction, punishable by a \$250 fine, for a person to knowingly install a tracking device or tracking application on another’s property without the other person’s consent. A second or subsequent violation is a second degree misdemeanor³⁷ In addition, the bill amends s. 493.6118, F.S., to add commission of the new offense as grounds for disciplinary action against persons regulated under Chapter 493, F.S. (Private Investigative, Private Security, and Repossession Services), or who are engaged in activities regulated under that chapter.

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.);

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.

- 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.
- (This provision does not apply to a person engaged in private investigation for another person unless the person for whom the investigation is being conducted would otherwise be exempt from the bill's provisions).
- An owner or lessor of a motor vehicle during the period of ownership or lease, provided that the device is removed before the vehicle title is transferred or the lease expires, or the new owner gives written consent for non-removal.
- The original manufacturer or the vehicle.

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:

Under PCS/CS/SB 282 anyone who violates the new law commits a criminal infraction, punishable by a \$250 fine. Any subsequent offense is a second degree misdemeanor with penalties which would likely include fines, fees, and court costs. In addition, persons regulated under Chapter 493, F.S. (Private Investigative, Private Security, and Repossession Services), are subject to disciplinary action by the Department of Agriculture and Consumer Services.

C. Government Sector Impact:

How often noncriminal infractions or misdemeanor criminal cases will be brought under the new law or how often convicted defendants will be jailed is unknown. However, the bill will have no impact on the state prison population.

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.)

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on April 8, 2015:

The committee substitute:

- Adds an exemption for owners or lessees of vehicles during the period of ownership;
- Adds an exemption for the original manufacturer of a motor vehicle;
- Limits the exemption for persons acting in good faith on behalf of a business entity for a legitimate business purpose. When the person who installs the tracking device is engaged in private investigation for another person, the exemption applies for the private investigator only if the person for whom the investigation is being conducted is otherwise exempt.
- Provides that a violation is grounds for discipline under Chapter 493, F.S. (Private Investigative, Private Security, and Repossession Services).
- Provides that a first violation is a noncriminal infraction, punishable by a \$250 fine, and that any subsequent violation is a second degree misdemeanor.

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.

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



557242

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 70 - 74
and insert:

(d) A person acting in good faith on behalf of a business entity for a legitimate business purpose. This paragraph does not apply to a person engaged in private investigation, as defined in s. 493.6101, on behalf of another person unless such activities would otherwise be exempt under this subsection if performed by the person engaging the private investigator.



557242

11 (e) An owner or lessee of a motor vehicle that installs, or
12 directs the installation of, a tracking device or tracking
13 application on such vehicle during the period of ownership or
14 lease, provided that:

15 1. The tracking device or tracking application is removed
16 before the vehicle's title is transferred or the vehicle's lease
17 expires;

18 2. The new owner of the vehicle, in the case of a sale, or
19 the lessor of the vehicle, in the case of an expired lease,
20 consents in writing to the nonremoval of the tracking device or
21 tracking application; or

22 3. The owner of the vehicle at the time of the installation
23 of the tracking device or tracking application was the original
24 manufacturer of the vehicle.

25 (5) A person who violates this section commits a
26 misdemeanor of the second degree, punishable as provided in s.
27 775.082 or s. 775.083.

28 Section 2. Paragraph (y) is added to subsection (1) of
29 section 493.6118, Florida Statutes, to read:

30 493.6118 Grounds for disciplinary action.—

31 (1) The following constitute grounds for which disciplinary
32 action specified in subsection (2) may be taken by the
33 department against any licensee, agency, or applicant regulated
34 by this chapter, or any unlicensed person engaged in activities
35 regulated under this chapter.

36 (y) Installation of a tracking device or tracking
37 application in violation of s. 934.425.

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



557242

40 And the title is amended as follows:

41 Delete line 10

42 and insert:

43 applications; providing criminal penalties; amending
44 s. 493.6118, F.S.; providing that violations of the
45 prohibition on installation of tracking devices and
46 tracking applications by private investigative,
47 private security, and repossession services are
48 grounds for disciplinary action, to which penalties
49 apply; providing



138500

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Bradley) recommended the following:

Senate Amendment

Between lines 72 and 73

insert:

noncriminal infraction, punishable by a \$250.00 fine, for a first violation. A person who commits a second or subsequent violation commits a

By the Committee on Criminal Justice; and Senator Hukill

591-03136-15

2015282c1

1 A bill to be entitled
 2 An act relating to tracking devices or tracking
 3 applications; creating s. 934.425, F.S.; defining
 4 terms; prohibiting the installation of a tracking
 5 device or tracking application without a person's
 6 consent; creating a presumption that consent is
 7 revoked upon initiation of specified proceedings;
 8 providing exceptions to the prohibition on
 9 installation of tracking devices or tracking
 10 applications; providing criminal penalties; providing
 11 an effective date.

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

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

17 934.425 Installation of tracking devices or tracking
 18 applications; exceptions; penalties.-

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

20 (a) "Business entity" means any form of corporation,
 21 partnership, association, cooperative, joint venture, business
 22 trust, or sole proprietorship that conducts business in this
 23 state.

24 (b) "Person" means an individual and does not mean a
 25 business entity.

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

29 (d) "Tracking device" means any device whose primary

Page 1 of 3

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

591-03136-15

2015282c1

30 purpose is to reveal its location or movement by the
 31 transmission of electronic signals.

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

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

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

40 (b) The consenting person or the person to whom consent was
 41 given files an injunction for protection against the other
 42 person pursuant to s. 741.30, s. 741.315, s. 784.046, or s.
 43 784.0485.

44 (4) This section does not apply to:

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

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

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

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

Page 2 of 3

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

591-03136-15

2015282c1

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

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

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

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

72 (5) A person who violates this section commits a
73 misdemeanor of the second degree, punishable as provided in s.
74 775.082 or s. 775.083.

75 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

April 2, 2015

The Honorable Joe Negron
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 282 – Tracking Devices or Applications

Dear Chairman Negron:

Senate Bill 282, relating Tracking Devices or Applications has been referred to the Appropriations Subcommittee on Criminal and Civil 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,

A handwritten signature in blue ink that reads "Dorothy L. Hukill".

Dorothy L. Hukill, District 8

cc: Tim Sadberry, Staff Director of the Appropriations Subcommittee on Criminal and Civil Justice Committee
Michelle Sanders, Administrative Assistant of the Appropriations Subcommittee on Criminal and Civil 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

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)

4.8.15

Meeting Date

CS SB 282

Bill Number (if applicable)

Topic Tracking devices

Amendment Barcode (if applicable)

Name Rick Kolodgy

Job Title Private Investigator

Address P.O. Box 13984

Phone 850-877-7700

Tallahassee FL 32317

Email Tallahasseei@aol.com

Speaking: For [] Against [x] Information []

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

Representing Self

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

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

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)

3.7

Meeting Date

SB CS 282

Bill Number (if applicable)

Topic Tracking Devices

Amendment Barcode (if applicable)

Name Burt Hodge

Job Title Investigator

Address 842 E Park Ave

Phone 850.561.3990

Tallahassee FL 32301

Email bur1842@gmail.com

Speaking: For [] Against [x] Information []

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

Representing Private Investigative Profession

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

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

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/SB 368 (934880)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; and Senators Abruzzo and Smith

SUBJECT: Rights of Grandparents and Great-grandparents

DATE: April 10, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	Favorable
3.	<u>Harkness/Preston</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Fav/CS
4.	_____	_____	<u>FP</u>	_____

I. Summary:

PCS/SB 368 provides that a grandparent of a minor child whose parents are deceased, missing, or in a permanent vegetative state may petition for visitation with a grandchild. If only one parent is deceased, missing or in a permanent vegetative state, the other parent must have been convicted of a felony or a violent offense in order for a grandparent to be able to petition for visitation. The court must find the grandparent has made a prima facie showing of parental unfitness or danger of significant harm to the child, and if not, must dismiss the petition.

If the court finds that there is prima facie evidence that a parent is unfit or that there is danger of significant harm to the child, the bill allows the court to appoint a guardian ad litem for the child and requires the court to order the family to mediation.

The bill provides a list of factors for the court to consider in assessing best interest of the child and material harm to the parent-child relationship. The bill places a limit on the number of times a grandparent can file an original action for visitation, absent a real, substantial, and unanticipated change of circumstances.

The bill creates definitions for the terms “missing” and “persistent vegetative state.”

The bill repeals s. 752.01, F.S., relating to grandparent visitation rights, which has been found largely unconstitutional by Florida courts. The bill also repeals s. 752.07, F.S., relating to grandparental rights after adoption of a child by a stepparent.

The bill is not expected to have a significant fiscal impact.

The bill has an effective date of July 1, 2015.

II. Present Situation:

History of Grandparent Visitation Rights

Under common law, a grandparent who was forbidden by his or her grandchild's parent from visiting the child was normally without legal recourse.¹ Nonparent visitation statutes which did not exist before the late 1960s, now allow grandparents to petition courts for the right to visit their grandchildren. Before the passage of these statutes, grandparents – like all other nonparents – had no right to sue for court-ordered visitation with their grandchildren.²

The common law rule against visitation by nonparents sought to preserve parental autonomy, as a value in and of itself, as a means of protecting children and to serve broader social goals:

- Courts historically expressed reluctance to undermine parents' authority by overruling their decisions regarding visitation and by introducing outsiders into the nuclear family.³ This common law tradition received constitutional protection in the 1920s when the Supreme Court held that a parent's right to direct the upbringing of his or her children was a fundamental liberty interest.⁴
- Under common law, courts presumed that fit parents act in the child's best interests and recognized that conflicts regarding visitation are a source of potential harm to the children involved.⁵
- Common law tradition understood parental authority as the very foundation of social order. Courts generally relied on ties of nature to resolve family disagreements rather than imposing coercive court orders.⁶

In response, states began to enact statutes to permit grandparents and sometimes other nonparents to petition for visitation rights. States passed the first wave of grandparent visitation statutes between 1966 and 1986. By the early 1990s, all states had enacted grandparent visitation laws that expanded grandparents' visitation rights. Today, the statutes generally delineate who may petition the court and under what circumstances and then require the court to determine if visitation is in the child's best interests.⁷

The enactment of grandparent visitation statutes responded primarily to two trends: demographic changes in family composition and an increase in the number of older Americans and the concurrent growth of the senior lobby.⁸ Grandparent visitation resonated with the public as well, who responded to sentimental images of grandparents in the popular media and the conclusions

¹ Kristine L. Roberts, *State Supreme Court Applications of Troxel v. Granville and the Courts' Reluctance to Declare Grandparent Visitation Statutes Unconstitutional*, 41 FAM. CT. REV. 14, 16 (Jan. 2003). Also see Karin J. McMullen, *The Scarlet "N:" Grandparent Visitation Statutes That Base Standing on Non-Intact Family Status Violate the Equal Protection Clause of the Fourteenth Amendment*, ST. JOHN'S LAW REVIEW, 83 (2009).

² *Id.*

³ *Id.*

⁴ See *Meyer v. Nebraska*, 262 U.S. 390 (1923) and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

⁵ Kristine L. Roberts, *State Supreme Court Applications of Troxel v. Granville and the Courts' Reluctance to Declare Grandparent Visitation Statutes Unconstitutional*, 41 FAM. CT. REV. 14, 16 (Jan. 2003).

⁶ *Id.*

⁷ *Id.*

⁸ Karen J. McMullen, *The Scarlet "N:" Grandparent Visitation Statutes That Base Standing on Non-Intact Family Status Violate the Equal Protection Clause of the Fourteenth Amendment*, ST. JOHN'S LAW REVIEW, 83 (2009).

of social scientists who focused on the importance of intergenerational family ties. During the 1990s, many Americans also focused on drug abuse problems of parents, significant poverty levels, and increasing numbers of out-of-wedlock children. Also during this period, Americans looked less to traditional social institutions, such as churches, and more toward the legal system as a way to solve their family problems.⁹

Policy related to grandparent visitation soon led to constitutional concerns because grandparent visitation statutes implicate the Fourteenth Amendment in two ways:

- The substantive due process rights of parents to direct the upbringing of their children in as much as parents' decisions are challenged, and
- The right to equal protection because many grandparent visitation statutes differentiate among parents based upon family status.¹⁰

The pertinent clauses in the Fourteenth Amendment state that a state shall not “deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”¹¹ As of 2007, 23 state supreme courts have ruled on the constitutionality of their grandparent visitation statutes, with the majority finding their statutes constitutional; however, courts in several large states, Florida included, have held their grandparent visitation statutes unconstitutional.¹²

Grandparent Visitation Rights in Florida

Until 1978, Florida grandparents did not have any statutory right to visit their grandchild. Currently, provisions relating to grandparents rights to visitation and custody are contained in chs. 752 and 39, F.S. Provisions previously in ch. 61, F.S., have been removed because they were ruled unconstitutional.

Chapter 752, Florida Statutes – Grandparent Visitation

The legislature enacted ch. 752, F.S., titled “Grandparental Visitation Rights,” in 1984, giving grandparents standing to petition the court for visitation in certain situations. At its broadest, s. 752.01(1), F.S., required visitation to be granted when the court determined it to be in the best interests of the child and one of the following situations existed:

- One or both of the child’s parents were deceased;
- The parents were divorced;
- One parent had deserted the child;
- The child was born out of wedlock; or
- One or both parents, who were still married, had prohibited the formation of a relationship between the child and the grandparent(s).¹³

⁹ *Id.*

¹⁰ *Id.*

¹¹ U.S. CONST. amend. XIV, s. 1.

¹² Comm. on Judiciary, The Florida Senate, Grandparent Visitation Rights, (Interim Report 2009-120) (Oct. 2008), available at http://archive.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-120ju.pdf. (last visited March 23, 2015).

¹³ See ch. 93-279, Laws of Fla. (s. 752.01, F.S. (1993)). Subsequent amendments by the Legislature removed some of these criteria. See s. 752.01, F.S. (2008).

Florida courts have considered the constitutionality of s. 752.01, F.S., on numerous occasions and have “consistently held all statutes that have attempted to compel visitation or custody with a grandparent based solely on the best interest of the child standard . . . to be unconstitutional.”¹⁴ The courts’ rulings are premised on the fact that the fundamental right of parenting is a long-standing liberty interest recognized by both the United States and Florida constitutions.¹⁵

In 1996, the Florida Supreme Court addressed its first major analysis of s. 752.01, F.S., in *Beagle v. Beagle*, 678 So. 2d 1271 (Fla. 1996). In *Beagle*, the Court determined that s. 752.01(e), F.S., which allowed grandparents to seek visitation when the child’s family was intact, was facially unconstitutional. The Court announced the standard of review applicable when deciding whether a state’s intrusion into a citizen’s private life is constitutional:

The right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least restrictive means.¹⁶

The Court held that “[b]ased upon the privacy provision in the Florida Constitution, . . . the State may not intrude upon the fundamental right of parents to raise their children except in cases where the child is threatened with harm.”¹⁷

To date, almost all of the provisions in s. 52.01, F.S., have been found to be unconstitutional,¹⁸ although these provisions are still found in the Florida Statutes because they have not been repealed by the Legislature.

Chapter 61, Florida Statutes – Dissolution of Marriage and Parental Responsibility

The courts have also struck down two grandparent rights provisions in ch. 61, F.S., which governs dissolution of marriage and parental responsibility for minor children. In 2000, the Florida Supreme Court struck down s. 61.13(7), F.S., which granted grandparents custodial rights in custody or dissolution of marriage proceedings.¹⁹ In *Richardson v. Richardson*, 766 So. 2d 1036 (Fla. 2000), the Court recognized that when a custody dispute is between two fit parents,

¹⁴ *Cranney v. Coronado*, 920 So. 2d 132, 134 (Fla. 2d DCA 2006) (quoting *Sullivan v. Sapp*, 866 So. 2d 28, 37 (Fla. 2004)).

¹⁵ In 1980, Florida’s citizens approved the addition of a privacy provision in the state constitution, which provides greater protection than the federal constitution. Specifically, Florida’s right to privacy provision states: “Every natural person has the right to be let alone and free from governmental intrusion into the person’s private life except as otherwise provided herein.” FLA. CONST. art. I, s. 23.

¹⁶ *Beagle*, 678 So. 2d at 1276 (quoting *Winfield v. Division of Pari-Mutuel Wagering*, 477 So. 2d 544, 547 (Fla. 1985)).

¹⁷ *Id.*

¹⁸ See *Von Eiff v. Azicri*, 720 So. 2d 510 (Fla. 1998); *Lonon v. Ferrell*, 739 So. 2d 650 (Fla. 2d DCA 1999); *Saul v. Brunetti*, 753 So. 2d 26 (Fla. 2000).

¹⁹ The subsection read that “[i]n any case where the child is actually residing with a grandparent in a stable relationship, whether the court has awarded custody to the grandparent or not, the court may recognize the grandparents as having the same standing as parents for evaluating what custody arrangements are in the best interest of the child.” Section 61.13(7), F.S. (1997).

it is proper to use the best interests of the child standard. However, when the dispute is between a fit parent and a third party, there must be a showing of detrimental harm to the child in order for custody to be denied to the parent.²⁰

In 2004, the Florida Supreme Court struck down the statutory provision that awarded reasonable grandparent visitation in a dissolution proceeding if the court found that the visitation would be in the child's best interest.²¹ Based on the rationale of earlier Florida cases, the Court declared the provision "unconstitutional as violative of Florida's right of privacy because it fails to require a showing of harm to the child prior to compelling and forcing the invasion of grandparent visitation into the parental privacy rights."²²

Chapter 39, Florida Statutes – Dependent Children

When a child has been adjudicated dependent and is removed from the physical custody of his or her parents, the child's grandparents have the right to unsupervised, reasonable visitation, unless visitation is not in the best interests of the child or would interfere with the goals of the case plan.²³ The court may deny grandparent visitation if it is not in the child's best interest or based on the grandparent's prior criminal history.

When the child is returned to the custody of his or her parent, the visitation rights granted to a grandparent must be terminated.²⁴

Existing grandparent visitation with a child who has been adjudicated dependent does not automatically terminate if the court enters an order for a termination of parental rights. Grandparent visitation rights will only terminate if the court finds that continued grandparent visitation is not in the best interest of the child or visitation would interfere with DCF goals of permanency planning for the child.²⁵ Before the court may terminate parental rights, notice must be provided to certain persons, including any grandparent entitled to priority for purposes of adoption.²⁶

If the court determines that reunification with a parent and adoption are not in the best interest of the child, the child can be placed with a permanent guardian or with a fit and willing relative. The court must address a number of factors in the order for permanent guardianship or placement with a fit and willing relative, including the frequency and nature of visitation or contact between the child and his or her grandparents.²⁷

²⁰ *Richardson*, 766 So. 2d at 1039.

²¹ *Sullivan v. Sapp*, 866 So. 2d 28 (Fla. 2004). Specifically, s. 61.13(2)(b)2.c., F.S. (2001), provided: "The court may award the grandparents visitation rights with a minor child if it is in the child's best interest. Grandparents have legal standing to seek judicial enforcement of such an award. This section does not require that grandparents be made parties or given notice of dissolution pleadings or proceedings, nor do grandparents have legal standing as contestants. . ."

²² *Id.*

²³ Section 39.509, F.S.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Section 39.801(3)(a), F.S. A grandparent has the right to notice by the court if a child has lived with the grandparent for at least six out of 24 months immediately preceding the filing of a petition for termination of parental rights pending adoption. Section 63.0425(1), F.S.

²⁷ Sections 39.6221(2)(d) and 39.6231(3)(d), F.S.

U.S. Supreme Court – Troxel v. Granville

The U.S. Supreme Court ruled on the issue of grandparent visitation and custody rights in 2000 when the Court struck down a Washington state law as unconstitutional as applied. In *Troxel v. Granville*, 530 U.S. 57 (2000), the Court found the Washington law²⁸ to be “breathtakingly broad” within the context of a “best interest” determination.²⁹ The Court noted that no consideration had been given to the decision of the parent, the parent’s fitness to make decisions had not been questioned, and no weight had been given to the fact that the mother had agreed to some visitation.³⁰ Based on these observations, the Court found the Washington statute unconstitutional as applied because “the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a better decision could be made.”³¹

The grandparent visitation cases decided by state supreme courts after *Troxel* all seem to recognize that the legal landscape has changed. Although the Troxel Court may have endeavored to leave room for the states to resolve questions relating to grandparent visitation on a case-by-case basis, the plurality did provide guidance and clarification, as the state courts all acknowledge:³²

- When they consider grandparents' visitation petitions, courts must presume a fit parent's decisions regarding visitation to be in his or her child's best interests, and they must accord some weight to these decisions. Likewise, in crafting statutes, legislatures must incorporate this presumption in favor of parents.
- Courts can no longer (at least explicitly) employ the contrary presumption that visitation with their grandparents generally benefits grandchildren. Statutes that presume grandparent visitation to be in a child's best interests violate parents' constitutional rights.
- Although there appears to have been a movement among some state supreme courts to strike down statutes as unconstitutional because they failed to require a showing of harm, other courts disagreed with this view and instead upheld the statutes' constitutionality and the use of the best-interests standard to determine if visitation was appropriate. In *Troxel*, the plurality neither condemned nor endorsed the harm standard, and it found the use of the best-interests standard alone, without some deference to parents, insufficient.³³

The Effect of Court Ordered Visitation on Children and Their Families

Requests for visitation by third parties over parental objections raise a multitude of issues. Increasing attention appears to be focused on the effects of those requests for visitation on the children involved. In an analysis of *Troxel v. Granville*, one author stated:

²⁸ The Washington statute provided that “Any person may petition the court for visitation rights at any time including, but not limited to, custody proceedings. The court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances.” WA. REV. CODE s. 26.10.160(3).

²⁹ *Troxel v. Granville*, 530 U.S. at 67.

³⁰ *Id.*

³¹ *Id.*

³² Kristine L. Roberts, *State Supreme Court Applications of Troxel v. Granville and the Courts’ Reluctance to Declare Grandparent Visitation Statutes Unconstitutional*, 41 FAM. CT. REV. 14, 16 (Jan. 2003)

³³ *Id.*

I am not suggesting that relationships must be conflict free in order to be viewed as being emotionally beneficial to those participating in them; however, when the relationships between members of the extended family and members of the nuclear family are so strained and when the ability to resolve those disputes is so impaired that one side or the other feels compelled to seek judicial intervention, the possibility that children will benefit from a court-imposed solution is remote. Where, over parental objection, visitation with a third party has been court ordered, the conflict between the parent and the individual whose bid for visitation the court has honored exacts a toll on the child(ren)....³⁴

Another legal scholar has stated that while grandparents can be wonderful resources for children, parents, not courts, should decide with whom their children should spend time and that a court reversal of a parent's decision raises problems:

Allowing courts to overrule parents is not good for children. The best interest of the child standard may sound appealing but, as an untethered guide to deciding where parental autonomy ends and the state's authority begins, it is not, in fact, in the best interest of the child. The main point here is that parental autonomy is not the enemy of the child; it is the best way this society knows to protect the child's best interest.³⁵

One commentator recognizes that grandparent visitation is a highly sensitive issue, especially in Florida where the senior citizen population is so large. While there are some bad grandparents, the pervasiveness of the stereotype of loving grandparents makes it hard to envision a situation where a child would not benefit from contact with his or her grandparents. For that reason, many courts have succumbed to sentimentality when deciding whether or not to grant grandparents visitation rights.³⁶

A more objective view has been taken by the Florida Supreme Court. Both the Federal and Florida constitutions convey rights of privacy. Among those privacy rights lies the right of parents to raise their child as they see fit. Case law has long addressed this right and, while it may seem unfair or unwise to deny loving grandparents the right to visit their grandchild, based on a long line of federal and state precedent it is clear that the Florida Supreme Court is correct in deciding that, absent some showing of harm to the child, a court cannot override a fit parent's decision. Case law shows that, absent a grandparent proving harm to the child, visitation is rarely granted.³⁷

³⁴ David A. Martindale, *Troxel v. Granville: A Nonjusticiable Dispute*, 41 FAM. CT. REV. 88 (Jan. 2003)

³⁵ Katharine T. Bartlett, *Grandparent Visitation: Best Interests Test is Not in Child's Best Interest*, WEST VIRGINIA LAW REVIEW. 102:723 (2000).

³⁶ Maegen E. Peek, *Grandparent Visitation Statutes: Do Legislatures Know The Way To Carry The Sleigh Through The Wide And Drifting Law?* FLORIDA LAW REVIEW (Apr. 2001)

³⁴ Id.

³⁷ Id.

A statute which demands such a showing of harm, while technically correct because it adheres to judicial rulings, will do little to help grandparents attain visitation with their grandchildren. The better solution would be to shift the focus away from judicial intrusions upon families and instead help families resolve their disputes themselves through mediation and counseling.³⁸

Harm to a Child

As a result of court rulings that Florida's grandparent visitation statutes were unconstitutional because the state may not intrude upon the fundamental right of parents to raise their children except in cases where the child is threatened with "harm," legislation filed for consideration during past legislative sessions seeking to grant grandparent visitation has required a showing of harm when a grandparent petitions the court for visitation.

Chapter 39, F.S., relating to proceedings relating to dependent children defines the term "abuse" as:

any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes acts or omissions...³⁹

Chapter 39, F.S. provides that "harm"

to a child's health or welfare can occur when any person inflicts or allows to be inflicted upon the child physical, mental, or emotional injury. In determining whether harm has occurred, the following factors must be considered in evaluating any physical, mental, or emotional injury to a child: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Such injury includes, but is not limited to...⁴⁰

Chapter 39, F.S., also provides that:

Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter... shall report such knowledge or suspicion... immediately to the department's central abuse hotline... Personnel at the department's central abuse hotline shall determine if the report received meets the statutory definition of child abuse, abandonment, or neglect. Any report meeting one of these definitions shall be accepted for the protective investigation...⁴¹

³⁸ *Id.*

³⁹ Section 39.01(2), F.S.

⁴⁰ Section 39.01(32), F.S.

⁴¹ Section 39.201(1) and (2), F.S.

III. Effect of Proposed Changes:

The bill makes numerous changes to laws relating to contact between grandparents and grandchildren.

Section 1 amends s. 752.001, F.S., to create a definition for the terms “missing” and “persistent vegetative state.”

Section 2 repeals s. 752. 01, F.S, relating to action by grandparent for right of visitation.

Section 3 creates s. 752.011, F.S., relating to a petition for grandparent visitation of a minor child, to specify limited circumstances under which a grandparent or may petition for visitation with a child. The newly created section authorizes grandparents to file a petition for visitation with a child if:

- The parents are deceased, missing, or in a permanent vegetative state; or
- At least one parent is deceased, missing, or in a permanent vegetative state and the other parent has been convicted of a felony or a violent offense.

If a petition for grandparent visitation is filed, the court will hold a preliminary hearing to determine whether a prima facie showing of parental unfitness or danger of significant harm to the minor child exists. If the petitioner establishes a prima facie case, the court will order the case to family mediation and may appoint a guardian ad litem.

At the final hearing, the court will determine by clear and convincing evidence whether the parent is unfit or a danger of significant harm to the child exists, visitation is in the best interest of the minor child, and visitation will not materially harm the parent-child relationship.

In determining the best interest of the child, the court will consider factors such as:

- The love, affection, and other emotional ties between the child and the grandparent;
- The length and quality of the previous relationship between the child and the grandparent;
- Whether the grandparent established ongoing personal contact with the child before the death of the parent;
- The reasons that the parent ended contact or visitation with the grandparent;
- Whether there has been demonstrable significant mental or emotional harm to the child and whether the support and stability of the grandparent has benefitted the child;
- Mental, physical, and emotional health of both the minor child and the grandparent;
- The recommendation of a guardian ad litem; and
- The preference of the minor child if he or she is sufficiently mature.

In assessing material harm to the parent and child relationship, the court must look at the totality of the circumstances.

The Uniform Child Custody Jurisdiction and Enforcement Act, which governs the resolution of child custody between states, applies to determination of grandparent visitation. The bill encourages consolidation of court determination of grandparent visitation and child custody, parenting, and time-sharing actions to minimize the burden of litigation on the parties.

The grandparent may file a petition once every two years, except on good cause that the minor child is suffering or may suffer harm caused by a parent's denial of grandparent visitation.

Section 4 repeals s. 752.07, F.S., relating to the effect of the adoption of a child by stepparent on right of visitation and when that right may be terminated.

Section 5 creates s. 752.071, F.S., relating to the effect of adoption by a stepparent or close relative, to authorize the stepparent to petition the court to terminate grandparent visitation, unless the grandparent can show that the criteria authorizing visitation with a child who remains in parental custody still applies.

Section 6 amends s. 752.015, F.S., relating to mediation, to replace rules promulgated by the Supreme Court with the Florida Family Law Rules of Procedure.

Section 7 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.

D. Other Constitutional Issues:

Various provisions of ch. 752, F.S., have been challenged as unconstitutional a number of times since becoming law in 1984. In 1996, the Florida Supreme Court reviewed the issue of whether it is proper for the government to impose grandparent visitation on an intact family, absent evidence of demonstrated harm to the child.⁴² In applying Article I, s. 23 of the Florida Constitution, the court found that parents have a fundamental right to be free from governmental interference. Further, the court found that the state failed to show a compelling interest.⁴³ For these reasons, the court ruled that part of the law unconstitutional.

In 1998, the Florida Supreme Court again struck down part of the grandparent visitation law.⁴⁴ The court noted that the United States Supreme Court had recognized an implicit right of person privacy in the liberty interest protected by the Due Process Clause of the

⁴² *Beagle v. Beagle*, 678 So. 2d 1271, 1272 (Fla. 1996).

⁴³ *Id.* at 1276.

⁴⁴ *Von Eiff v. Azicri*, 720 So. 2d 510 (Fla. 1998).

Fourteenth Amendment. Along with the implicit right of privacy, the State Constitution provides the explicit right of privacy to citizens under Article I, s. 23.⁴⁵ Here the court found that the law suffered the same infirmity, namely the part of the law that mandated grandparent visitation under a best interest of the child standard, without a showing of proof of demonstrable harm to the child.⁴⁶

Again, in 2004, the Florida Supreme Court reviewed a statute which authorized a court to award grandparent visitation rights to a child if it is in the child's best interest. The statutory provision challenged was not in ch. 752, F.S., but in ch. 61, F.S., dealing with custody time-sharing, and paternity (s. 61.13(2)(b)2.c., F.S.)⁴⁷ Here, the child's mother filed a motion for rehearing in a paternity action and subsequently died in a car accident. The case was before the court on a motion to intervene filed by the grandmother.⁴⁸ Although the court resolved the case on the issue of the motion to intervene, the court reiterated the unconstitutionality of any provision of law which would impose grandparent visitation absent a showing of harm to the child.⁴⁹

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

In its review of the original bill (SB 368), the Department of Children and Families (DCF) identified a potential fiscal impact related to:

- Possible increased costs for Community-based Care lead agencies, subcontracted agencies, dependency case managers, and foster parents, associated with transporting or supervising great-grandparent visitation; and
- Possible increased costs for private adoption attorneys and Children's Legal Services due to adding great-grandparents to the list of relatives entitled to service of process on a notice of a petition to terminate parental rights.

⁴⁵ *Id.* at 513-514.

⁴⁶ *Id.* at 514.

⁴⁷ *Sullivan v. Sapp*, 866 So.2d 28, 38 (Fla. 2004). Section 61.13(2)(b)2.c., F.S. (2003), provided, "The court may award the grandparents visitation rights with a minor child if it is in the child's best interest. Grandparents have legal standing to seek judicial enforcement of such an award."

⁴⁸ *Id.* at 30-31.

⁴⁹ *Id.* at 38-39.

The department also estimated an increase in personal service of process costs. These costs are approximately \$35 within the state, up to \$180 for out-of-state, and \$280 or higher internationally.⁵⁰

Additionally, the Office of the State Courts Administrator (OSCA) indicated that the impact of the original bill (SB 368) on judicial workload was difficult to determine as the number of petitions to be filed as a result of the bill was unknown.⁵¹

The Committee Substitute narrows the circumstances under which a grandparent or may petition for visitation with a child. As a result, the bill does not have a discernable fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

From an operational perspective, it's difficult to see how some provisions of the bill will work. For example, if both parents are deceased, missing or in a persistent vegetative state, how will the court find them unfit, award them attorney fees and court costs, or order them to mediation. How would these circumstances apply to the child's then-current caregiver?

The court is required to examine the effect of grandparent visitation with a child on the parent-child relationship. A number of factors the court is to consider assume a parent-child relationship exists. If the parents are deceased, missing, or in a persistent vegetative state, there is no parent-child relationship.

The bill provides that a grandparent can only file a petition for visitation once during any two year period unless there has been a change in circumstances related to a parental decision to deny visitation. This appears unlikely to happen unless a missing parent returns or a parent in a persistent vegetative state recovers.

The bill does not address a situation where a court finds that there is prima facie evidence that the minor child is suffering or is threatened with suffering demonstrable significant mental or emotional harm as a result of not being allowed to visit a grandparent, a judge would be required to call the child abuse hotline under the provisions of ch. 39, F.S. This may result in the department commencing a child protective investigation pursuant to s. 39.301, F.S.

The bill requires mediation, but does not contain an opt-out clause which provides protection against being ordered to mediation when there is evidence of domestic violence in the family.

⁵⁰ Department of Children and Families, *2015 Agency Legislative Bill analysis for SB 368* (January 9, 2015); on file with the Senate Committee on Children, Families and Elder Affairs.

⁵¹ Office of the State Courts Administrator, *2015 Judicial Impact Statement* (March 10, 2015); on file with the Senate Judiciary Committee.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 752.001 and 752.015.

This bill creates the following sections of the Florida Statutes: 752.011 and 752.071.

This bill repeals the following sections of the Florida Statutes: 752.01 and 752.07.

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

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

Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on April 8, 2015:

The committee substitute:

- Creates a definition for the terms “missing” and “persistent vegetative state.”
- Removes all of the provisions relating to grandparent visitation with minor children who are dependent under chapter 39, F.S.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
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	.	

Appropriations Subcommittee on Criminal and Civil Justice (Soto)
recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 752.001, Florida Statutes, is amended to
read:

752.001 Definitions.—As used in ~~For purposes of~~ this
chapter, the term:

(1) "Grandparent" shall include great-grandparent.

(2) "Missing" means having whereabouts which are unknown



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11 for a period of at least 90 days and not being able to be
12 located after a diligent search and inquiry. Such search and
13 inquiry for a missing person must include, at a minimum,
14 inquiries of all relatives of the person who can reasonably be
15 identified by the petitioner, inquiries of hospitals in the
16 areas where the person last resided, inquiries of the person's
17 recent employers, inquiries of state and federal agencies likely
18 to have information about the person, inquiries of appropriate
19 utility and postal providers, a thorough search of at least one
20 electronic database specifically designed for locating persons,
21 and inquiries of appropriate law enforcement agencies.

22 (3) "Persistent vegetative state" has the same meaning as
23 provided in s. 765.101(12).

24 Section 2. Section 752.01, Florida Statutes, is repealed.

25 Section 3. Section 752.011, Florida Statutes, is created to
26 read:

27 752.011 Petition for grandparent visitation with a minor
28 child.—A grandparent of a minor child whose parents are
29 deceased, missing, or in a persistent vegetative state, or whose
30 one parent is deceased, missing, or in a persistent vegetative
31 state and whose other parent has been convicted of a felony or
32 an offense of violence evincing behavior that poses a
33 substantial threat of harm to the minor child's health or
34 welfare, may petition the court for court-ordered visitation
35 with the grandchild under this section.

36 (1) Upon the filing of a petition by a grandparent for
37 visitation, the court shall hold a preliminary hearing to
38 determine whether the petitioner has made a prima facie showing
39 of parental unfitness or significant harm to the child. Absent



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40 such a showing, the court shall dismiss the petition and may
41 award reasonable attorney fees and costs to be paid by the
42 petitioner to the respondent.

43 (2) If the court finds that there is prima facie evidence
44 that a parent is unfit or that there is significant harm to the
45 child, the court may appoint a guardian ad litem and shall refer
46 the matter to family mediation as provided in s. 752.015. If
47 family mediation does not successfully resolve the issue of
48 grandparent visitation, the court shall proceed with a final
49 hearing.

50 (3) After conducting a final hearing on the issue of
51 visitation, the court may award reasonable visitation to the
52 grandparent with respect to the minor child if the court finds
53 by clear and convincing evidence that a parent is unfit or that
54 there is significant harm to the child, that visitation is in
55 the best interest of the minor child, and that the visitation
56 will not materially harm the parent-child relationship.

57 (4) In assessing the best interest of the child under
58 subsection (3), the court shall consider the totality of the
59 circumstances affecting the mental and emotional well-being of
60 the minor child, including:

61 (a) The love, affection, and other emotional ties existing
62 between the minor child and the grandparent, including those
63 resulting from the relationship that had been previously allowed
64 by the child's parent.

65 (b) The length and quality of the previous relationship
66 between the minor child and the grandparent, including the
67 extent to which the grandparent was involved in providing
68 regular care and support for the child.



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69 (c) Whether the grandparent established ongoing personal
70 contact with the minor child before the death of the parent,
71 before the onset of the parent's persistent vegetative state, or
72 before the parent was missing.

73 (d) The reasons cited by the respondent parent in ending
74 contact or visitation between the minor child and the
75 grandparent.

76 (e) Whether there has been significant and demonstrable
77 mental or emotional harm to the minor child as a result of the
78 disruption in the family unit, whether the child derived support
79 and stability from the grandparent, and whether the continuation
80 of such support and stability is likely to prevent further harm.

81 (f) The existence or threat to the minor child of mental
82 injury as defined in s. 39.01.

83 (g) The present mental, physical, and emotional health of
84 the minor child.

85 (h) The present mental, physical, and emotional health of
86 the grandparent.

87 (i) The recommendations of the minor child's guardian ad
88 litem, if one is appointed.

89 (j) The result of any psychological evaluation of the minor
90 child.

91 (k) The preference of the minor child if the child is
92 determined to be of sufficient maturity to express a preference.

93 (l) A written testamentary statement by the deceased parent
94 regarding visitation with the grandparent. The absence of a
95 testamentary statement is not deemed to provide evidence that
96 the deceased or missing parent or parent in a persistent
97 vegetative state would have objected to the requested



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98 visitation.

99 (m) Other factors that the court considers necessary to
100 making its determination.

101 (5) In assessing material harm to the parent-child
102 relationship under subsection (3), the court shall consider the
103 totality of the circumstances affecting the parent-child
104 relationship, including:

105 (a) Whether there have been previous disputes between the
106 grandparent and the parent over childrearing or other matters
107 related to the care and upbringing of the minor child.

108 (b) Whether visitation would materially interfere with or
109 compromise parental authority.

110 (c) Whether visitation can be arranged in a manner that
111 does not materially detract from the parent-child relationship,
112 including the quantity of time available for enjoyment of the
113 parent-child relationship and any other consideration related to
114 disruption of the schedule and routine of the parent and the
115 minor child.

116 (d) Whether visitation is being sought for the primary
117 purpose of continuing or establishing a relationship with the
118 minor child with the intent that the child benefit from the
119 relationship.

120 (e) Whether the requested visitation would expose the minor
121 child to conduct, moral standards, experiences, or other factors
122 that are inconsistent with influences provided by the parent.

123 (f) The nature of the relationship between the child's
124 parent and the grandparent.

125 (g) The reasons cited by the parent in ending contact or
126 visitation between the minor child and the grandparent which was



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127 previously allowed by the parent.

128 (h) The psychological toll of visitation disputes on the
129 minor child.

130 (i) Other factors that the court considers necessary in
131 making its determination.

132 (6) Part II of chapter 61 applies to actions brought under
133 this section.

134 (7) If actions under this section and s. 61.13 are pending
135 concurrently, the courts are strongly encouraged to consolidate
136 the actions in order to minimize the burden of litigation on the
137 minor child and the other parties.

138 (8) An order for grandparent visitation may be modified
139 upon a showing by the person petitioning for modification that a
140 substantial change in circumstances has occurred and that
141 modification of visitation is in the best interest of the minor
142 child.

143 (9) An original action requesting visitation under this
144 section may be filed by a grandparent only once during any 2-
145 year period, except on good cause shown that the minor child is
146 suffering, or may suffer, significant and demonstrable mental or
147 emotional harm caused by a parental decision to deny visitation
148 between a minor child and the grandparent, which was not known
149 to the grandparent at the time of filing an earlier action.

150 (10) This section does not provide for grandparent
151 visitation with a minor child placed for adoption under chapter
152 63 except as provided in s. 752.071 with respect to adoption by
153 a stepparent or close relative.

154 (11) Venue shall be in the county where the minor child
155 primarily resides, unless venue is otherwise governed by chapter



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156 39, chapter 61, or chapter 63.

157 Section 4. Section 752.07, Florida Statutes, is repealed.

158 Section 5. Section 752.071, Florida Statutes, is created to
159 read:

160 752.071 Effect of adoption by stepparent or close
161 relative.—After the adoption of a minor child by a stepparent or
162 close relative, the stepparent or close relative may petition
163 the court to terminate an order granting grandparent visitation
164 under this chapter which was entered before the adoption. The
165 court may terminate the order unless the grandparent is able to
166 show that the criteria of s. 752.011 authorizing the visitation
167 continue to be satisfied.

168 Section 6. Section 752.015, Florida Statutes, is amended to
169 read:

170 752.015 Mediation of visitation disputes.—It ~~is shall be~~
171 the public policy of this state that families resolve
172 differences over grandparent visitation within the family. It is
173 ~~shall be~~ the further public policy of this state that, when
174 families are unable to resolve differences relating to
175 grandparent visitation, ~~that~~ the family participate in any
176 formal or informal mediation services that may be available. If
177 ~~When~~ families are unable to resolve differences relating to
178 grandparent visitation and a petition is filed pursuant to s.
179 752.011 ~~s. 752.01~~, the court shall, if such services are
180 available in the circuit, refer the case to family mediation in
181 accordance with the Florida Family Law Rules of Procedure ~~rules~~
182 ~~promulgated by the Supreme Court.~~

183 Section 7. This act shall take effect July 1, 2015.

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



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185 And the title is amended as follows:

186 Delete everything before the enacting clause
187 and insert:

188 A bill to be entitled

189 An act relating to the rights of grandparents;
190 amending s. 752.001, F.S.; providing definitions;
191 repealing s. 752.01, F.S., relating to actions by a
192 grandparent for visitation rights; creating s.
193 752.011, F.S.; authorizing the grandparent of a minor
194 child to petition a court for visitation under certain
195 circumstances; requiring a preliminary hearing;
196 providing for the payment of attorney fees and costs
197 by a petitioner who fails to make a prima facie
198 showing of harm; authorizing grandparent visitation if
199 the court makes specified findings; providing factors
200 for court consideration; providing applicability of
201 the Uniform Child Custody Jurisdiction and Enforcement
202 Act; encouraging the consolidation of certain
203 concurrent actions; providing for modification of an
204 order awarding grandparent visitation; limiting the
205 frequency of actions seeking visitation; limiting
206 applicability to a minor child placed for adoption;
207 providing for venue; repealing s. 752.07, F.S.,
208 relating to the effect of adoption of a child by a
209 stepparent on grandparent visitation rights; creating
210 s. 752.071, F.S.; providing conditions under which a
211 court may terminate a grandparent visitation order
212 upon adoption of a minor child by a stepparent or
213 close relative; amending s. 752.015, F.S.; conforming



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214
215

provisions and cross-references to changes made by the
act; providing an effective date.

By Senator Abruzzo

25-00324-15

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1 A bill to be entitled
 2 An act relating to the rights of grandparents and
 3 great-grandparents; amending s. 39.01, F.S.;
 4 redefining the term "next of kin" to include great-
 5 grandparents; amending s. 39.509, F.S.; providing
 6 great-grandparents the same visitation rights as
 7 grandparents; amending ss. 39.801 and 63.0425, F.S.;
 8 requiring notice to a great-grandparent under certain
 9 circumstances; repealing s. 752.01, F.S., relating to
 10 actions by a grandparent for visitation rights;
 11 creating s. 752.011, F.S.; authorizing the grandparent
 12 of a minor child to petition a court for visitation
 13 under certain circumstances; requiring a preliminary
 14 hearing; providing for the payment of attorney fees
 15 and costs by a petitioner who fails to make a prima
 16 facie showing of harm; authorizing grandparent
 17 visitation after a final hearing if the court makes
 18 specified findings; providing factors for court
 19 consideration; providing for application of the
 20 Uniform Child Custody Jurisdiction and Enforcement
 21 Act; encouraging the consolidation of certain
 22 concurrent actions; providing for modification of an
 23 order awarding grandparent visitation; limiting the
 24 frequency of actions seeking visitation; limiting
 25 application to a minor child placed for adoption;
 26 providing for venue; repealing s. 752.07, F.S.,
 27 relating to the effect of adoption of a child by a
 28 stepparent on grandparent visitation rights; creating
 29 s. 752.071, F.S.; authorizing, after petition, a court

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30 to terminate a grandparent visitation order upon
 31 adoption of a minor child by a stepparent or close
 32 relative; amending ss. 39.6221, 39.6231, 63.087,
 33 63.172, and 752.015, F.S.; conforming provisions and
 34 cross-references to changes made by the act; providing
 35 an effective date.
 36

37 Be It Enacted by the Legislature of the State of Florida:
 38

39 Section 1. Subsection (45) of section 39.01, Florida
 40 Statutes, is amended to read:

41 39.01 Definitions.—When used in this chapter, unless the
 42 context otherwise requires:

43 (45) "Next of kin" means an adult relative of a child who
 44 is the child's brother, sister, grandparent, great-grandparent,
 45 aunt, uncle, or first cousin.

46 Section 2. Section 39.509, Florida Statutes, is amended to
 47 read:

48 39.509 Visitation rights of grandparents and great-
 49 grandparents ~~Grandparents rights.~~—Notwithstanding any other
 50 ~~provision of~~ law, a maternal or paternal grandparent or great-
 51 grandparent, as well as a step-grandparent or step-great-
 52 grandparent, ~~stepgrandparent~~ is entitled to reasonable
 53 visitation with his or her grandchild or great-grandchild who
 54 has been adjudicated a dependent child and taken from the
 55 physical custody of the parent unless the court finds that such
 56 visitation is not in the best interest of the child or that such
 57 visitation would interfere with the goals of the case plan.
 58 Reasonable visitation may be unsupervised and, where appropriate

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59 and feasible, may be frequent and continuing. ~~An Any~~ order for
60 visitation or other contact must conform to ~~the provisions of~~ s.
61 39.0139.

62 (1) Grandparent or great-grandparent visitation may take
63 place in the home of the grandparent or great-grandparent unless
64 there is a compelling reason for denying such a visitation. The
65 department's caseworker shall arrange the visitation to which a
66 grandparent or great-grandparent is entitled pursuant to this
67 section. The state ~~may shall~~ not charge a fee for any costs
68 associated with arranging the visitation. However, the
69 grandparent or great-grandparent shall pay for the child's cost
70 of transportation ~~if when~~ the visitation is to take place in the
71 grandparent's or great-grandparent's home. The caseworker shall
72 document the reasons for any decision to restrict a
73 grandparent's or great-grandparent's visitation.

74 (2) A grandparent or great-grandparent entitled to
75 visitation pursuant to this section ~~may shall~~ not be restricted
76 from appropriate displays of affection to the child, such as
77 appropriately hugging or kissing his or her grandchild or great-
78 grandchild. Gifts, cards, and letters from the grandparent or
79 great-grandparent and other family members ~~may shall~~ not be
80 denied to a child who has been adjudicated a dependent child.

81 (3) ~~An Any~~ attempt by a grandparent or great-grandparent to
82 facilitate a meeting between the child who has been adjudicated
83 a dependent child and the child's parent or legal custodian, or
84 any other person in violation of a court order shall
85 automatically terminate future visitation rights of the
86 grandparent or great-grandparent.

87 (4) When the child has been returned to the physical

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88 custody of his or her parent, the visitation rights granted
89 pursuant to this section ~~shall~~ terminate.

90 (5) The termination of parental rights does not affect the
91 rights of grandparents or great-grandparents unless the court
92 finds that such visitation is not in the best interest of the
93 child or that such visitation would interfere with the goals of
94 permanency planning for the child.

95 (6) In determining whether grandparental or great-
96 grandparental visitation is not in the child's best interest,
97 ~~the court consideration~~ may consider ~~be given to~~ the following:

98 (a) The finding of guilt, regardless of adjudication, or
99 entry or plea of guilty or nolo contendere to charges under the
100 following statutes, or similar statutes of other jurisdictions:

101 1. Section ~~s-~~ 787.04, relating to removing a minor child
102 minors from the state or concealing a minor child ~~minors~~
103 contrary to court order;

104 2. Section ~~s-~~ 794.011, relating to sexual battery;

105 3. Section ~~s-~~ 798.02, relating to lewd and lascivious
106 behavior;

107 4. Chapter 800, relating to lewdness and indecent exposure;

108 5. Section ~~s-~~ 826.04, relating to incest; or

109 6. Chapter 827, relating to the abuse of children.

110 (b) The designation by a court as a sexual predator as
111 defined in s. 775.21 or a substantially similar designation
112 under laws of another jurisdiction.

113 (c) A report of abuse, abandonment, or neglect under ss.
114 415.101-415.113 or this chapter and the outcome of the
115 investigation concerning such report.

116 Section 3. Paragraph (a) of subsection (3) of section

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117 39.801, Florida Statutes, is amended to read:

118 39.801 Procedures and jurisdiction; notice; service of
119 process.—

120 (3) Before the court may terminate parental rights, in
121 addition to the other requirements set forth in this part, the
122 following requirements must be met:

123 (a) Notice of the date, time, and place of the advisory
124 hearing for the petition to terminate parental rights and a copy
125 of the petition must be personally served upon the following
126 persons, specifically notifying them that a petition has been
127 filed:

128 1. The parents of the child.

129 2. The legal custodians of the child.

130 3. If the parents who would be entitled to notice are dead
131 or unknown, a living relative of the child, unless upon diligent
132 search and inquiry no such relative can be found.

133 4. Any person who has physical custody of the child.

134 5. Any grandparent or great-grandparent entitled to
135 priority for adoption under s. 63.0425.

136 6. Any prospective parent who has been identified under s.
137 39.503 or s. 39.803.

138 7. The guardian ad litem for the child or the
139 representative of the guardian ad litem program, if the program
140 has been appointed.

141

142 The document containing the notice to respond or appear must
143 contain, in type at least as large as the type in the balance of
144 the document, the following or substantially similar language:

145

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146 ~~FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING~~

147 CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF
148 THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND
149 TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE
150 CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS
151 NOTICE.”

152 Section 4. Section 63.0425, Florida Statutes, is amended to
153 read:

154 63.0425 Grandparent’s or great-grandparent’s right to
155 notice.—

156 (1) If a child has lived with a grandparent or great-
157 grandparent for at least 6 months within the 24-month period
158 immediately preceding the filing of a petition for termination
159 of parental rights pending adoption, the adoption entity shall
160 provide notice to that grandparent or great-grandparent of the
161 hearing on the petition.

162 (2) This section does not apply if the placement for
163 adoption is the result of the death of the child’s parent and a
164 different preference is stated in the parent’s will.

165 (3) This section does not apply in stepparent adoptions.

166 (4) This section does not contravene the provisions of s.
167 63.142(4).

168 Section 5. Section 752.01, Florida Statutes, is repealed.

169 Section 6. Section 752.011, Florida Statutes, is created to
170 read:

171 752.011 Petition for grandparent visitation of a minor
172 child.—A grandparent of a minor child whose parents are
173 deceased, missing, or in a permanent vegetative state, or whose
174 one parent is deceased, missing, or in a permanent vegetative

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175 state and whose other parent has been convicted of a felony or
 176 an offense of violence, may petition the court for court-ordered
 177 visitation with the grandchild under this section.

178 (1) Upon the filing of a petition by a grandparent for
 179 visitation, the court shall hold a preliminary hearing to
 180 determine whether the petitioner has made a prima facie showing
 181 of parental unfitness or danger of significant harm to the minor
 182 child. Absent such a showing, the court shall dismiss the
 183 petition and shall award reasonable attorney fees and costs to
 184 be paid by the petitioner to the respondent.

185 (2) If the court finds that there is prima facie evidence
 186 that a parent is unfit or that there is a danger of significant
 187 harm to the minor child, the court shall proceed toward a final
 188 hearing, may appoint a guardian ad litem, and shall order the
 189 matter to family mediation as provided in s. 752.015.

190 (3) After conducting a final hearing on the issue of
 191 visitation, the court may award reasonable visitation to the
 192 grandparent with respect to the minor child if the court finds
 193 by clear and convincing evidence that a parent is unfit or that
 194 there is a danger of significant harm to the minor child, that
 195 visitation is in the best interest of the minor child, and that
 196 the visitation will not materially harm the parent-child
 197 relationship.

198 (4) In assessing the best interest of the minor child under
 199 subsection (3), the court shall consider the totality of the
 200 circumstances affecting the mental and emotional well-being of
 201 the minor child, including:

202 (a) The love, affection, and other emotional ties existing
 203 between the minor child and the grandparent, including those

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204 resulting from the relationship that had been previously allowed
 205 by the child's parent.

206 (b) The length and quality of the previous relationship
 207 between the minor child and the grandparent, including the
 208 extent to which the grandparent was involved in providing
 209 regular care and support for the child.

210 (c) Whether the grandparent established ongoing personal
 211 contact with the minor child before the death of the parent.

212 (d) The reasons that the surviving parent cited in ending
 213 contact or visitation between the minor child and the
 214 grandparent.

215 (e) Whether there has been demonstrable significant mental
 216 or emotional harm to the minor child as a result of the
 217 disruption in the family unit from which the child derived
 218 support and stability from the grandparent, and whether the
 219 continuation of that support and stability is likely to prevent
 220 further harm.

221 (f) The existence or threat to the minor child of mental
 222 injury as defined in s. 39.01.

223 (g) The present mental, physical, and emotional health of
 224 the minor child.

225 (h) The present mental, physical, and emotional health of
 226 the grandparent.

227 (i) The recommendations of the minor child's guardian ad
 228 litem, if one is appointed.

229 (j) The results of any psychological evaluation of the
 230 minor child.

231 (k) The preference of the minor child if he or she is
 232 determined to be of sufficient maturity to express a preference.

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233 (l) A written testamentary statement by the deceased parent
 234 regarding visitation with the grandparent. The absence of a
 235 testamentary statement is not deemed to provide evidence that
 236 the deceased parent would have objected to the requested
 237 visitation.

238 (m) Other factors that the court considers necessary in
 239 making its determination.

240 (5) In assessing material harm to the parent-child
 241 relationship under subsection (3), the court shall consider the
 242 totality of the circumstances affecting the parent-child
 243 relationship, including:

244 (a) Whether there have been previous disputes between the
 245 grandparent and the parent over childrearing or other matters
 246 related to the care and upbringing of the minor child.

247 (b) Whether visitation would materially interfere with or
 248 compromise parental authority.

249 (c) Whether visitation can be arranged in a manner that
 250 does not materially detract from the parent-child relationship,
 251 including the quantity of time available for enjoyment of the
 252 parent-child relationship and any other consideration related to
 253 disruption of the schedule and routines of the parent and the
 254 minor child.

255 (d) Whether visitation is being sought for the primary
 256 purpose of continuing or establishing a relationship with the
 257 minor child with the intent that the child benefit from the
 258 relationship.

259 (e) Whether the requested visitation would expose the minor
 260 child to conduct, moral standards, experiences, or other factors
 261 that are inconsistent with influences provided by the parent.

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262 (f) The nature of the relationship between the child's
 263 parent and the grandparent.

264 (g) The reasons that the parent cited in ending contact or
 265 visitation between the minor child and the grandparent which was
 266 previously allowed by the parent.

267 (h) The psychological toll of visitation disputes on the
 268 minor child.

269 (i) Other factors that the court considers necessary in
 270 making its determination.

271 (6) Part II of chapter 61, the Uniform Child Custody
 272 Jurisdiction and Enforcement Act, applies to actions brought
 273 under this section.

274 (7) If separate actions under this section and s. 61.13 are
 275 pending concurrently, the courts are strongly encouraged to
 276 consolidate the actions in order to minimize the burden of
 277 litigation on the minor child and the other parties.

278 (8) An order for grandparent visitation may be modified
 279 upon a showing by the person petitioning for modification that a
 280 substantial change in circumstances has occurred and that
 281 modification of visitation is in the best interest of the minor
 282 child.

283 (9) An original action requesting visitation under this
 284 section may be filed by a grandparent only once during any 2-
 285 year period, except on good cause shown that the minor child is
 286 suffering, or may suffer, demonstrable significant mental or
 287 emotional harm caused by a parental decision to deny visitation
 288 between a minor child and the grandparent, which was not known
 289 to the grandparent at the time of filing an earlier action.

290 (10) This section does not provide for grandparent

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291 visitation with a minor child placed for adoption under chapter
 292 63 except as provided in s. 752.071 with respect to adoption by
 293 a stepparent or close relative.

294 (11) Venue shall be in the county where the minor child
 295 primarily resides, unless venue is otherwise governed by chapter
 296 39, chapter 61, or chapter 63.

297 Section 7. Section 752.07, Florida Statutes, is repealed.

298 Section 8. Section 752.071, Florida Statutes, is created to
 299 read:

300 752.071 Effect of adoption by stepparent or close
 301 relative.-After the adoption of a minor child by a stepparent or
 302 close relative, the stepparent or close relative may petition
 303 the court to terminate a court order granting grandparent
 304 visitation under this chapter which was entered before the
 305 adoption. The court may terminate the order unless the
 306 grandparent is able to show that the criteria of s. 752.011
 307 authorizing the visitation continue to be satisfied.

308 Section 9. Subsection (2) of section 39.6221, Florida
 309 Statutes, is amended to read:

310 39.6221 Permanent guardianship of a dependent child.-

311 (2) In its written order establishing a permanent
 312 guardianship, the court shall do all of the following:

313 (a) List the circumstances that make or reasons why the
 314 child's parents unfit are not fit to care for the child and make
 315 why reunification impossible, referencing is not possible by
 316 referring to specific findings of fact made in its order
 317 adjudicating the child dependent or by making separate findings
 318 of fact.†

319 (b) State the reasons why establishment of a permanent

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320 guardianship is being ordered ~~established~~ instead of adoption.†

321 (c) Specify the frequency and nature of visitation or
 322 contact between the child and his or her parents.†

323 (d) Specify the frequency and nature of visitation or
 324 contact between the child and his or her grandparents or great-
 325 grandparents, under s. 39.509.†

326 (e) Specify the frequency and nature of visitation or
 327 contact between the child and his or her siblings.† ~~and~~

328 (f) Require that the permanent guardian not return the
 329 child to the physical care and custody of the person from whom
 330 the child was removed without the approval of the court.

331 Section 10. Subsection (3) of section 39.6231, Florida
 332 Statutes, is amended to read:

333 39.6231 Permanent placement with a fit and willing
 334 relative.-

335 (3) In its written order placing the child with a fit and
 336 willing relative, the court shall do all of the following:

337 (a) List the circumstances that make or reasons why
 338 reunification impossible, referencing is not possible by
 339 ~~referring to~~ specific findings of fact made in its order
 340 adjudicating the child dependent or ~~by~~ making separate findings
 341 of fact.†

342 (b) State the reasons why permanent placement with a fit
 343 and willing relative is being ordered ~~established~~ instead of
 344 adoption.†

345 (c) Specify the frequency and nature of visitation or
 346 contact between the child and his or her parents.†

347 (d) Specify the frequency and nature of visitation or
 348 contact between the child and his or her grandparents or great-

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349 ~~grandparents~~ under s. 39.509.

350 (e) Specify the frequency and nature of visitation or
351 contact between the child and his or her siblings.

352 (f) Require that the relative not return the child to the
353 physical care and custody of the person from whom the child was
354 removed without the approval of the court.

355 Section 11. Paragraph (e) of subsection (4) of section
356 63.087, Florida Statutes, is amended to read:

357 63.087 Proceeding to terminate parental rights pending
358 adoption; general provisions.—

359 (4) PETITION.—

360 (e) The petition must include:

361 1. The minor's name, gender, date of birth, and place of
362 birth. The petition must contain all names by which the minor is
363 or has been known, excluding the minor's prospective adoptive
364 name but including the minor's legal name at the time of the
365 filing of the petition. In the case of an infant child whose
366 adoptive name appears on the original birth certificate, the
367 adoptive name ~~may shall~~ not be included in the petition ~~or, nor~~
368 ~~shall it be included~~ elsewhere in the termination of parental
369 rights proceeding.

370 2. All information required by the Uniform Child Custody
371 Jurisdiction and Enforcement Act and the Indian Child Welfare
372 Act.

373 3. A statement of the grounds under s. 63.089 upon which
374 the petition is based.

375 4. The name, address, and telephone number of any adoption
376 entity seeking to place the minor for adoption.

377 5. The name, address, and telephone number of the division

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378 of the circuit court in which the petition is to be filed.

379 6. A certification of compliance with the requirements of
380 s. 63.0425 regarding notice to grandparents or great-
381 grandparents of an impending adoption.

382 Section 12. Subsection (2) of section 63.172, Florida
383 Statutes, is amended to read:

384 63.172 Effect of judgment of adoption.—

385 (2) If one or both parents of a child die without the
386 relationship of parent and child having been previously
387 terminated and a spouse of the living parent or a close relative
388 of the child thereafter adopts the child, the child's right of
389 inheritance from or through the deceased parent is unaffected by
390 the adoption and, unless the court orders otherwise, the
391 adoption does will not terminate any grandparental or great-
392 grandparental rights delineated under chapter 752. For purposes
393 of this subsection, a close relative of a child is the child's
394 brother, sister, grandparent, great-grandparent, aunt, or uncle.

395 Section 13. Section 752.015, Florida Statutes, is amended
396 to read:

397 752.015 Mediation of visitation disputes.—It is shall be
398 the public policy of this state that families resolve
399 differences over grandparent visitation within the family. It is
400 ~~shall be~~ the further public policy of this state that, when
401 families are unable to resolve differences relating to
402 grandparent visitation, ~~that~~ the family participate in any
403 formal or informal mediation services that may be available. If
404 ~~When~~ families are unable to resolve differences relating to
405 grandparent visitation and a petition is filed pursuant to s.
406 752.011 s. 752.04, the court shall, if such services are

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407 available in the circuit, refer the case to family mediation in
408 accordance with the Florida Family Law Rules of Procedure ~~rules~~
409 ~~promulgated by the Supreme Court.~~

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

February 19th, 2015

Appropriations Subcommittee on Criminal and Civil Justice (ACJ)

404 S Monroe Street

Tallahassee, FL 32399-1100

201 The Capitol

SENATE APPROPRIATIONS
RECEIVED
15 MAR -2 AM 9:55
STAFF DIR. STAFF

Dear Sirs:

In reference to the Bill SB368 relating to Rights of Grandparents and Great-grandparents, we would like to express our opinion and support, since it is very important to take into consideration the significant role that they represent on children's lives.

Grandparents have a very strong connection with their grandchild, they show love and care, spending a quality of time by feeding them, telling family stories, playing, putting them to sleep with a nice song that children enjoy. Grandparents really love their grandchildren because they feel that grandchildren are an extension of their children, so they are the center of their lives and attention.

It is important to mention that, grandparents give the grandkids a sense of security, developing a deeper relationship to strengthen family ties as well as providing them with joyful memories, valuable life lessons and emotional health.

Grandchildren I earn to value the family and elders, respect to others and themselves because they receive the legacy of knowledge, traditions and love from their grandparents,

The grandparents need to establish a close relationship when the child is just an infant, be a part of the child's life and stay connected. The grandparents cannot expect a relationship to just happen once the child becomes an adult.

In addition, parents can feel comfortable and ensure that their children are in good hands with their grandparents, knowing for a fact that the kids are learning good moral values and good behaviorism as they grew up inside the same lovely and peaceful environment.

Sincerely,

Johnpaul Aponte



Alegria Granados



THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/15 Meeting Date

SB 368 Bill Number (if applicable)

Topic Rights of Grandparents and Great-grandparents

Amendment Barcode (if applicable)

Name Eric Stern

Job Title Florida PTA

Address Street

Phone

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 PTA

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

Lobbyist registered with Legislature: [] Yes [] No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/15 Meeting Date

368 Bill Number (if applicable)

Topic GRANDPARENTS RIGHTS

Amendment Barcode (if applicable)

Name DAVID STERLING

Job Title

Address 2115 JACKSON BLUFF TRD Street

Phone 850-556-0905

JALLAGASSEE FL 32304 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 GRANDPARENT STATEWIDE

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)

4-8-15
Meeting Date

368
Bill Number (if applicable)

Topic Rights For Grandparents

Amendment Barcode (if applicable)

Name Besley Sheffin

Job Title JD

Address 4050 Cottagewood Trail

Phone 850 942 5180

Street
Jalohassee FL 32311
City State Zip

Email besley.sheffin09@comcast.net

Speaking: For Against Information
NO

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

Representing Grandparents As Parents

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)

4/8/15
Meeting Date

368
Bill Number (if applicable)

Topic Rights of Grandparents

Amendment Barcode (if applicable)

Name Zayne Smith

Job Title ASD

Address 200 W. College Ave.

Phone 850 577-5163

Street
Tally FL 32309
City State Zip

Email zsmith@aarp.org

Speaking: For Against Information

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

Representing AARP

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)

4-08-2015

Meeting Date

368

Bill Number (if applicable)

Topic Rights of Grandparents and Great Grandparents

Amendment Barcode (if applicable)

Name Yvonne Stewart

Job Title _____

Address 557 Guy Ct

Phone 4077169716

Street

Email ystrandzsalon@yahoo.com

City

State

Zip

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

4-8-15
Meeting Date

368
Bill Number (if applicable)

Topic Grandparents Rights

Amendment Barcode (if applicable)

Name Barbara DeVane

Job Title Ms

Address 625 E. Brevard St

Phone 850-222-3969

Tallahassee FL 32308
Street City State Zip

Email barbaradevane1@yahoo.com

Speaking: For Against Information

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

Representing FL Alliance for Retired Americans

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

but not for FLRA-volunteer

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

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

The Florida Senate
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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/CS/SB 390

INTRODUCER: Criminal Justice Committee; Judiciary Committee; and Senator Richter

SUBJECT: Fraud

DATE: April 7, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	Fav/CS
3.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	Favorable
4.	_____	_____	<u>FP</u>	_____

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 make the business entity immune from liability for disclosures made in good faith;
- Replace the term "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.

The Criminal Justice Impact Conference has found that the bill will result in the need for additional prison beds, but the amount cannot be determined.

The bill has an effective date of October 1, 2015.

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 passwords⁴ 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 information⁶ can have devastating effects. Reconstructing the events and obtaining

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

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.

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.

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.

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 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 restitution⁹ 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 victims¹⁰ 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.

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.

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.

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 felony¹³ 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 three years. (s. 816.568(2)(b), F.S.)

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 five 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 felony¹⁴ 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 five 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 misdemeanor¹⁵ 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 three years. (s. 817.658(8)(b), F.S.)

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 five 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:

- Section 817.14, F.S. (procuring assignments of produce upon false representations);
- Section 817.15, F.S. (false entries);
- Section 817.39, F.S. (simulated forms of court or legal process); and
- Section 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.

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:**

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:

Under CS/CS/SB 390, the requirement that businesses provide victims of identity theft with records involving their theft might have a positive fiscal impact on those who have been the victims of identity theft by assisting victims in recovering economic losses. 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 estimates that the bill will require an increase in the need for prison beds. However, the amount of the increase cannot be predicted and is therefore unquantifiable.

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 Substantial Changes:**

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

CS/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.

By the Committees on Criminal Justice; and Judiciary; and
Senator Richter

591-03137-15

2015390c2

1 A bill to be entitled
2 An act relating to fraud; creating s. 817.011, F.S.;
3 defining the term "business entity"; amending s.
4 817.02, F.S.; providing for restitution to victims for
5 certain victim out-of-pocket costs; providing for a
6 civil cause of action for certain victims; creating s.
7 817.032, F.S.; defining the term "victim"; requiring
8 business entities to provide copies of business
9 records of fraudulent transactions involving identity
10 theft to victims and law enforcement agencies in
11 certain circumstances; providing an exception;
12 providing for verification of a victim's identity and
13 claim; providing procedures for claims; requiring that
14 certain information be provided to victims without
15 charge; specifying circumstances in which business
16 entities may decline to provide information; providing
17 a limitation on civil liability for business entities
18 that provide or decline to provide information in
19 certain circumstances; specifying that no new record
20 retention is required; providing an affirmative
21 defense to business entities in actions seeking
22 enforcement of provisions; amending s. 817.11, F.S.;
23 making editorial changes; transferring, renumbering,
24 and amending ss. 817.12 and 817.13, F.S.; combining
25 offense, penalty, and evidence provisions and
26 transferring such provisions to s. 817.11, F.S.;
27 amending s. 817.14, F.S.; clarifying provisions;
28 amending s. 817.15, F.S.; substituting the term
29 "business entity" for the term "corporation"; amending

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30 ss. 817.17 and 817.18, F.S.; including counties and
31 other political subdivisions in provisions prohibiting
32 the false marking of goods or packaging with a
33 location of origin; reorganizing penalty provisions;
34 amending s. 817.19, F.S.; prohibiting fraudulent
35 issuance of indicia of membership interest in a
36 limited liability company; amending s. 817.39, F.S.;
37 substituting the term "business entity" for the term
38 "corporation"; amending s. 817.40, F.S.; specifying
39 that the term "misleading advertising" includes
40 electronic forms of dissemination; amending s.
41 817.411, F.S.; substituting the term "business entity"
42 for the term "corporation"; specifying that certain
43 false statements made through electronic means are
44 prohibited; amending s. 817.412, F.S.; specifying that
45 electronic statements are included in provisions
46 prohibiting false representations of used goods as
47 new; amending s. 817.481, F.S.; clarifying provisions;
48 amending s. 817.50, F.S.; revising criminal penalties
49 for fraudulently obtaining goods or services from a
50 health care provider; amending s. 817.568, F.S.;
51 expanding specified identity theft offenses to include
52 all persons rather than being limited to natural
53 persons; including dissolved business entities within
54 certain offenses involving fraudulent use of personal
55 identification information of deceased persons;
56 amending s. 817.569, F.S.; prohibiting a person from
57 knowingly providing false information that becomes
58 part of a public record to facilitate or further the

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59 commission of certain offenses; providing criminal
60 penalties; amending s. 921.0022, F.S.; conforming
61 provisions to changes made by the act; providing an
62 effective date.

63
64 Be It Enacted by the Legislature of the State of Florida:

65
66 Section 1. Section 817.011, Florida Statutes, is created to
67 read:

68 817.011 Definition.—As used in this chapter, the term
69 “business entity” means any corporation, partnership, limited
70 partnership, company, limited liability company, proprietorship,
71 firm, enterprise, franchise, association, self-employed
72 individual, or trust, whether fictitiously named or not, doing
73 business in this state.

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

76 817.02 Obtaining property by false personation.—

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

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

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

86
87 shall be punished as if he or she had been convicted of larceny.

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88 (2) (a) In sentencing a defendant convicted of a violation
89 of this section, in addition to restitution to the victim under
90 s. 775.089, the court may order restitution for the victim’s
91 out-of-pocket costs, including attorney fees and fees associated
92 with services provided by certified public accountants licensed
93 under chapter 473, incurred by the victim in clearing the
94 victim’s credit history or credit rating, or costs incurred in
95 connection with a civil or administrative proceeding to satisfy
96 a debt, lien, or other obligation of the victim arising as a
97 result of the actions of the defendant.

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

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

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

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

111 817.032 Information available to identity theft victims.—

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

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117 crime.

118 (2) GENERALLY.—

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

134 1. The victim;

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

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

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

143 (3) VERIFICATION OF IDENTITY AND CLAIM.—Before a business
 144 entity provides any information under subsection (2), unless the
 145 business entity, at its discretion, has a high degree of

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146 confidence that it knows the identity of the victim making a
 147 request under subsection (2), the victim shall provide to the
 148 business entity:

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

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

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

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

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

162 1. A copy of a police report evidencing the claim of the
 163 victim of identity theft; and

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

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

168 (a) Be in writing;

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

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

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175 1. If known by the victim or readily obtainable by the
 176 victim, the date of the application or transaction.
 177 2. If known by the victim or readily obtainable by the
 178 victim, any other identifying information such as an account
 179 number or transaction number.
 180 (5) NO CHARGE TO VICTIM.—Information required to be
 181 provided under subsection (2) shall be provided without charge.
 182 (6) AUTHORITY TO DECLINE TO PROVIDE INFORMATION.—A business
 183 entity may decline to provide information under subsection (2)
 184 if, in the exercise of good faith, the business entity
 185 determines that:
 186 (a) This section does not require disclosure of the
 187 information;
 188 (b) After reviewing the information provided pursuant to
 189 subsection (3), the business entity does not have a high degree
 190 of confidence in knowing the true identity of the individual
 191 requesting the information;
 192 (c) The request for the information is based on a
 193 misrepresentation of fact by the individual requesting the
 194 information;
 195 (d) The information requested is Internet navigational data
 196 or similar information about a person's visit to a website or
 197 online service; or
 198 (e) The disclosure is otherwise prohibited by state or
 199 federal law.
 200 (7) LIMITATION ON CIVIL LIABILITY.—A business entity may
 201 not be held civilly liable in this state for a disclosure made
 202 in good faith pursuant to this section or a decision to decline
 203 to provide information as provided in subsection (6).

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204 (8) NO NEW RECORDKEEPING OBLIGATION.—This section does not
 205 create an obligation on the part of a business entity to obtain,
 206 retain, or maintain information or records that are not
 207 otherwise required to be obtained, retained, or maintained in
 208 the ordinary course of its business or under other applicable
 209 law.
 210 (9) AFFIRMATIVE DEFENSE.—In any civil action brought to
 211 enforce this section, it is an affirmative defense, which the
 212 defendant must establish by a preponderance of the evidence, for
 213 a business entity to file an affidavit or answer stating that:
 214 (a) The business entity has made a reasonably diligent
 215 search of its available business records.
 216 (b) The records requested under this section do not exist
 217 or are not reasonably available.
 218 Section 4. Section 817.11, Florida Statutes, is amended,
 219 and sections 817.12 and 817.13, Florida Statutes, are
 220 transferred and renumbered as subsections (2) and (3),
 221 respectively, of section 817.11, Florida Statutes, and amended,
 222 to read:
 223 817.11 Obtaining property by fraudulent promise to furnish
 224 inside information.—
 225 (1) A No person may not ~~shall~~ defraud or attempt to defraud
 226 any individual out of ~~anything any thing~~ of value by assuming to
 227 have or be able to obtain any secret, advance or inside
 228 information regarding any person, transaction, act or thing,
 229 whether such person, transaction, act or thing exists or not.
 230 (2) ~~817.12~~ A person who violates this section commits
 231 penalty for violation of s. 817.11. Any person guilty of
 232 violating the provisions of s. 817.11 shall be deemed guilty of

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233 a felony of the third degree, punishable as provided in s.
234 775.082, s. 775.083, or s. 775.084.

235 ~~(3) 817.13 Paraphernalia as evidence of violation of s.~~
236 ~~817.11.~~ All paraphernalia of whatsoever kind in possession of
237 any person and used in defrauding or attempting to defraud as
238 specified in this section ~~s. 817.11~~ shall be held and accepted
239 by any court of competent jurisdiction in this state as prima
240 facie evidence of guilt.

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

243 817.14 Procuring assignments of produce upon false
244 representations.—A Any person acting for himself or herself or
245 another person, who shall procure any consignment of produce
246 grown in this state, to himself or herself or such other, for
247 sale on commission or for other compensation by any knowingly
248 false representation as to the prevailing market price at such
249 time for such produce at the point to which it is consigned, or
250 as to the price which such person for whom he or she is acting
251 is at said time paying to other consignors for like produce at
252 said place, or as to the condition of the market for such
253 produce at such time and place, and any such person acting for
254 another who shall procure any consignment for sale as aforesaid
255 by false representation of authority to him or her by such other
256 to make a guaranteed price to the consignor, commits shall be
257 guilty of a misdemeanor of the first degree, punishable as
258 provided in s. 775.082 or s. 775.083.

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

261 817.15 Making False entries in, etc., or books of business

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262 entity corporation.—Any officer, agent, clerk or servant of a
263 business entity corporation who makes a false entry in the books
264 thereof, with intent to defraud, and any person whose duty it is
265 to make in such books a record or entry of the transfer of
266 stock, or of the issuing and canceling of certificates thereof,
267 or of the amount of stock issued by such business entity
268 corporation, who omits to make a true record or entry thereof,
269 with intent to defraud, commits shall be guilty of a felony of
270 the third degree, punishable as provided in s. 775.082, s.
271 775.083, or s. 775.084.

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

274 817.17 Wrongful use of city, county, or other political
275 subdivision name.—

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

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

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

293 817.18 Wrongful marking with a city, county, or other
294 political subdivision name stamping, marking, etc.; penalty.-

295 (1) ~~A~~ No person ~~may not shall~~ knowingly sell or offer for
296 sale, within the state, any manufactured articles which shall
297 have printed, stamped, marked, engraved, or branded upon them,
298 or upon the boxes, packages, or bands containing said
299 manufactured articles, the name of any city, county, or other
300 political subdivision of ~~in~~ the state, other than that in which
301 such articles were manufactured; provided, that ~~nothing in~~ this
302 section does not shall prohibit any person from offering for
303 sale any goods, having marked thereon the name of any city,
304 county, or other political subdivision of the state in Florida,
305 other than that in which said goods are manufactured, if there
306 be no manufactory of similar goods in the city, county, or other
307 political subdivision the name of which is used.

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

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

313 817.19 Fraudulent issue of stock certificate or indicia of
314 membership interest of stock of corporation.-Any officer, agent,
315 clerk or servant of a corporation, or any other person, who
316 fraudulently issues or transfers a certificate of stock of a
317 corporation or indicia of a membership interest in a limited
318 liability company to any person not entitled thereto, or
319 fraudulently signs such certificate or other indicia of

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320 membership interest, in blank or otherwise, with the intent that
321 it shall be so issued or transferred by himself or herself or
322 any other person, commits shall be guilty of a felony of the
323 third degree, punishable as provided in s. 775.082, s. 775.083,
324 or s. 775.084.

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

327 817.39 Simulated forms of court or legal process, or
328 official seal or stationery; publication, sale or circulation
329 unlawful; penalty.-

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

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

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

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349 817.40 False, misleading and deceptive advertising and
 350 sales; definitions.—When construing ss. 817.40, 817.41, 817.43–
 351 817.47, and each and every word, phrase or part thereof, where
 352 the context will permit:

353 (5) The phrase “misleading advertising” includes any
 354 statements made, or disseminated, in oral, written, electronic,
 355 or printed form or otherwise, to or before the public, or any
 356 portion thereof, which are known, or through the exercise of
 357 reasonable care or investigation could or might have been
 358 ascertained, to be untrue or misleading, and which are or were
 359 so made or disseminated with the intent or purpose, either
 360 directly or indirectly, of selling or disposing of real or
 361 personal property, services of any nature whatever, professional
 362 or otherwise, or to induce the public to enter into any
 363 obligation relating to such property or services.

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

366 817.411 False information; advertising.—~~A No person, firm~~
 367 or business entity may not ~~corporation shall~~ knowingly publish,
 368 disseminate, circulate, or place before the public, or cause
 369 directly or indirectly, to be made, published, disseminated,
 370 circulated, or placed before the public, in a newspaper,
 371 magazine or other publication, or in the form of a notice,
 372 circular, pamphlet, letter or poster, or over any radio or
 373 television station, electronically, or in any other way, any
 374 advertisement, announcement, or statement containing any
 375 assertion, representation, or statement that commodities,
 376 mortgages, promissory notes, securities, or other things of
 377 value offered for sale are covered by insurance guaranties where

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378 such insurance is nonexistent or does not in fact insure against
 379 the risks covered.

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

382 817.412 Sale of used goods as new; penalty.—

383 (1) It is unlawful for a seller in a transaction where the
 384 purchase price of goods exceeds \$100 to misrepresent orally, in
 385 writing, electronically, or by failure to speak that the goods
 386 are new or original when they are used or repossessed or where
 387 they have been used for sales demonstration.

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

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

393 817.481 Credit or purchases ~~cards~~; obtaining illicitly
 394 ~~goods by use of false, expired, etc.~~; penalty.—

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

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

409 817.50 Fraudulently obtaining goods ~~or~~ services, ~~etc.~~,
410 from a health care provider.—

411 (1) Whoever shall, willfully and with intent to defraud,
412 obtain or attempt to obtain goods, products, merchandise, or
413 services from any health care provider in this state, as defined
414 in s. 641.19(14), commits a felony misdemeanor of the third
415 ~~second~~ degree, punishable as provided in s. 775.082, ~~or~~ s.
416 775.083, or s. 775.084.

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

427 Section 16. Paragraph (f) of subsection (1) and subsections
428 (2), (4), (8), and (9) of section 817.568, Florida Statutes, are
429 amended to read:

430 817.568 Criminal use of personal identification
431 information.—

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

433 (f) "Personal identification information" means any name or
434 number that may be used, alone or in conjunction with any other
435 information, to identify a specific person individual, including

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436 any:

437 1. Name, postal or electronic mail address, telephone
438 number, social security number, date of birth, mother's maiden
439 name, official state-issued or United States-issued driver
440 license or identification number, alien registration number,
441 government passport number, employer or taxpayer identification
442 number, Medicaid or food assistance account number, bank account
443 number, credit or debit card number, or personal identification
444 number or code assigned to the holder of a debit card by the
445 issuer to permit authorized electronic use of such card;

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

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

450 4. Medical records;

451 5. Telecommunication identifying information or access
452 device; or

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

455 (2) (a) Any person who willfully and without authorization
456 fraudulently uses, or possesses with intent to fraudulently use,
457 personal identification information concerning another person ~~an~~
458 ~~individual~~ without first obtaining that person's individual's
459 consent, commits the offense of fraudulent use of personal
460 identification information, which is a felony of the third
461 degree, punishable as provided in s. 775.082, s. 775.083, or s.
462 775.084.

463 (b) Any person who willfully and without authorization
464 fraudulently uses personal identification information concerning

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465 ~~a person an individual~~ without first obtaining that person's
 466 ~~individual's~~ consent commits a felony of the second degree,
 467 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 468 if the pecuniary benefit, the value of the services received,
 469 the payment sought to be avoided, or the amount of the injury or
 470 fraud perpetrated is \$5,000 or more or if the person
 471 fraudulently uses the personal identification information of 10
 472 or more persons individuals, but fewer than 20 persons
 473 ~~individuals~~, without their consent. Notwithstanding any other
 474 provision of law, the court shall sentence any person convicted
 475 of committing the offense described in this paragraph to a
 476 mandatory minimum sentence of 3 years' imprisonment.

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

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494 fraudulently uses the personal identification information of 30
 495 or more persons individuals without their consent,
 496 notwithstanding any other provision of law, the court shall
 497 sentence any person convicted of committing the offense
 498 described in this paragraph to a mandatory minimum sentence of
 499 10 years' imprisonment.

500 (4) Any person who willfully and without authorization
 501 possesses, uses, or attempts to use personal identification
 502 information concerning ~~a person an individual~~ without first
 503 obtaining that person's individual's consent, and who does so
 504 for the purpose of harassing that person individual, commits the
 505 offense of harassment by use of personal identification
 506 information, which is a misdemeanor of the first degree,
 507 punishable as provided in s. 775.082 or s. 775.083.

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

516 (b) Any person who willfully and fraudulently uses personal
 517 identification information concerning a deceased individual or
 518 dissolved business entity commits a felony of the second degree,
 519 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 520 if the pecuniary benefit, the value of the services received,
 521 the payment sought to be avoided, or the amount of injury or
 522 fraud perpetrated is \$5,000 or more, or if the person

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523 fraudulently uses the personal identification information of 10
 524 or more but fewer than 20 deceased individuals or dissolved
 525 business entities. Notwithstanding any other provision of law,
 526 the court shall sentence any person convicted of committing the
 527 offense described in this paragraph to a mandatory minimum
 528 sentence of 3 years' imprisonment.

529 (c) Any person who willfully and fraudulently uses personal
 530 identification information concerning a deceased individual or
 531 dissolved business entity commits the offense of aggravated
 532 fraudulent use of the personal identification information of
 533 multiple deceased individuals or dissolved business entities, a
 534 felony of the first degree, punishable as provided in s.
 535 775.082, s. 775.083, or s. 775.084, if the pecuniary benefit,
 536 the value of the services received, the payment sought to be
 537 avoided, or the amount of injury or fraud perpetrated is \$50,000
 538 or more, or if the person fraudulently uses the personal
 539 identification information of 20 or more but fewer than 30
 540 deceased individuals or dissolved business entities.
 541 Notwithstanding any other provision of law, the court shall
 542 sentence any person convicted of the offense described in this
 543 paragraph to a minimum mandatory sentence of 5 years'
 544 imprisonment. If the pecuniary benefit, the value of the
 545 services received, the payment sought to be avoided, or the
 546 amount of the injury or fraud perpetrated is \$100,000 or more,
 547 or if the person fraudulently uses the personal identification
 548 information of 30 or more deceased individuals or dissolved
 549 business entities, notwithstanding any other provision of law,
 550 the court shall sentence any person convicted of an offense
 551 described in this paragraph to a mandatory minimum sentence of

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552 10 years' imprisonment.

553 (9) Any person who willfully and fraudulently creates or
 554 uses, or possesses with intent to fraudulently use, counterfeit
 555 or fictitious personal identification information concerning a
 556 fictitious ~~person individual~~, or concerning a real person
 557 ~~individual~~ without first obtaining that real person's
 558 ~~individual's~~ consent, with intent to use such counterfeit or
 559 fictitious personal identification information for the purpose
 560 of committing or facilitating the commission of a fraud on
 561 another person, commits the offense of fraudulent creation or
 562 use, or possession with intent to fraudulently use, counterfeit
 563 or fictitious personal identification information, a felony of
 564 the third degree, punishable as provided in s. 775.082, s.
 565 775.083, or s. 775.084.

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

568 817.569 Criminal use of a public record or public records
 569 information; providing false information; penalties.—A person
 570 who knowingly uses any public record, as defined in s. 119.011,
 571 ~~or~~ who knowingly uses information obtainable only through such
 572 public record, or who knowingly provides false information that
 573 becomes part of a public record to facilitate or further the
 574 commission of:

575 (1) A misdemeanor of the first degree, commits a
 576 misdemeanor of the first degree, punishable as provided in s.
 577 775.082 or s. 775.083.

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

580 Section 18. Paragraphs (a) and (e) of subsection (3) of

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581 section 921.0022, Florida Statutes, are amended to read:
 582 921.0022 Criminal Punishment Code; offense severity ranking
 583 chart.-
 584 (3) OFFENSE SEVERITY RANKING CHART
 585 (a) LEVEL 1
 586
 587

Florida Statute	Felony Degree	Description
24.118(3) (a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2) (b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
212.15(2) (b)	3rd	Failure to remit sales taxes, amount greater than \$300 but less than \$20,000.
316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
319.35(1) (a)	3rd	Tamper, adjust, change, etc.,

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594 an odometer.
 320.26(1) (a) 3rd Counterfeit, manufacture, or
 sell registration license
 plates or validation stickers.
 595
 322.212 3rd Possession of forged, stolen,
 (1) (a)-(c) counterfeit, or unlawfully
 issued driver license;
 possession of simulated
 identification.
 596
 322.212(4) 3rd Supply or aid in supplying
 unauthorized driver license or
 identification card.
 597
 322.212(5) (a) 3rd False application for driver
 license or identification card.
 598
 414.39(2) 3rd Unauthorized use, possession,
 forgery, or alteration of food
 assistance program, Medicaid
 ID, value greater than \$200.
 599
 414.39(3) (a) 3rd Fraudulent misappropriation of
 public assistance funds by
 employee/official, value more
 than \$200.
 600

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

	591-03137-15		2015390c2
	443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
601	509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.
602	517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
603	562.27(1)	3rd	Possess still or still apparatus.
604	713.69	3rd	Tenant removes property upon which lien has accrued, value more than \$50.
605	812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
606	812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
607	815.04(5)(a)	3rd	Offense against intellectual

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	591-03137-15		2015390c2
			property (i.e., computer programs, data).
608	817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
609	817.569(2)	3rd	Use of public record or public records information <u>or providing false information</u> to facilitate commission of a felony.
610	826.01	3rd	Bigamy.
611	828.122(3)	3rd	Fighting or baiting animals.
612	831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
613	831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
614	832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.
615			

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	591-03137-15		2015390c2
	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.
616			
	838.15(2)	3rd	Commercial bribe receiving.
617			
	838.16	3rd	Commercial bribery.
618			
	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
619			
	847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
620			
	849.01	3rd	Keeping gambling house.
621			
	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.
622			
	849.23	3rd	Gambling-related machines; "common offender" as to property rights.
623			

	591-03137-15		2015390c2
	849.25(2)	3rd	Engaging in bookmaking.
624			
	860.08	3rd	Interfere with a railroad signal.
625			
	860.13(1)(a)	3rd	Operate aircraft while under the influence.
626			
	893.13(2)(a)2.	3rd	Purchase of cannabis.
627			
	893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
628			
	934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.
629			
	(e) LEVEL 5		
630			
631			
	Florida Statute	Felony Degree	Description
632			
	316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
633			
	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
634			

	591-03137-15		2015390c2
	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
635			
	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
636			
	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
637			
	379.3671 (2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
638			
	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
639			
	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
640			
	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
641			
	440.381(2)	2nd	Submission of false,

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	591-03137-15		2015390c2
			misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
642			
	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
643			
	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
644			
	790.01(2)	3rd	Carrying a concealed firearm.
645			
	790.162	2nd	Threat to throw or discharge destructive device.
646			
	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
647			
	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
648			
	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
649			

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	591-03137-15		2015390c2
	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
650			
	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
651			
	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
652			
	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
653			
	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
654			
	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
655			
	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
656			
	812.131(2)(b)	3rd	Robbery by sudden snatching.
657			

	591-03137-15		2015390c2
	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
658			
	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
659			
	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
660			
	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.
661			
	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 .
662			
	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or

	591-03137-15		2015390c2	reencoder.
663	825.1025(4)	3rd		Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
664	827.071(4)	2nd		Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
665	827.071(5)	3rd		Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
666	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.
667	843.01	3rd		Resist officer with violence to person; resist arrest with violence.
668	847.0135(5)(b)	2nd		Lewd or lascivious exhibition

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	591-03137-15		2015390c2	using computer; offender 18 years or older.
669	847.0137 (2) & (3)	3rd		Transmission of pornography by electronic device or equipment.
670	847.0138 (2) & (3)	3rd		Transmission of material harmful to minors to a minor by electronic device or equipment.
671	874.05(1)(b)	2nd		Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
672	874.05(2)(a)	2nd		Encouraging or recruiting person under 13 years of age to join a criminal gang.
673	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).
674	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.,

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(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.

675

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.

676

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.

677

893.13(1)(f)1. 1st Sell, manufacture, or deliver
cocaine (or other s.

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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.

678

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.,
(2)(c)5., (2)(c)6., (2)(c)7.,
(2)(c)8., (2)(c)9., (3), or (4)
drugs).

679

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

680

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



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 31, 2015

The Honorable Joe Negron, Chair
Senate Appropriations Subcommittee on Criminal and Civil Justice
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron:

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

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Garrett Richter".

Garrett Richter

cc: Tim Sadberry, Staff Director

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

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)

4/8/15
Meeting Date

390
Bill Number (if applicable)

Topic Fraud

Amendment Barcode (if applicable)

Name Zayne Smith

Job Title ASD

Address 200 W College Ave

Phone 850 577-5163

Street

Tally

City

FL

State

32301

Zip

Email zsmith@aarpa.org

Speaking: For Against Information

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

Representing AARP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/SB 464 (402202)

INTRODUCER: Appropriations Subcommittee Criminal and Civil Justice; and Senator Joyner

SUBJECT: Controlled Substances

DATE: April 10, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	<u>RC</u>	_____

I. Summary:

PCS/SB 464 authorizes a court to grant a defendant's motion to depart from a three-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 three-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.

The bill has a positive fiscal impact on general revenue because it reduces the future need for state prison beds.

The bill has an effective date of July 1, 2015.

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 possession¹ 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, opiates² 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 felonies⁵ 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 three-year mandatory minimum term. Provided are the threshold weights that trigger drug trafficking penalties and the weight ranges applicable to a three-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 Three-Year Mandatory Minimum Term
s. 893.13(1)(b), F.S.	Cocaine	28 grams	28 grams or more but less than 200 grams

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 Three-Year Mandatory Minimum Term
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)
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 than 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.

⁷Sections 921.002-921.0027, F.S.

⁸ Section 921.0024(1)(b), F.S.

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

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 three-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 evidence¹² that all of the following criteria are met:

- The defendant has not previously moved to depart from a three-year mandatory minimum term and mandatory fine.
- The defendant's violation of s. 893.135, F.S., would be subject to a three-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) and of the quantity specified:
 - Not more than 34 grams of cocaine;
 - Not more than 17 grams of hydrocodone;
 - Not more than eight grams of oxycodone;
 - Not more than six grams of a controlled substance described in s. 893.135(1)(c), F.S. (opiates and opioids);¹³

⁹ See *State v. Vanderhoff*, 14 So.3d 1185 (Fla. 5th DCA 2009).

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.

- Not more than 34 grams of phencyclidine;
- Not more than 17 grams of amphetamine or methamphetamine;
- Not more than six 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 two grams of lysergic acid diethylamide (LSD).
- 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 PCS/SB 464 will have a negative indeterminate (unquantifiable) prison bed impact, meaning the bill will reduce the future need for prison beds.

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 eight 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 six grams.

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.)

**Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice
on April 7, 2015:**

The committee substitute makes technical and clarifying changes to the bill.

- B. **Amendments:**

None.



529112

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Joyner) recommended the following:

Senate Amendment

Delete line 30

and insert:

1. The defendant has not previously benefited by a
departure from the



459042

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Joyner) recommended the following:

Senate Amendment

Delete line 44
and insert:
described in subparagraph (1)(c)1.;



750164

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Joyner) recommended the following:

Senate Amendment

Delete lines 63 - 64

and insert:

7. The defendant does not have a previous conviction for or
has not had

By Senator Joyner

19-00006A-15

2015464__

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

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

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

19 893.135 Trafficking; mandatory sentences; suspension or
 20 reduction of sentences; conspiracy to engage in trafficking.-
 21 (7) (a) If a defendant is convicted of a violation of this
 22 section, the defendant may move the sentencing court to depart
 23 from the 3-year mandatory minimum term of imprisonment and the
 24 mandatory fine that would apply to the conviction absent a
 25 departure. The state attorney may file an objection to the
 26 motion.

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

Page 1 of 4

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

19-00006A-15

2015464__

30 1. The defendant has not previously moved to depart from a
 31 3-year mandatory minimum term and mandatory fine pursuant to
 32 this subsection.
 33 2. The defendant's violation of this section would be
 34 subject to a 3-year mandatory minimum term and mandatory fine
 35 absent a departure.
 36 3. The defendant's violation of this section involves
 37 possession of one of the following controlled substances or a
 38 mixture that contains one of the following controlled
 39 substances:
 40 a. Not more than 34 grams of cocaine;
 41 b. Not more than 17 grams of hydrocodone;
 42 c. Not more than 8 grams of oxycodone;
 43 d. Not more than 6 grams of any controlled substance as
 44 described in paragraph (1) (c);
 45 e. Not more than 34 grams of phencyclidine;
 46 f. Not more than 17 grams of amphetamine or
 47 methamphetamine;
 48 g. Not more than 6 grams of flunitrazepam;
 49 h. Not more than 20 grams of a Phenethylamine as described
 50 in subparagraph (1) (k)1.; or
 51 i. Not more than 2 grams of lysergic acid diethylamide
 52 (LSD).
 53 4. The defendant did not possess the controlled substance
 54 or mixture containing the controlled substance with the intent
 55 to sell, manufacture, or deliver the substance or mixture.
 56 5. The defendant did not obtain the controlled substance or
 57 mixture containing the controlled substance by using a minor to
 58 obtain the substance or mixture.

Page 2 of 4

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

19-00006A-15

2015464__

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

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

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

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

78 a. Section 393.135(2);

79 b. Section 394.4593(2);

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

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

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

85 f. Section 794.05;

86 g. Former s. 796.03;

87 h. Former s. 796.035;

Page 3 of 4

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19-00006A-15

2015464__

88 i. Section 800.04;

89 j. Section 810.145(8);

90 k. Section 825.1025;

91 l. Section 827.071;

92 m. Section 847.0133;

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

94 o. Section 847.0137;

95 p. Section 847.0138;

96 q. Section 847.0145;

97 r. Section 916.1075(2);

98 s. Section 985.701(1); or

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

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

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

Page 4 of 4

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 8, 2015

464

Meeting Date

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Bob Dillinger

Job Title Public Defender, 8th Circuit

Address 14250 49th Street North

Phone 727.464.6516

Street

Clearwater

Florida

33762

Email bdilling@weararethehope.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 922

INTRODUCER: Judiciary Committee and Senator Latvala

SUBJECT: Appointment of an Ad Litem

DATE: April 7, 2015 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	Favorable
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 922 authorizes a court to appoint an ad litem, which is an attorney, administrator, or guardian ad litem, for a person who is served by publication with notice of a lawsuit and fails to respond to the lawsuit. The purpose of the ad litem is to represent the interests of an absent party during a legal action if the party is not otherwise represented. An ad litem is not required to post bond. Additionally, the ad litem is entitled to reasonable fees and costs, assessed against the party requesting the appointment of the ad litem, or as otherwise ordered by the court. However, state funds may not be used to pay for services rendered by the ad litem, unless the state requested the ad litem.

The bill does not have a fiscal impact.

The bill has an effective date of July 1, 2015.

II. Present Situation:

Ad Litem

The term “ad litem” means “for the suit.”¹ An ad litem can take several forms, such as a guardian ad litem or an attorney ad litem. A guardian ad litem is typically an attorney, appointed by the

¹ BLACK’S LAW DICTIONARY (10th ed. 2014).

court to appear in a lawsuit on behalf of an incompetent party or minor child.² An attorney ad litem is a court-appointed lawyer who represents a child during the course of a legal action, such as a divorce, termination of parental rights, or child abuse case.³

Service of Process

The sheriff of the county where the person is to be served is generally responsible for serving as process server. The role of a process server is to serve summons, subpoenas, and other forms of process in civil and criminal actions.⁴ The term “to serve” means to make legal delivery of a notice or a pleading.⁵ A summons is a writ or a process beginning a plaintiff’s legal action and requiring a defendant to appear in court to answer the summons.⁶ A subpoena is a legal writ or order commanding a person to appear before a court or other tribunal.⁷ A subpoena can command a person to be present for a deposition or for a court appearance.

A process server generally must effect service of process by personal service or substitute service. Typically these types of service occur by:

- Serving the person directly or by leaving a copy of a complaint, petition, or initial pleading or paper at the person’s usual place of abode with a person who is 15 years old or older;
- Serving a person at his or her place of employment in a private area designated by the employer;
- Providing substitute service on a spouse if the cause of action is not an adversarial proceeding between the spouse and the person to be served, if the spouse requests service, and if the spouse and person to be served live together;
- Providing substitute service during regular hours at a business by leaving delivery with an employee or other person in charge if the person to be served is a sole proprietor and two attempts have been made to serve the owner.⁸

Constructive Service of Process

Constructive service of process is service accomplished by a method or circumstance that does not give actual notice.⁹ This method of providing notice is accomplished by publishing notice of a lawsuit in a newspaper or, in some circumstances, posting notice of a lawsuit in three different conspicuous places in the county.¹⁰ Constructive service is authorized only if personal service of process cannot be accomplished.¹¹

Florida law enumerates a number of legal actions for which constructive service of process is authorized:

² *Id.*

³ *Id.*

⁴ Sections 48.011 and 48.021, F.S.

⁵ BLACK’S LAW DICTIONARY (10th ed. 2014).

⁶ *Id.*

⁷ *Id.*

⁸ Section 48.031(1) and (2), F.S.

⁹ BLACK’S LAW DICTIONARY (10th ed. 2014).

¹⁰ Sections 49.10 and 49.11, F.S.

¹¹ Section 49.021, F.S.

- In real or personal property cases, to partition property within the jurisdiction of the court, enforce legal or equitable liens, enforce claims to title or interest, quiet title or to remove an encumbrance, lien, or cloud on property;
- For the dissolution of marriage or in an annulment case;
- For the termination of parental rights, temporary custody of a minor child, adoption, and in certain paternity actions;
- For the construction of a will, deed, contract, or other written instrument and for a judicial declaration or enforcement of any legal or equitable right, title, claim, lien or interest; and
- For a case in which a writ of replevin, garnishment, or attachment has been issued and executed.¹²

Service of process by publication may be made to:

- Known or unknown persons, and in some instances, persons unknown to be dead or alive;
- Corporations or other legal entities, whether foreign, domestic, or unknown, and dissolved or existing; and
- Any group, firm, entity, or persons who operate or do business, or have operated or done business in the state; and
- All claimants under any of the above intended recipients of process.¹³

Before effecting service on a person by publication, the plaintiff or the plaintiff's agent or attorney must file a sworn statement with the court which specifies the following:

- That a diligent search and inquiry has been made to discover the name and residence of the person to be served;
- That the person is either over or under the age of 18 years old, if known, or that age is unknown; and
- That if the residence of the person is unknown, in another state or country, or if in the state, the person has been absent from the state for more than 60 days or concealed himself or herself in the state so as not to be found.¹⁴

Before effecting service on a corporation by publication, the plaintiff must address in the sworn statement:

- That diligent search and inquiry has been made to discover the true name, domicile, principal place of business, and status (foreign, domestic, or dissolved) of the corporate defendant and others who would bind the corporation;
- Whether the corporation has ever qualified to do business in this state, unless the corporation is a Florida corporation; and
- That all officers, directors, managers, cashiers, and agents of the corporation are absent or cannot be found in the state, conceal themselves to avoid process, or that their whereabouts are unknown.¹⁵

Within 60 days after filing the sworn statement, the clerk or judge must issue a notice of action which provides:

¹² Section 49.011, F.S.

¹³ Section 49.021, F.S.

¹⁴ Section 49.041, F.S.

¹⁵ Section 49.051, F.S.

- The names of the known defendants or a description of the unknown defendants;
- The nature of the action or the proceeding;
- The name of the court in which the plaintiff initiated the action; and
- If relevant, the description of real property.¹⁶

Most notices of action are published once a week for four consecutive weeks in a newspaper published in the county where the court is located.¹⁷ If the county does not have a newspaper, three copies of the notice must be posted in three different and conspicuous places in the county, including the front door of the courthouse.¹⁸ Proof of publication is made by affidavit of the owner, publisher, editor, business manager, or other officer or employee of the newspaper.¹⁹

III. Effect of Proposed Changes:

This bill authorizes a court to appoint an ad litem to represent the interest of a party who fails to respond to a lawsuit after service of process by publication has been made. An ad litem is an attorney, administrator, or guardian ad litem. An ad litem may represent a party in any case for which service of process by publication is authorized, such as cases relating to real property, probate, and certain kinds of family law issues.

If a court appoints an ad litem, the court:

- May not require the ad litem to post a bond or designate a resident agent.
- May not appoint an ad litem to represent an interest for which a personal representative, guardian of property, or trustee is already serving.
- Must discharge the ad litem when final judgment is entered or as otherwise ordered by the court.
- Must assess the reasonable fees and costs of the ad litem against the party requesting the appointment of an ad litem, typically the plaintiff, or as otherwise ordered by the court. However, the bill prohibits the use of state funds for services rendered by the ad litem unless the state requested the ad litem.

The bill also expressly validates the adjudication of cases in which a court appointed an ad litem without statutory authority to make the appointment. Specifically, the bill states: “In all cases adjudicated in which the court appointed an ad litem, a proceeding may not be declared ineffective solely due to the lack of statutory authority to appoint an ad litem.”

The bill clarifies that it does not impede the common law authority of a court to appoint an ad litem.

This bill takes effect July 1, 2015.

¹⁶ Section 49.08, F.S.

¹⁷ Section 49.10(1)(a), F.S.

¹⁸ Section 49.11, F.S.

¹⁹ Section 49.10(2), 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:

According to the Real Property Probate, and Trust Law Section of the Florida Bar, CS/SB 922 will help protect the property rights of individuals who cannot be notified of lawsuits. The bill also preserves the marketability of title to real estate, which might be questioned if a person is not represented in a quiet title action or foreclosure proceeding.²⁰

The bill also validates previous legal proceedings in which a court appointed an ad litem to represent an unknown or unavailable defendant without express statutory authority to do so. This retroactive validation of legal proceedings likely benefits foreclosing lenders and title insurance companies by eliminating a potential ground for setting aside a foreclosure or judgment in a quiet title action.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) anticipates that the discretionary appointment of an ad litem will require the assessment of fees and costs, review of reports, and processing petitions for discharge, all of which would result in additional judicial time.²¹ While OSCA cannot accurately determine the bill's fiscal impact, if any, OSCA did not offer data to support the need for additional court resources to address the bill's workload requirements.

²⁰ Real Property Probate, and Trust Law Section of The Florida Bar, *White Paper: Proposed Revisions to s. 49.021, Fla. Stats., Concerning Appointment of Ad Litem* (Nov. 23, 2013) (on file with the Senate Committee on Judiciary).

²¹ Office of the State Courts Administrator, *2015 Judicial Impact Statement* (March 13, 2015).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 49.31 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 Judiciary on March 24, 2015:

The committee substitute:

- Removes the requirement that a personal representative must notify the court and petition for discharge where representation would overlap if the ad litem discovers that the person for whom the ad litem is serving is already represented;
- Removes the requirement that if an ad litem discovers that the person he or she represents is deceased, the ad litem must reasonably attempt to notify relatives and heirs, report to the court the contact of any persons located, and petition for discharge; and
- Prohibits the use of state funds for services rendered by the ad litem unless the state requested the ad litem.

- B. **Amendments:**

None.

By the Committee on Judiciary; and Senator Latvala

590-02843-15

2015922c1

A bill to be entitled

An act relating to the appointment of an ad litem; creating s. 49.31, F.S.; defining the term "ad litem"; authorizing a court to appoint an ad litem for certain parties upon whom service of process by publication is made; prohibiting a court from appointing an ad litem to represent an interest for which a personal representative, guardian of property, or trustee is serving; requiring an ad litem, upon discovery that the party he or she represents is already represented by a personal representative, guardian of property, or trustee, or is deceased, to take certain actions; prohibiting a court from requiring an ad litem to post a bond or designate a resident agent; requiring a court to discharge an ad litem when the final judgment is entered or as otherwise ordered by the court; providing that an ad litem is entitled to an award of a reasonable fee for services and costs; providing for assessment; prohibiting the use of state funds to pay fees for services rendered by the ad litem except in certain circumstances; prohibiting declaring certain proceedings ineffective solely due to a lack of statutory authority to appoint an ad litem; providing construction; providing an effective date.

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

Section 1. Section 49.31, Florida Statutes, is created to read:

Page 1 of 3

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

590-02843-15

2015922c1

49.31 Appointment of ad litem.—

(1) As used in this section, the term "ad litem" means an attorney, administrator, or guardian ad litem.

(2) The court may appoint an ad litem for any party, whether known or unknown, upon whom service of process by publication under this chapter has been properly made and who has failed to file or serve any paper in the action within the time required by law. A court may not appoint an ad litem to represent an interest for which a personal representative, guardian of property, or trustee is serving.

(a) If the court has appointed an ad litem and the ad litem discovers that a personal representative, guardian of property, or trustee is serving who represents the interest for which the ad litem was appointed, the ad litem must promptly report that finding to the court and must file a petition for discharge as to any interest for which the personal representative, guardian of property, or trustee is serving.

(b) If the court has appointed an ad litem to represent an interest and the ad litem discovers that the person whose interest he or she represents is deceased and there is no personal representative, guardian of property, or trustee to represent the decedent's interest, the ad litem must make a reasonable attempt to locate any spouse, heir, devisee, or beneficiary of the decedent, must report to the court the name and address of all such persons whom the ad litem locates, and must petition for discharge as to any interest of the person located.

(3) The court may not require an ad litem to post a bond or designate a resident agent in order to serve as an ad litem.

Page 2 of 3

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

590-02843-15

2015922c1

59 (4) The court shall discharge the ad litem when the final
60 judgment is entered or as otherwise ordered by the court.

61 (5) The ad litem is entitled to an award of a reasonable
62 fee for services rendered and costs, which shall be assessed
63 against the party requesting the appointment of the ad litem, or
64 as otherwise ordered by the court. State funds may not be used
65 to pay fees for services rendered by the ad litem unless the ad
66 litem was requested by the state.

67 (6) In all cases adjudicated in which the court appointed
68 an ad litem, a proceeding may not be declared ineffective solely
69 due to lack of statutory authority to appoint an ad litem.

70 (7) This section does not abrogate a court's common law
71 authority to appoint an ad litem.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.8.15

Meeting Date

922

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Martha Edenfield

Job Title _____

Address 215 So Monroe Street #815

Phone 850-999-4100

Street

Tallahassee FL 32301

City

State

Zip

Email medenfield@deanmexel.com

Speaking: For Against Information

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

Representing The Real Property, Probate + Trust Law Section of the Florida Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on
Transportation, Tourism, and Economic
Development, *Chair*
Appropriations
Commerce and Tourism
Governmental Oversight and Accountability
Regulated Industries
Rules

SENATOR JACK LATVALA

20th District

March 24, 2015

The Honorable Joe Negron, Chair
Senate Appropriations Subcommittee on Criminal & Civil Justice
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Negron:

I respectfully request consideration of Senate Bill 922/Appointment of an Ad Litem by the Senate Appropriations Subcommittee on Criminal & Civil Justice at your earliest convenience. The bill was favorably referred by the Judiciary Committee on March 24.

This bill will provide a specific authority for a judge to appoint a representative for an individual who is personally absent from the court's jurisdiction in order to protect their property rights. Examples would include deployed military personnel or an individual who could not be located by the process server.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,


Jack Latvala
State Senator
District 20

Cc: Tin Sadberry, Staff Director; Michelle Sanders, Administrative Assistant

SENATE APPROPRIATIONS
RECEIVED
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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
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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/CS/SB 1082 (584212)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; Criminal Justice Committee; and Senator Altman and others

SUBJECT: Juvenile Justice

DATE: April 10, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1082 substantially amends two of Florida's current methods for transferring a juvenile to adult court for criminal prosecution. These transfer methods are indictment and direct file. It also amends current provisions requiring the court to impose juvenile and adult sanctions upon juveniles transferred to adult court.

The bill amends the indictment transfer statute, s. 985.56, F.S., by limiting the state attorney's authority to convene a grand jury to cases in which the juvenile is 14 years of age or older (currently available for juveniles of any age who are charged with an offense punishable by death or life imprisonment).

The bill amends the direct file transfer statute, s. 985.557, F.S., by eliminating the mandatory direct file system and modifying the discretionary direct file system to a two-tiered system based on the juvenile's age and enumerated offense.

- In the first tier, the state attorney may direct file a juvenile who is 16 years of age or older and less than 18 years at the time of the alleged offense if he or she committed an enumerated offense.
- In the second tier, the state attorney may direct file a juvenile who is 14 or 15 years of age at the time of the offense if he or she committed murder, manslaughter, or sexual battery.

The bill prohibits a juvenile from being transferred to adult court by indictment or direct file if the juvenile:

- Has a pending competency hearing in juvenile court; or
- Has been previously found to be incompetent and has not been restored to competency by a court.

The bill provides that a juvenile transferred to adult court by direct file who is found to have committed a violation of law or a lesser included offense may be sentenced as an adult, a youthful offender, or a juvenile. (Unlike current law, it never requires the court to impose adult sanctions.)

It removes, modifies, and adds criteria that the court must consider when determining whether these sanctions are appropriate. The court must include specific findings of fact and reasons for its decision to impose adult sanctions under the bill.

The bill provides a reverse waiver process that allows a juvenile who is transferred to adult court by direct file to request a court hearing to determine whether he or she will remain in adult court. The adult court, after considering certain factors, can waive the case back to juvenile court.

Finally, the bill requires the Department of Juvenile Justice (DJJ) to collect and annually report direct file data to the Legislature.

The Criminal Justice Impact Conference met on March 11, 2015, and determined that this bill will result in an indeterminate reduction in the Department of Corrections' need for prison beds. The bill is likely to reduce the number of juveniles transferred to the adult system and increase the number of juveniles within the juvenile justice system. The DJJ estimates that reducing the number of youth who are diverted into the adult system through direct file will have a fiscal impact of approximately \$43.2 million.

The bill also requires the DJJ to collect and report on specific data that will require modification of the Juvenile Justice Information (JJIS) System, which is estimated to cost \$93,600. The DJJ indicates that it cannot absorb this cost within existing resources.

This bill has an effective date of July 1, 2015.

II. Present Situation:

Transferring Juveniles to Adult Court

There are three methods of transferring a juvenile to adult court for prosecution: judicial waiver, indictment by a grand jury, or direct filing of an information by a prosecutor.

Judicial Waiver of Juvenile Court Jurisdiction

The judicial waiver process allows juvenile courts to waive jurisdiction to adult court on a case-by-case basis. Section 985.556, F.S., creates three types of judicial waivers:

- Voluntary Waiver - the juvenile requests to have his or her case transferred to adult court;¹
- Involuntary Discretionary Waiver - the state attorney may file a motion requesting the court to transfer any case where the juvenile is 14 years of age or older;² and
- Involuntary Mandatory Waiver - the state attorney must request the transfer of a juvenile 14 years of age or older if the juvenile:
 - Has been previously adjudicated delinquent for an enumerated felony³ and the juvenile is currently charged with a second or subsequent violent crime against a person; or
 - Was 14 years of age or older at the time of commission of a fourth or subsequent felony offense and the juvenile was previously adjudicated delinquent or had adjudication withheld for three felony offenses, and one or more of such felony offenses involved the use or possession of a firearm or violence against a person.⁴

If the state attorney files a motion to transfer a juvenile to adult court, the court must hold a hearing to determine whether the juvenile should be transferred.⁵ The court must consider a variety of statutorily articulated factors when determining whether transfer is appropriate (including, in part, the seriousness of the offense, the sophistication and maturity of the juvenile, the record and previous history of the juvenile, and whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner).⁶ The court must also provide an order specifying the reasons for its decision to impose adult sanctions.⁷

If a juvenile transferred to adult court by a voluntary or involuntary discretionary waiver is found to have committed the offense or a lesser included offense, the court may sentence the juvenile as an adult, a youthful offender, or a juvenile.⁸ If the transfer was by an involuntary mandatory waiver, the court must impose adult sanctions.⁹

Indictment by Grand Jury

Section 985.56, F.S., specifies that a juvenile of any age who is charged with an offense punishable by death or life imprisonment is subject to the jurisdiction of the juvenile courts unless and until an indictment is returned on the charge by a grand jury. If the grand jury returns an indictment on the charge, the juvenile must be transferred to adult court and be handled as an adult in every respect.¹⁰

¹ Section 985.556(1), F.S.

² Section 985.556(2), F.S.

³ The enumerated felonies listed in this subsection include the commission of, attempt to commit, or conspiracy to commit: murder; sexual battery; armed or strong-armed robbery; carjacking; home-invasion robbery; aggravated battery; aggravated assault; or burglary with an assault or battery.

⁴ Section 985.556(3), F.S.

⁵ Section 985.556(4), F.S.

⁶ Section 985.556(4)(c), F.S.

⁷ Section 985.556(4)(e), F.S.

⁸ Section 985.565(4)(a)2., F.S.

⁹ Section 985.565(4)(a)3., F.S.

¹⁰ Section 985.56(1), F.S. The charge punishable by death or life imprisonment must be transferred, as well as all other felonies or misdemeanors charged in the indictment which are based on the same act or transaction as the offense punishable by death or life imprisonment.

If the juvenile is found to have committed the offense punishable by death or life imprisonment, the court must sentence the juvenile as an adult.¹¹ If the juvenile is found not to have committed the indictable offense, but is found to have committed a lesser included offense or any other offense for which he or she was indicted as part of the criminal episode, the court may sentence the juvenile as an adult, as a youthful offender, or as a juvenile.¹²

Direct Filing an Information by the State Attorney

Direct file transfer under s. 985.557, F.S., can either be discretionary or mandatory. Direct file is the predominant transfer method, according to the DJJ.¹³

Discretionary Direct File

Section 985.557(1), F.S., allows the state attorney to file an information¹⁴ on certain juvenile cases when, in the state attorney's judgment and discretion, the offense requires that adult sanctions be considered or imposed. Specifically, the state attorney may file an information in adult court when a juvenile is:

- 14 or 15 years old and charged with one of the following felony offenses:
 - Arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated assault; aggravated stalking; murder; manslaughter; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; specified burglary of a dwelling or structure; burglary with an assault or battery; aggravated battery; any lewd or lascivious offense committed upon or in the presence of a person less than 16; carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony; grand theft; possessing or discharging any weapon or firearm on school property; home invasion robbery; carjacking; grand theft of a motor vehicle; or grand theft of a motor vehicle valued at \$20,000 or more if the child has a previous adjudication for grand theft of a motor vehicle.¹⁵
- 16 or 17 years old and charged with any felony offense;¹⁶ or
- 16 or 17 years old and charged with any misdemeanor, provided the juvenile has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which is a felony.¹⁷

If a juvenile transferred to adult court by discretionary direct file is found to have committed the offense or a lesser included offense, the court may sentence the juvenile as an adult, as a youthful offender, or as a juvenile.¹⁸

¹¹ Section 985.565(4)(a)1., F.S.

¹² *Id.*

¹³ In Fiscal Year 2013-2014, 1,322 juveniles were transferred to the adult system. Approximately 98% of those were transferred by direct file. Department of Juvenile Justice, *2015 Bill Analysis for SB 1082 (2015)* (on file with the Senate Criminal Justice Committee).

¹⁴ An "information" is the charging document that initiates prosecution. Section 985.557(4), F.S., provides that any information filed pursuant to the direct file statute may include all charges that are based on the same act, criminal episode, or transaction as the primary offenses.

¹⁵ Section 985.557(1)(a), F.S.

¹⁶ Section 985.557(1)(b), F.S.

¹⁷ *Id.*

¹⁸ Section 985.565(4)(a)2. and (b), F.S.

Mandatory Direct File

Section 985.557(2), F.S., requires the state attorney to file a case in adult court when the juvenile is:

- 16 or 17 years old at the time of the alleged offense and:
 - Has been previously adjudicated delinquent for an enumerated felony¹⁹ and the juvenile is currently charged with a second or subsequent violent crime against a person;
 - Is currently charged with a forcible felony²⁰ and has been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred within 45 days of each other;²¹ or
 - Is charged with committing or attempting to commit an offense listed in s. 775.087(2)(a)1.a.-q., F.S.,²² and during the commission of the offense the juvenile actually possessed or discharged a firearm or destructive device;²³ or
- Any age and is alleged to have committed an act that involves stealing a vehicle in which the juvenile caused serious bodily injury or death to a person who was not involved in the underlying offense while possessing the vehicle.²⁴

The court may sentence the following juveniles who are transferred to adult court by mandatory direct file as an adult, a youthful offender, or a juvenile:

- Juveniles found to have committed the offense or a lesser included offense who:
 - Are 16 or 17 years old at the time of the offense, the offense was listed in s. 775.087(2)(a)1.a.-q., F.S., and during the commission of the offense the juvenile actually possessed or discharged a firearm or destructive device; and
 - Are any age and the offense involved stealing a vehicle in which the juvenile caused serious bodily injury or death to a person who was not involved in the underlying offense while possessing the vehicle.²⁵

The court must impose adult sanctions on the following juveniles who are transferred to adult court by mandatory direct file and who are found to have committed the offense or a lesser included offense:

¹⁹ The enumerated felonies listed in this subsection include the commission of, attempt to commit, or conspiracy to commit: murder; sexual battery; armed or strong-armed robbery; carjacking; home-invasion robbery; aggravated battery; or aggravated assault.

²⁰ Section 776.08, F.S., defines “forcible felony” to mean treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

²¹ Section 985.557(2)(b), F.S., also states that this paragraph does not apply when the state attorney has good cause to believe that exceptional circumstances exist which preclude the just prosecution of the juvenile in adult court.

²² This list includes: murder; sexual battery; robbery; burglary; arson; aggravated assault; aggravated battery; kidnapping; escape; aircraft piracy; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; home-invasion robbery; aggravated stalking; trafficking in cannabis, trafficking in cocaine, capital importation of cocaine, trafficking in illegal drugs, capital importation of illegal drugs, trafficking in phencyclidine, capital importation of phencyclidine, trafficking in methaqualone, capital importation of methaqualone, trafficking in amphetamine, capital importation of amphetamine, trafficking in flunitrazepam, trafficking in gamma-hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol, trafficking in Phenethylamines, or other violation of s. 893.135(1), F.S.

²³ The terms “firearm” and “destructive device” are defined in s. 790.001, F.S.

²⁴ Section 985.557(2)(c), F.S.

²⁵ Section 985.565(4)(a)2., F.S.

- Juveniles 16 or 17 years old at the time of the offense who:
 - Have been previously adjudicated delinquent for an enumerated felony and the juvenile has been found to have committed a second or subsequent violent crime against a person; or
 - Have been found to have committed a forcible felony and have been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred within 45 days of each other.²⁶

Imposing Adult or Juvenile Sanctions

Judges often have discretion to impose adult or juvenile sanctions when a juvenile is transferred to adult court and is found to have committed the offense. In such instances, the judge must consider specified factors to determine whether adult or juvenile sanctions are appropriate. These include:

- The seriousness of the offense to the community and whether the community would best be protected by juvenile or adult sanctions;
- Whether the offense was committed in an aggressive, violent, premeditated, or willful manner;
- Whether the offense was against persons or against property;²⁷
- The sophistication and maturity of the offender;
- The record and previous history of the offender, including:
 - Previous contacts with the Department of Corrections (DOC), the DJJ, the former Department of Health and Rehabilitative Services (HRS), the Department of Children and Families (DCF), law enforcement agencies, and the courts;
 - Prior periods of probation;
 - Prior adjudications that the offender committed a delinquent act or violation of law as a child;
 - Prior commitments to the DJJ, former HRS, DCF, or other facilities or institutions;
- The prospects for adequate protection of the public and the likelihood of deterrence and reasonable rehabilitation of the offender if assigned to DJJ services and facilities;
- Whether the DJJ has appropriate programs, facilities, and services immediately available; and
- Whether adult sanctions would provide more appropriate punishment and deterrence to further violations of law than juvenile sanctions.²⁸

The court is required to consider a presentence investigation (PSI) report prepared by DOC regarding the suitability of a juvenile for disposition as an adult or juvenile.²⁹ The PSI report must include a comments section prepared by the DJJ, with its recommendations as to disposition.³⁰ The court must give all parties³¹ present at the disposition hearing an opportunity

²⁶ Section 985.565(4)(a)3., F.S.

²⁷ Greater weight is given to offenses against persons, especially if personal injury resulted.

²⁸ Section 985.565(1)(b), F.S.

²⁹ Section 985.565(3), F.S. This report requirement may be waived by the offender.

³⁰ *Id.*

³¹ *Id.* This includes the parent, guardian, or legal custodian of the offender; the offender's counsel; the state attorney; representatives of DOC and DJJ; the victim or victim's representative; representatives of the school system; and law enforcement involved in the case.

to comment on the issue of sentence and any proposed rehabilitative plan, and may receive and consider any other relevant and material evidence.³²

If juvenile sentences are imposed, the court must adjudge the juvenile to have committed a delinquent act.³³ Upon adjudicating a juvenile delinquent, the court may:

- Place the juvenile in a probation program under the supervision of the DJJ for an indeterminate period of time until he or she reaches the age of 19 years or sooner if discharged by order of the court;
- Commit the juvenile to the DJJ for treatment in an appropriate program for an indeterminate period of time until he or she is 21 or sooner if discharged by the DJJ;³⁴ or
- Order disposition under ss. 985.435,³⁵ 985.437,³⁶ 985.439,³⁷ 985.441,³⁸ 985.45,³⁹ and 985.455⁴⁰, F.S., as an alternative to youthful offender or adult sentencing if the court determines not to impose youthful offender or adult sanctions.⁴¹

If the court imposes a juvenile sanction and the DJJ determines that the sanction is unsuitable for the juvenile, the DJJ must return custody of the juvenile to the sentencing court for further proceedings, including the imposition of adult sanctions.⁴²

Any sentence imposing adult sanctions is presumed appropriate, and the court is not required to set forth specific findings or list the criteria used as any basis for its decision to impose adult sanctions.⁴³

The court may not sentence the juvenile to a combination of adult and juvenile punishments.⁴⁴

Effect of Transferring a Juvenile to Adult Court

If a juvenile transferred to adult court for prosecution is found to have committed the offense or a lesser included offense, the juvenile must have any subsequent violations of law handled

³² *Id.* Other relevant evidence may include other reports, written or oral, in its effort to determine the action to be taken with regard to the child. This evidence may be relied upon by the court to the extent of its probative value even if the evidence would not be competent in an adjudicatory hearing.

³³ Section 985.565(4)(b), F.S. Adjudication of delinquency is not deemed a conviction, nor does it operate to impose any of the civil disabilities ordinarily resulting from a conviction.

³⁴ DJJ must notify the court of its intent to discharge the juvenile from the commitment program no later than 14 days prior to discharge. Failure of the court to timely respond to the department's notice shall be considered approval for discharge.

³⁵ Probation and postcommitment probation or community service.

³⁶ Restitution.

³⁷ Violation of probation or postcommitment probation.

³⁸ Commitment.

³⁹ Work program liability and remuneration.

⁴⁰ Other dispositional issues.

⁴¹ Section 985.565(4)(b), F.S.

⁴² *Id.* DJJ also has recourse if the judge imposes a juvenile sanction and the juvenile proves not to be suitable to the sanction. In such instances, DJJ must provide the sentencing court a written report outlining the basis for its objections to the juvenile sanction and schedule a hearing. Upon hearing, the court may revoke the previous adjudication, impose an adjudication of guilt, and impose any adult sanction it may have originally lawfully imposed, s. 985.565(4)(c), F.S.

⁴³ Section 985.565(4)(a)4., F.S.

⁴⁴ Section 985.565(4)(b), F.S.

thereafter in every respect as an adult.⁴⁵ The court must also immediately transfer and certify all unresolved⁴⁶ felony cases pertaining to the juvenile to adult court for prosecution.⁴⁷

If the juvenile is acquitted of all charged offenses (or lesser included offenses) contained in the original direct filed case, all felony cases transferred to adult court as a result of the direct file case must be subject to juvenile sanctions.⁴⁸

Juvenile Transfer Statistics from the DJJ

Since Fiscal Year 2008-2009, there has been a significant reduction (53%) in juveniles transferred to adult court, as well as a significant reduction in the overall incidence of juvenile crime. In Fiscal Year 2012-2013, there were a total of 1,535 juvenile transfers, most of which related to a felony offense (96%).⁴⁹ The majority of the juveniles transferred to adult court were 16 or 17 years old.⁵⁰ During Fiscal Year 2008-2009 through Fiscal Year 2012-2013, there were only two juveniles transferred who were 11-12 years of age and none who were ages five to ten.⁵¹

In Fiscal Year 2012-2013, the most common offenses which resulted in juveniles being transferred to adult court included:

- Burglary (481 youth);
- Armed robbery (260 youth);
- Aggravated assault or battery (185 youth);
- Weapon-related felonies (98 youth);
- Drug-related felonies (75 youth);
- Robbery (73 youth);
- Sexual battery (59 youth); and
- Grand theft auto (44 youth).⁵²

III. Effect of Proposed Changes:

The bill substantially amends two of Florida's current methods for transferring a juvenile to adult court for criminal prosecution. These transfer methods are indictment and direct file. It also amends current provisions requiring the court to impose juvenile or adult sanctions upon juveniles transferred to the adult court.

⁴⁵ Sections 985.556(5), 985.56(4), and 985.557(3), F.S. This provision does not apply if the adult court imposes juvenile sanctions under s. 985.565, F.S.

⁴⁶ Unresolved cases include those which have not yet resulted in a plea of guilty or nolo contendere or in which a finding of guilt has not been made. See s. 985.557(3), F.S.

⁴⁷ Sections 985.556(5), 985.56(4), and 985.557(3), F.S.

⁴⁸ *Id.*

⁴⁹ Department of Juvenile Justice Delinquency Profile 2012-2013 (hereinafter referenced as "Delinquency Profile").

⁵⁰ 385 out of the 1,585 total youth transferred to criminal court in Fiscal Year 2012-2013 were 16 years old at the time they committed the offense (25%), while 1,016 were 17 years old or older when they committed the offense (66%). *Age at Arrest - Youth Transferred Statewide*, Delinquency Profile.

⁵¹ *Id.*

⁵² *Felonies – Youth Transferred Statewide*, Delinquency Profile and s. 812.14(1)(c)6., F.S.

Direct Filing an Information by the State Attorney

The bill amends s. 985.557, F.S., by eliminating the mandatory direct file system and modifying the discretionary direct file system to a two-tiered system based on the juvenile's age and enumerated offense.

Tier One

The bill permits the state attorney to file an information in adult court when, in his or her judgment and discretion, the public interest requires that adult sanctions be considered and:

- The juvenile is 16 years of age or older and less than 18 years of age at the time of the alleged offense; and
- The juvenile committed, or attempted to commit, one of the following enumerated offenses:
 - Murder;
 - Manslaughter;
 - Sexual battery as defined in s. 794.011(3), F.S.;
 - Armed robbery;
 - Aggravated assault with a firearm;
 - Aggravated child abuse;
 - Aggravated stalking;
 - Kidnapping;
 - Unlawful throwing, placing, or discharging of a destructive device and bomb;
 - Aggravated battery resulting in great bodily harm, permanent disability, or permanent disfigurement;
 - Carrying, displaying, using, or threatening or attempting to use a weapon or firearm in furtherance of the commission of a felony, provided the use or threatened use does not include the mere acquisition of a deadly weapon or firearm during the felony;
 - Possessing or discharging a firearm on school property in violation of s. 790.115, F.S.;
 - Home invasion robbery;
 - Carjacking;
 - Aggravated animal cruelty by intentional acts;
 - DUI resulting in fatality, great bodily harm, permanent disability, or permanent disfigurement to a person; or
 - Arson in violation of s. 806.031.

Tier Two

The bill allows the state attorney to file an information in adult court when, in his or her judgment and discretion, the public interest requires adult sanctions be considered and:

- The juvenile is 14 or 15 years of age at the time of the alleged offense; and
- The juvenile committed, or attempted to commit, one of the following enumerated offenses:
 - Murder;
 - Manslaughter; or
 - Sexual battery in violation of s. 794.011(3).

A juvenile eligible for direct file cannot be transferred if he or she has:

- A pending competency hearing in juvenile court; or

- Been previously found to be incompetent to proceed and has not been restored to competency by a court.

The bill allows, rather than requires, the court to transfer any unresolved felony cases when the transfer is by direct file.

The bill allows a juvenile who is transferred by direct file to request a court hearing, in writing, to determine whether he or she will remain in adult court. The adult court, after considering certain factors, can waive the case back to juvenile court under the bill. These factors include the seriousness of the offense, the extent of the juvenile's alleged participation or role in the offense, the sophistication and maturity of the juvenile, and any prior offenses. This process is called a reverse waiver under the bill.

The bill also requires the DJJ to collect and annually report data to the President of the Senate and Speaker of the House of Representatives relating to juveniles who qualify for transfer by direct file. This data includes, but is not limited to the following:

- Age;
- Race and ethnicity;
- Gender;
- Circuit and county of residence;
- Circuit and county of offense;
- Prior adjudicated offenses;
- Prior periods of probation;
- Previous contacts with law enforcement agencies or the courts;
- Initial charges;
- Charges at disposition;
- Whether adult codefendants were involved;
- Whether child codefendants were involved who were transferred to adult court;
- Whether the child was represented by counsel;
- Whether the child had waived counsel;
- Risk assessment instrument score;
- The child's medical, mental health, substance abuse, or trauma history;
- The child's history of physical or mental impairment or disability-related accommodations;
- The child's history of abuse or neglect;
- The child's history of foster care placements, including the number of prior placements;
- Whether the child has experienced a failed adoption;
- Whether the child has fetal alcohol syndrome or was exposed to controlled substances at birth;
- Whether the child has below-average intellectual functioning or is eligible for exceptional student education services;
- Whether the child has received mental health services or treatment;
- Whether the child has been the subject of a CINS/FINS or dependency petition;
- Plea offers made by the state and the outcome of any plea offers;
- Whether the child was transferred for criminal prosecution as an adult;
- The case resolution in juvenile court;

- The case resolution in adult court; and
- Disposition data, including, but not limited to, whether the child received adult sanctions, juvenile sanctions, or diversion, and, if sentenced to prison, length of prison sentence or enhanced sentence.

Indictment by Grand Jury

The bill amends s. 985.56, F.S., by:

- Limiting the state attorney's authority to convene a grand jury to apply to juveniles who are 14 years of age or older (currently available for juveniles of any age charged with an offense punishable by death or life imprisonment).
- Allowing, rather than requiring, the court to transfer any unresolved felony cases upon a returned indictment; and
- Prohibiting a juvenile who is eligible for indictment from being transferred to adult court for criminal prosecution if the juvenile is pending a competency hearing in juvenile court or has been previously found to be incompetent and has not been restored to competency by a court.

Imposing Adult or Juvenile Sanctions

Unlike current law, the bill never requires the court to impose adult sanctions. Instead, the bill amends s. 985.565, F.S., to provide that a juvenile who is transferred by direct file or judicial waiver and found to have committed a violation of law or a lesser included offense may be sentenced as:

- An adult;
- A youthful offender under ch. 958, F.S.; or
- A juvenile.

It also amends this section by modifying existing criteria and adding additional criteria the court must consider when determining whether juvenile sanctions or adult sanctions are appropriate.

The bill includes the following additional criteria for courts to consider:

- The extent of the juvenile's participation or role in the offense;
- The effect, if any, of familial or peer pressure on the juvenile's actions; and
- Whether DOC has appropriate programs, facilities, and services immediately available for the juvenile.

The bill modifies the following existing criteria that a court considers:

- The sophistication and maturity of the juvenile, including:
 - The juvenile's age, intellectual capacity, and mental and emotional health at the time of the offense;
 - The juvenile's background, including his or her family, home, and community environment;
 - The effect, if any, of immaturity, impetuosity, or failure to appreciate the risks and consequences on the juvenile's participation in the offense; and
 - The effect, if any, of characteristics attributable to the juvenile's age on his or her judgment.
- The record and previous history of the juvenile, including:

- Previous contacts with the DOC, the DJJ, HRS, and the DCF and the adequacy and appropriateness of any services provided to address the juvenile's needs;
- Previous contacts with law enforcement agencies and the courts;
- History of abuse, abandonment, or neglect; and
- Identification of the juvenile as having a mental, physical, or intellectual or developmental disability or having previously received mental health services or treatment.

The bill removes the provision allowing the court to consider whether adult sanctions would provide more appropriate punishment and deterrence to further violations of law than the imposition of juvenile sanctions.

The bill requires the court to render an order including specific findings of fact and the reasons for its decisions to impose adult sanctions. The order is reviewable on appeal under s. 985.534, F.S., and the Florida Rules of Appellate Procedure.

The bill requires the court to consider any reports that may assist the court in its decision to impose juvenile or adult sanctions. These include, but are not limited to: prior predisposition reports; psychosocial assessments; individual education plans; developmental assessments; school records; abuse or neglect reports; home studies; protective investigations; and psychological or psychiatric evaluations.

Under the bill, the juvenile, state attorney, and defense counsel have the right to examine these reports, and to question the parties responsible for them at the hearing.

The bill also amends this section by removing the prohibition on imposing both adult and juvenile sanctions, as well as the requirement that the DJJ return the juvenile to the sentencing court for further proceedings if the department determines that the sanction is inappropriate. (The bill does not, however, change another section of current law requiring the DJJ to provide the sentencing court with written reasons upon determining that a juvenile is not suitable to a commitment program, juvenile probation program, or a treatment program within the department. A court must then determine whether to resentence the juvenile.)

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:

The Criminal Justice Impact Conference (CJIC) met on March 11, 2015, and determined that PCS/CS/SB 1082 will have a negative indeterminate prison bed impact on the DOC (i.e., an unquantifiable reduction in the need for prison beds).

According to the DJJ, the bill is likely to reduce the number of juveniles transferred to the adult system and increase the number of juveniles within the juvenile justice system. The DJJ estimates that this will result in at least 835 additional youth remaining in the juvenile system who would be diverted into the adult system under current practice. The DJJ also estimates that 20% of these youth will be placed in probation, 25% in non-secure commitment, and 55% in secure commitment. Based upon these estimates and using the average per diem rates and average cost per youth supervision rates for Fiscal Year 2013-2014, The DJJ projects that this portion of the bill will have a fiscal impact of approximately \$43.2 million.⁵³

The bill also requires the DJJ to collect and report on specific data that will require modification of the Juvenile Justice Information (JJIS) System, which the DJJ estimates will cost \$93,600.⁵⁴ The DJJ indicates that it cannot absorb this cost within existing resources.⁵⁵

VI. Technical Deficiencies:

The bill appears to delete language that mandates how the court must sentence a juvenile who has been transferred to adult court by indictment. The word “indictment” may need to be added on line 413 to ensure that the court has authority to sentence such a juvenile as an adult, a youthful offender, or a juvenile.

⁵³ Email from Department of Juvenile Justice dated April 10, 2015 (on file with Senate Appropriations Subcommittee on Criminal and Civil Justice),

⁵⁴ Department of Juvenile Justice, *2015 Bill Analysis for SB 1082* (2015) (on file with the Senate Criminal Justice Committee.)

⁵⁵ *Supra* note 55.

VII. Related Issues:

The DJJ indicates that the reconfiguration of the JJIS system that will be required to capture the pertinent data elements under the bill may take up to 6 months to complete, making implementation by the effective date (July 1, 2015) difficult.⁵⁶

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 985.265, 985.557, 985.56, and 985.565.

This bill makes technical and conforming changes to the following sections of the Florida Statutes: 985.556, 985.04, 985.15, 985.265, and 985.514.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on April 7, 2015:

The committee substitute removes the section of the bill that would have deleted s. 985.265(5), F.S., which requires the court to order a juvenile who is being transferred or indicted for criminal prosecution as an adult to be detained in an adult jail.

CS by Criminal Justice on March 23, 2015:

- Deletes the judicial waiver provisions in the bill.
- Lowers the age of a juvenile who can be transferred to adult court by indictment from 16 years or older to 14 years or older.
- Deletes the repeal of the direct file transfer statute, s. 985.557, F.S.
- Amends the direct file transfer statute by eliminating the mandatory direct file system and modifying the discretionary direct file system to a two-tiered system based on the juvenile's age and enumerated offense.
- Provides a reverse waiver process that allows a juvenile who is transferred to adult court by direct file to request a court hearing to determine whether he or she will remain in adult court or be waived back to juvenile court.
- Deletes the provision requiring the Secretary of DJJ to transfer juveniles younger than 18 years who have been sentenced to the DOC from the DOC to the DJJ.

- B. **Amendments:**

None.

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

⁵⁶ *Supra*



820944

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Evers) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 61 - 121.
4 ===== T I T L E A M E N D M E N T =====
5 And the title is amended as follows:
6 Delete lines 2 - 5
7 and insert:
8 An act relating to juvenile justice; amending

By the Committee on Criminal Justice; and Senators Altman, Soto,
and Gibson

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1 A bill to be entitled
2 An act relating to juvenile justice; amending s.
3 985.265, F.S.; deleting provisions requiring the court
4 to order the delivery of a child to a jail or other
5 facility intended or used to detain adults; amending
6 s. 985.557, F.S.; revising the circumstances under
7 which the state attorney is authorized to file an
8 information when a child of a certain age range
9 commits or attempts to commit specified crimes;
10 deleting a requirement that a state attorney file an
11 information under certain circumstances; revising the
12 effects of the direct filing of a child; prohibiting
13 the transfer of a child under certain circumstances
14 based on the child's competency; requiring the court
15 to consider certain factors after a written request is
16 made for a hearing; authorizing the court, based on
17 these factors, to waive the case back to juvenile
18 court; requiring the Department of Juvenile Justice to
19 collect specified data under certain circumstances;
20 requiring the department to provide an annual report
21 to the Legislature; amending s. 985.56, F.S.; revising
22 the age of a child who is subject to the jurisdiction
23 of a court for certain crimes; prohibiting the
24 transfer of a child under certain circumstances based
25 on the child's competency; removing provisions
26 regarding sentencing of a child; authorizing, rather
27 than requiring, a court to transfer a child indicted
28 under certain circumstances; amending s. 985.565,
29 F.S.; revising the criteria in determining whether to

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30 impose juvenile or adult sanctions; requiring the
31 adult court to render an order including specific
32 findings of fact and the reasons for its decision;
33 providing that the order is reviewable on appeal;
34 requiring the court to consider any reports that may
35 assist it; providing for the examination of the
36 reports; revising how a child may be sanctioned under
37 certain circumstances; removing a provision which
38 requires a court to impose adult sanctions under
39 certain circumstances; requiring the court to explain
40 the basis for imposing adult sanctions; revising when
41 juvenile sanctions may be imposed; amending s.
42 985.556, F.S.; conforming a cross-reference;
43 reenacting s. 985.04(2), F.S., relating to oaths,
44 records, and confidential information, to incorporate
45 the amendments made to ss. 985.557, 985.56, and
46 985.565, F.S., in a reference thereto; reenacting ss.
47 985.15(1), 985.265(5), and 985.556(3), F.S., relating
48 to filing decisions; detention transfer and release,
49 education, and adult jails; and waiver of juvenile
50 court jurisdiction and hearings, respectively, to
51 incorporate the amendment made to s. 985.557, F.S., in
52 references thereto; reenacting ss. 985.514(3) and
53 985.556(5)(a), F.S., relating to responsibility for
54 cost of care and fees, and waiver of juvenile court
55 jurisdiction and hearings, respectively, to
56 incorporate the amendment made to s. 985.565, F.S., in
57 references thereto; providing an effective date.
58

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

60
61 Section 1. Section 985.265, Florida Statutes, is amended to
62 read:

63 985.265 Detention transfer and release; education, ~~adult~~
64 ~~jails.~~-

65 (1) If a child is detained under this part, the department
66 may transfer the child from nonsecure detention care to secure
67 detention care only if significantly changed circumstances
68 warrant such transfer.

69 (2) If a child is on release status and not detained under
70 this part, the child may be placed into secure or nonsecure
71 detention care only pursuant to a court hearing in which the
72 original risk assessment instrument and the newly discovered
73 evidence or changed circumstances are introduced into evidence
74 with a rescored risk assessment instrument.

75 (3) (a) When a juvenile sexual offender is placed in
76 detention, detention staff shall provide appropriate monitoring
77 and supervision to ensure the safety of other children in the
78 facility.

79 (b) When a juvenile is released from secure detention or
80 transferred to nonsecure detention, detention staff shall
81 immediately notify the appropriate law enforcement agency,
82 school personnel, and victim if the juvenile is charged with
83 committing any of the following offenses or attempting to commit
84 any of the following offenses:

- 85 1. Murder, under s. 782.04;
- 86 2. Sexual battery, under chapter 794;
- 87 3. Stalking, under s. 784.048; or

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88 4. Domestic violence, as defined in s. 741.28.

89 (4) (a) While a child who is currently enrolled in school is
90 in nonsecure detention care, the child shall continue to attend
91 school unless otherwise ordered by the court.

92 (b) While a child is in secure detention care, the child
93 shall receive education commensurate with his or her grade level
94 and educational ability.

95 ~~(5) The court shall order the delivery of a child to a jail~~
96 ~~or other facility intended or used for the detention of adults:~~

97 ~~(a) When the child has been transferred or indicted for~~
98 ~~criminal prosecution as an adult under part X, except that the~~
99 ~~court may not order or allow a child alleged to have committed a~~
100 ~~misdemeanor who is being transferred for criminal prosecution~~
101 ~~pursuant to either s. 985.556 or s. 985.557 to be detained or~~
102 ~~held in a jail or other facility intended or used for the~~
103 ~~detention of adults; however, such child may be held temporarily~~
104 ~~in a detention facility; or~~

105 ~~(b) When a child taken into custody in this state is wanted~~
106 ~~by another jurisdiction for prosecution as an adult.~~

107
108 ~~The child shall be housed separately from adult inmates to~~
109 ~~prohibit a child from having regular contact with incarcerated~~
110 ~~adults, including trustees. "Regular contact" means sight and~~
111 ~~sound contact. Separation of children from adults shall permit~~
112 ~~no more than haphazard or accidental contact. The receiving jail~~
113 ~~or other facility shall contain a separate section for children~~
114 ~~and shall have an adequate staff to supervise and monitor the~~
115 ~~child's activities at all times. Supervision and monitoring of~~
116 ~~children includes physical observation and documented checks by~~

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117 ~~jail or receiving facility supervisory personnel at intervals~~
 118 ~~not to exceed 10 minutes. This subsection does not prohibit~~
 119 ~~placing two or more children in the same cell. Under no~~
 120 ~~circumstances shall a child be placed in the same cell with an~~
 121 ~~adult.~~

122 Section 2. Section 985.557, Florida Statutes, is amended to
 123 read:

124 (Substantial rewording of section. See
 125 s. 985.557, F.S., for present text.)

126 985.557 Direct filing of an information.-

127 (1) DIRECT FILE.-

128 (a) With respect to a child who was 16 years of age or
 129 older or less than 18 years of age at the time the alleged
 130 offense was committed, the state attorney may file an
 131 information if, in the state attorney's judgment and discretion,
 132 the public interest requires that adult sanctions be considered
 133 and the offense charged is for the commission of or attempt to
 134 commit:

135 1. Murder;

136 2. Manslaughter;

137 3. Sexual battery as defined in s. 794.011(3);

138 4. Armed robbery;

139 5. Aggravated assault with a firearm;

140 6. Aggravated child abuse;

141 7. Arson in violation of S. 806.031;

142 8. Kidnapping;

143 9. Unlawful throwing, placing, or discharging of a
 144 destructive device or bomb;

145 10. Aggravated battery resulting in great bodily harm,

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146 permanent disability, or permanent disfigurement;

147 11. Carrying, displaying, using, or threatening or
 148 attempting to use a weapon or firearm in furtherance of the
 149 commission of a felony, if the use or threatened use does not
 150 include the mere acquisition of a deadly weapon or firearm
 151 during the felony;

152 12. Possessing or discharging a firearm on school property
 153 in violation of s. 790.115;

154 13. Home invasion robbery;

155 14. Aggravated stalking;

156 15. Carjacking;

157 16. Aggravated animal cruelty by intentional acts; or

158 17. DUI resulting in fatality, great bodily harm, permanent
 159 disability, or permanent disfigurement to a person.

160 (b) With respect to a child who was 14 or 15 years of age
 161 at the time the alleged offense was committed, the state
 162 attorney may file an information if, in the state attorney's
 163 judgment and discretion, the public interest requires that adult
 164 sanctions be considered and the offense charged is for the
 165 commission of or attempt to commit:

166 1. Murder;

167 2. Manslaughter; or

168 3. Sexual battery in violation of S. 794.011(3).

169 (2) EFFECT OF DIRECT FILE.-

170 (a) When a child is transferred for criminal prosecution as
 171 an adult, the court may transfer and certify to the adult
 172 circuit court for prosecution of the child as an adult all
 173 related felony cases pertaining to the child which have not yet
 174 resulted in a plea of guilty or nolo contendere or in which a

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175 finding of guilt has not been made. If the child is acquitted of
 176 all charged offenses or lesser included offenses contained in
 177 the original case transferred to adult court, any felony cases
 178 that were transferred to adult court under this subsection are
 179 subject to the same penalties they were subject to before their
 180 transfer.

181 (b) Once a child has been convicted and sentenced to adult
 182 sanctions pursuant to this section, he or she shall be handled
 183 as an adult for any subsequent violation of state law, unless
 184 the court imposes juvenile sanctions under s. 985.565.

185 (3) TRANSFER PROHIBITION.—Notwithstanding any other law, a
 186 child who is eligible for direct file and who is pending a
 187 competency hearing in juvenile court or has previously been
 188 found to be incompetent and has not been restored to competency
 189 by a court may not be transferred to adult court for criminal
 190 prosecution.

191 (4) REVERSE WAIVER.—A child who is transferred to adult
 192 court pursuant to this section may request, in writing, a
 193 hearing to determine whether he or she shall remain in adult
 194 court. The adult court, in determining whether public safety
 195 would be best served by retaining jurisdiction, shall consider
 196 the seriousness of the offense, the extent of the child's
 197 alleged participation or role in the offense, the sophistication
 198 and maturity of the child, and any prior offenses the child has
 199 committed. The adult court may, based on these considerations,
 200 waive the case back to juvenile court.

201 (5) DATA COLLECTION RELATING TO DIRECT FILE.—

202 (a) The department shall collect data regarding children
 203 who qualify for direct file under subsection (1), including, but

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204 not limited to:

205 1. Age;

206 2. Race and ethnicity;

207 3. Gender;

208 4. Circuit and county of residence;

209 5. Circuit and county of offense;

210 6. Prior adjudicated offenses;

211 7. Prior periods of probation;

212 8. Previous contacts with law enforcement agencies or the
 213 courts;

214 9. Initial charges;

215 10. Charges at disposition;

216 11. Whether adult codefendants were involved;

217 12. Whether child codefendants were involved who were
 218 transferred to adult court;

219 13. Whether the child was represented by counsel;

220 14. Whether the child has waived counsel;

221 15. Risk assessment instrument score;

222 16. The child's medical, mental health, substance abuse, or
 223 trauma history;

224 17. The child's history of physical or mental impairment or
 225 disability-related accommodations;

226 18. The child's history of abuse or neglect;

227 19. The child's history of foster care placements,
 228 including the number of prior placements;

229 20. Whether the child has fetal alcohol syndrome or was
 230 exposed to controlled substances at birth;

231 21. Whether the child has below-average intellectual
 232 functioning or is eligible for exceptional student education

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233 services;234 22. Whether the child has received mental health services
235 or treatment;236 23. Whether the child has been the subject of a CINS/FINS
237 or dependency petition;238 24. Plea offers made by the state and the outcome of any
239 plea offers;240 25. Whether the child was transferred for criminal
241 prosecution as an adult;242 26. The case resolution in juvenile court; or243 27. The case resolution in adult court.244 (b) When a child is transferred for criminal prosecution as
245 an adult, the department shall also collect disposition data,
246 including, but not limited to, whether the child received adult
247 sanctions, juvenile sanctions, or diversion, and, if sentenced
248 to prison, length of prison sentence or enhanced sentence.249 (c) The department shall annually provide a report
250 analyzing this aggregated data to the President of the Senate
251 and the Speaker of the House of Representatives.252 Section 3. Section 985.56, Florida Statutes, is amended to
253 read:

254 985.56 Indictment of a juvenile.—

255 (1) A child 14 years of age or older ~~of any age~~ who is
256 charged with a violation of state law punishable by death or by
257 life imprisonment is subject to the jurisdiction of the court as
258 set forth in s. 985.0301(2) unless and until an indictment on
259 the charge is returned by the grand jury. When such indictment
260 is returned, the petition for delinquency, if any, must be
261 dismissed and the child must be tried ~~and handled in every~~

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262 ~~respect~~ as an adult:263 (a) On the indicting offense ~~punishable by death or by life~~
264 ~~imprisonment; and~~265 (b) On all other felonies or misdemeanors charged in the
266 indictment which are based on the same act or transaction as the
267 indicting offense ~~punishable by death or by life imprisonment or~~
268 ~~on one or more acts or transactions connected with the offense~~
269 ~~punishable by death or by life imprisonment.~~270 (2) An adjudicatory hearing may not be held until 21 days
271 after the child is taken into custody and charged with having
272 committed an indictable offense ~~punishable by death or by life~~
273 ~~imprisonment~~, unless the state attorney advises the court in
274 writing that he or she does not intend to present the case to
275 the grand jury, or has presented the case to the grand jury and
276 the grand jury has not returned an indictment. If the court
277 receives such a notice from the state attorney, or if the grand
278 jury fails to act within the 21-day period, the court may
279 proceed as otherwise authorized under this part.280 (3) Notwithstanding any other law, a child who is eligible
281 for indictment and who is pending a competency hearing in
282 juvenile court or has been previously found to be incompetent
283 and has not been restored to competency by a court may not be
284 transferred to adult court for criminal prosecution ~~If the child~~
285 ~~is found to have committed the offense punishable by death or by~~
286 ~~life imprisonment, the child shall be sentenced as an adult. If~~
287 ~~the juvenile is not found to have committed the indictable~~
288 ~~offense but is found to have committed a lesser included offense~~
289 ~~or any other offense for which he or she was indicted as a part~~
290 ~~of the criminal episode, the court may sentence under s.~~

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291 ~~985.565.~~

292 (4) (a) Once a child has been indicted pursuant to this
 293 section and has been found to have committed any offense for
 294 which he or she was indicted as a part of the criminal episode,
 295 the child shall be handled thereafter ~~in every respect as if~~ an
 296 adult for any subsequent violation of state law, unless the
 297 court imposes juvenile sanctions under s. 985.565.

298 (b) When a child has been indicted pursuant to this
 299 section, the court ~~may shall immediately~~ transfer and certify to
 300 the adult circuit court all related felony cases pertaining to
 301 the child, for prosecution of the child as an adult, which have
 302 not yet resulted in a plea of guilty or nolo contendere or in
 303 which a finding of guilt has not been made. If the child is
 304 acquitted of all charged offenses or lesser included offenses
 305 contained in the indictment case, any all felony cases that were
 306 transferred to adult court pursuant to this paragraph shall be
 307 subject to the same penalties such cases were subject to before
 308 being transferred to adult court.

309 Section 4. Subsection (1), paragraph (c) of subsection (3),
 310 and subsection (4) of section 985.565, Florida Statutes, are
 311 amended to read:

312 985.565 Sentencing powers; procedures; alternatives for
 313 juveniles prosecuted as adults.—

314 (1) POWERS OF DISPOSITION.—

315 (a) A child who is found to have committed a violation of
 316 law may, as an alternative to adult dispositions, be committed
 317 to the department for treatment in an appropriate program for
 318 children outside the adult correctional system or be placed on
 319 juvenile probation.

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320 (b) In determining whether to impose juvenile or sanctions
 321 ~~instead of~~ adult sanctions, the court shall consider the
 322 following criteria:

323 1. The seriousness of the offense to the community and
 324 whether the protection of the community would be best served ~~be~~
 325 ~~protected~~ by juvenile or adult sanctions.

326 2. The extent of the child's participation in the offense.

327 3. The effect, if any, of familial or peer pressure on the
 328 child's actions.

329 4.2. Whether the offense was committed in an aggressive,
 330 violent, premeditated, or willful manner.

331 5.3. Whether the offense was against persons or against
 332 property, with greater weight being given to offenses against
 333 persons, especially if personal injury resulted.

334 6.4. The sophistication and maturity of the child,
 335 including: offender

336 a. The child's age, maturity, intellectual capacity, and
 337 mental and emotional health at the time of the offense.

338 b. The child's background, including his or her family,
 339 home, and community environment.

340 c. The effect, if any, of immaturity, impetuosity, or
 341 failure to appreciate the risks and consequences on the child's
 342 participation in the offense.

343 d. The effect, if any, of characteristics attributable to
 344 the child's age on the child's judgment.

345 7.5. The record and previous history of the child offender,
 346 including:

347 a. Previous contacts with the Department of Corrections,
 348 the Department of Juvenile Justice, the former Department of

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349 Health and Rehabilitative Services, the Department of Children
 350 and Families, ~~law enforcement agencies, and the courts~~ and the
 351 adequacy and appropriateness of the services provided to address
 352 the child's needs.

353 b. Prior periods of probation.

354 c. Prior adjudications that the offender committed a
 355 delinquent act or violation of law as a child.

356 d. Prior commitments to the Department of Juvenile Justice,
 357 the former Department of Health and Rehabilitative Services, the
 358 Department of Children and Families, or other facilities or
 359 institutions and the adequacy and appropriateness of the
 360 services provided to address the child's needs.

361 e. Previous contacts with law enforcement agencies and the
 362 courts.

363 f. History of abuse, abandonment or neglect, foster care
 364 placements, failed adoption, fetal alcohol syndrome, exposure to
 365 controlled substances at birth, and below-average intellectual
 366 functioning.

367 g. Identification of the child as having a disability or
 368 having previously received mental health services or treatment.

369 ~~8.6-~~ The prospects for adequate protection of the public
 370 and the likelihood of deterrence and reasonable rehabilitation
 371 of the offender if assigned to services and facilities of the
 372 Department of Juvenile Justice.

373 ~~9.7-~~ Whether the Department of Juvenile Justice has
 374 appropriate programs, facilities, and services immediately
 375 available.

376 ~~8.~~ Whether adult sanctions would provide more appropriate
 377 punishment and deterrence to further violations of law than the

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378 ~~imposition of juvenile sanctions.~~

379 10. Whether the Department of Corrections has appropriate
 380 programs, facilities, and services immediately available.

381 (c) The adult court shall render an order including
 382 specific findings of fact and the reasons for its decision. The
 383 order shall be reviewable on appeal under s. 985.534 and the
 384 Florida Rules of Appellate Procedure.

385 (3) SENTENCING HEARING.—

386 (c) The court may receive and consider any other relevant
 387 and material evidence, including other reports, written or oral,
 388 in its effort to determine the action to be taken with regard to
 389 the child, and may rely upon such evidence to the extent of its
 390 probative value even if the evidence would not be competent in
 391 an adjudicatory hearing. The court shall consider any reports
 392 that may assist it, including prior predisposition reports,
 393 psycho-social assessments, individualized educational programs,
 394 developmental assessments, school records, abuse or neglect
 395 reports, home studies, protective investigations, and
 396 psychological and psychiatric evaluations. The child, the
 397 child's defense counsel, and the state attorney, have the right
 398 to examine these reports and to question the parties responsible
 399 for them at the hearing.

400 (4) SENTENCING ALTERNATIVES.—

401 (a) ~~Adult Sanctions.~~—

402 ~~1. Cases prosecuted on indictment. If the child is found to~~
 403 ~~have committed the offense punishable by death or life~~
 404 ~~imprisonment, the child shall be sentenced as an adult. If the~~
 405 ~~juvenile is not found to have committed the indictable offense~~
 406 ~~but is found to have committed a lesser included offense or any~~

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407 ~~other offense for which he or she was indicted as a part of the~~
 408 ~~criminal episode, the court may sentence as follows:~~
 409 ~~a. As an adult;~~
 410 ~~b. Under chapter 958; or~~
 411 ~~c. As a juvenile under this section.~~
 412 ~~2. Other cases.~~—If a child who has been transferred for
 413 criminal prosecution pursuant to information or waiver of
 414 juvenile court jurisdiction is found to have committed a
 415 violation of state law or a lesser included offense for which he
 416 or she was charged as a part of the criminal episode, the court
 417 may sentence as follows:
 418 ~~1. a.~~ As an adult;
 419 ~~2. b.~~ As a youthful offender under chapter 958; or
 420 ~~3. c.~~ As a juvenile under this section.
 421 ~~3. Notwithstanding any other provision to the contrary, if~~
 422 ~~the state attorney is required to file a motion to transfer and~~
 423 ~~certify the juvenile for prosecution as an adult under s.~~
 424 ~~985.556(3) and that motion is granted, or if the state attorney~~
 425 ~~is required to file an information under s. 985.557(2)(a) or~~
 426 ~~(b), the court must impose adult sanctions.~~
 427 ~~(b) 4. Findings.—The court must~~ Any sentence imposing adult
 428 ~~sanctions is presumed appropriate, and the court is not required~~
 429 ~~to set forth specific findings or enumerate the criteria in this~~
 430 subsection as any basis for its decision to impose adult
 431 sanctions.
 432 ~~(c) 5. Restitution.—When a child has been transferred for~~
 433 criminal prosecution as an adult and has been found to have
 434 committed a violation of state law, the disposition of the case
 435 may include the enforcement of any restitution ordered in any

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436 juvenile proceeding.
 437 ~~(d) (b) Juvenile sanctions.—If a juvenile sentence is For~~
 438 ~~juveniles transferred to adult court but who do not qualify for~~
 439 ~~such transfer under s. 985.556(3) or s. 985.557(2)(a) or (b),~~
 440 ~~the court may impose juvenile sanctions under this paragraph. If~~
 441 ~~juvenile sentences are imposed, the court shall, under this~~
 442 paragraph, adjudge the child to have committed a delinquent act.
 443 Adjudication of delinquency shall not be deemed a conviction,
 444 nor shall it operate to impose any of the civil disabilities
 445 ordinarily resulting from a conviction. ~~The court shall impose~~
 446 ~~an adult sanction or a juvenile sanction and may not sentence~~
 447 ~~the child to a combination of adult and juvenile punishments. An~~
 448 adult sanction or a juvenile sanction may include enforcement of
 449 an order of restitution or probation previously ordered in any
 450 juvenile proceeding. ~~However, if the court imposes a juvenile~~
 451 ~~sanction and the department determines that the sanction is~~
 452 ~~unsuitable for the child, the department shall return custody of~~
 453 ~~the child to the sentencing court for further proceedings,~~
 454 ~~including the imposition of adult sanctions.~~ Upon adjudicating a
 455 child delinquent under subsection (1), the court may:
 456 1. Place the child in a probation program under the
 457 supervision of the department for an indeterminate period of
 458 time until the child reaches the age of 19 years or sooner if
 459 discharged by order of the court.
 460 2. Commit the child to the department for treatment in an
 461 appropriate program for children for an indeterminate period of
 462 time until the child is 21 or sooner if discharged by the
 463 department. The department shall notify the court of its intent
 464 to discharge no later than 14 days prior to discharge. Failure

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465 of the court to timely respond to the department's notice shall
466 be considered approval for discharge.

467 3. Order disposition under ss. 985.435, 985.437, 985.439,
468 985.441, 985.45, and 985.455 as an alternative to youthful
469 offender or adult sentencing if the court determines not to
470 impose youthful offender or adult sanctions.

471 ~~(e)~~ (e) *Adult sanctions upon failure of juvenile sanctions.*—
472 If a child proves not to be suitable to a commitment program,
473 juvenile probation program, or treatment program under paragraph
474 ~~(d)~~ (b), the department shall provide the sentencing court with a
475 written report outlining the basis for its objections to the
476 juvenile sanction and shall simultaneously provide a copy of the
477 report to the state attorney and the defense counsel. The
478 department shall schedule a hearing within 30 days. Upon
479 hearing, the court may revoke the previous adjudication, impose
480 an adjudication of guilt, and impose any sentence which it may
481 lawfully impose, giving credit for all time spent by the child
482 in the department. The court may also classify the child as a
483 youthful offender under s. 958.04, if appropriate. For purposes
484 of this paragraph, a child may be found not suitable to a
485 commitment program, community control program, or treatment
486 program under paragraph ~~(d)~~ (b) if the child commits a new
487 violation of law while under juvenile sanctions, if the child
488 commits any other violation of the conditions of juvenile
489 sanctions, or if the child's actions are otherwise determined by
490 the court to demonstrate a failure of juvenile sanctions.

491 ~~(f)~~ (d) *Further proceedings heard in adult court.*—When a
492 child is sentenced to juvenile sanctions, further proceedings
493 involving those sanctions shall continue to be heard in the

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494 adult court.

495 ~~(g)~~ (e) *School attendance.*—If the child is attending or is
496 eligible to attend public school and the court finds that the
497 victim or a sibling of the victim in the case is attending or
498 may attend the same school as the child, the court placement
499 order shall include a finding pursuant to the proceeding
500 described in s. 985.455(2), regardless of whether adjudication
501 is withheld.

502
503 It is the intent of the Legislature that the criteria and
504 guidelines in this subsection are mandatory and that a
505 determination of disposition under this subsection is subject to
506 the right of the child to appellate review under s. 985.534.

507 Section 5. Subsection (1) of section 985.556, Florida
508 Statutes, is amended to read:

509 985.556 Waiver of juvenile court jurisdiction; hearing.—

510 (1) VOLUNTARY WAIVER.—The court shall transfer and certify
511 a child's criminal case for trial as an adult if the child is
512 alleged to have committed a violation of law and, prior to the
513 commencement of an adjudicatory hearing, the child, joined by a
514 parent or, in the absence of a parent, by the guardian or
515 guardian ad litem, demands in writing to be tried as an adult.
516 Once a child has been transferred for criminal prosecution
517 pursuant to a voluntary waiver hearing and has been found to
518 have committed the presenting offense or a lesser included
519 offense, the child shall be handled thereafter in every respect
520 as an adult for any subsequent violation of state law, unless
521 the court imposes juvenile sanctions under s. 985.565(4)(d) ~~or~~
522 ~~985.565(4)(b)~~.

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

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523 Section 6. For the purpose of incorporating the amendment
 524 made by this act to sections 985.557, 985.56, and 985.565,
 525 Florida Statutes, in a reference thereto, subsection (2) of
 526 section 985.04, Florida Statutes, is reenacted to read:

527 985.04 Oaths; records; confidential information.-

528 (2) Notwithstanding any other provisions of this chapter,
 529 the name, photograph, address, and crime or arrest report of a
 530 child:

531 (a) Taken into custody if the child has been taken into
 532 custody by a law enforcement officer for a violation of law
 533 which, if committed by an adult, would be a felony;

534 (b) Found by a court to have committed three or more
 535 violations of law which, if committed by an adult, would be
 536 misdemeanors;

537 (c) Transferred to the adult system under s. 985.557,
 538 indicted under s. 985.56, or waived under s. 985.556;

539 (d) Taken into custody by a law enforcement officer for a
 540 violation of law subject to s. 985.557(2)(b) or (d); or

541 (e) Transferred to the adult system but sentenced to the
 542 juvenile system under s. 985.565

543 shall not be considered confidential and exempt from s.
 544 119.07(1) solely because of the child's age.

545 Section 7. For the purpose of incorporating the amendment
 546 made by this act to section 985.557, Florida Statutes, in a
 547 reference thereto, subsection (1) of section 985.15, Florida
 548 Statutes, is reenacted to read:

549 985.15 Filing decisions.-

550 (1) The state attorney may in all cases take action
 551

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552 independent of the action or lack of action of the juvenile
 553 probation officer and shall determine the action that is in the
 554 best interest of the public and the child. If the child meets
 555 the criteria requiring prosecution as an adult under s. 985.556,
 556 the state attorney shall request the court to transfer and
 557 certify the child for prosecution as an adult or shall provide
 558 written reasons to the court for not making such a request. In
 559 all other cases, the state attorney may:

560 (a) File a petition for dependency;

561 (b) File a petition under chapter 984;

562 (c) File a petition for delinquency;

563 (d) File a petition for delinquency with a motion to
 564 transfer and certify the child for prosecution as an adult;

565 (e) File an information under s. 985.557;

566 (f) Refer the case to a grand jury;

567 (g) Refer the child to a diversionary, pretrial
 568 intervention, arbitration, or mediation program, or to some
 569 other treatment or care program if such program commitment is
 570 voluntarily accepted by the child or the child's parents or
 571 legal guardian; or

572 (h) Decline to file.

573 Section 8. For the purpose of incorporating the amendment
 574 made by this act to section 985.557, Florida Statutes, in a
 575 reference thereto, subsection (5) of section 985.265, Florida
 576 Statutes, is reenacted to read:

577 985.265 Detention transfer and release; education; adult
 578 jails.-

579 (5) The court shall order the delivery of a child to a jail
 580 or other facility intended or used for the detention of adults:

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581 (a) When the child has been transferred or indicted for
 582 criminal prosecution as an adult under part X, except that the
 583 court may not order or allow a child alleged to have committed a
 584 misdemeanor who is being transferred for criminal prosecution
 585 pursuant to either s. 985.556 or s. 985.557 to be detained or
 586 held in a jail or other facility intended or used for the
 587 detention of adults; however, such child may be held temporarily
 588 in a detention facility; or

589 (b) When a child taken into custody in this state is wanted
 590 by another jurisdiction for prosecution as an adult.
 591

592 The child shall be housed separately from adult inmates to
 593 prohibit a child from having regular contact with incarcerated
 594 adults, including trustees. "Regular contact" means sight and
 595 sound contact. Separation of children from adults shall permit
 596 no more than haphazard or accidental contact. The receiving jail
 597 or other facility shall contain a separate section for children
 598 and shall have an adequate staff to supervise and monitor the
 599 child's activities at all times. Supervision and monitoring of
 600 children includes physical observation and documented checks by
 601 jail or receiving facility supervisory personnel at intervals
 602 not to exceed 10 minutes. This subsection does not prohibit
 603 placing two or more children in the same cell. Under no
 604 circumstances shall a child be placed in the same cell with an
 605 adult.

606 Section 9. For the purpose of incorporating the amendment
 607 made by this act to section 985.557, Florida Statutes, in a
 608 reference thereto, subsection (3) of section 985.556, Florida
 609 Statutes, is reenacted to read:

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610 985.556 Waiver of juvenile court jurisdiction; hearing.-

611 (3) INVOLUNTARY MANDATORY WAIVER.-

612 (a) If the child was 14 years of age or older, and if the
 613 child has been previously adjudicated delinquent for an act
 614 classified as a felony, which adjudication was for the
 615 commission of, attempt to commit, or conspiracy to commit
 616 murder, sexual battery, armed or strong-armed robbery,
 617 carjacking, home-invasion robbery, aggravated battery,
 618 aggravated assault, or burglary with an assault or battery, and
 619 the child is currently charged with a second or subsequent
 620 violent crime against a person; or

621 (b) If the child was 14 years of age or older at the time
 622 of commission of a fourth or subsequent alleged felony offense
 623 and the child was previously adjudicated delinquent or had
 624 adjudication withheld for or was found to have committed, or to
 625 have attempted or conspired to commit, three offenses that are
 626 felony offenses if committed by an adult, and one or more of
 627 such felony offenses involved the use or possession of a firearm
 628 or violence against a person;

629
 630 the state attorney shall request the court to transfer and
 631 certify the child for prosecution as an adult or shall provide
 632 written reasons to the court for not making such request, or
 633 proceed under s. 985.557(1). Upon the state attorney's request,
 634 the court shall either enter an order transferring the case and
 635 certifying the case for trial as if the child were an adult or
 636 provide written reasons for not issuing such an order.

637 Section 10. For the purpose of incorporating the amendment
 638 made by this act to section 985.565, Florida Statutes, in a

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20151082c1

639 reference thereto, subsection (3) of section 985.514, Florida
640 Statutes, is reenacted to read:

641 985.514 Responsibility for cost of care; fees.—

642 (3) When the court under s. 985.565 orders any child
643 prosecuted as an adult to be supervised by or committed to the
644 department for treatment in any of the department's programs for
645 children, the court shall order the child's parents to pay fees
646 as provided in s. 985.039.

647 Section 11. For the purpose of incorporating the amendment
648 made by this act to section 985.565, Florida Statutes, in a
649 reference thereto, paragraph (a) of subsection (5) of section
650 985.556, Florida Statutes, is reenacted to read:

651 985.556 Waiver of juvenile court jurisdiction; hearing.—

652 (5) EFFECT OF ORDER WAIVING JURISDICTION.—

653 (a) Once a child has been transferred for criminal
654 prosecution pursuant to an involuntary waiver hearing and has
655 been found to have committed the presenting offense or a lesser
656 included offense, the child shall thereafter be handled in every
657 respect as an adult for any subsequent violation of state law,
658 unless the court imposes juvenile sanctions under s. 985.565.

659 Section 12. This act shall take effect July 1, 2015.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Children, Families, and Elder Affairs, *Vice-Chair*
Appropriations
Appropriations Subcommittee on General Government
Environmental Preservation and Conservation
Finance and Tax

SENATOR THAD ALTMAN

16th District

March 26, 2015

The Honorable Joe Negron
Senate Appropriations Subcommittee on Criminal and Civil Justice, Chair
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron:

I respectfully request that CS/SB 1082, related to *Juvenile Justice*, be placed on the committee agenda at your earliest convenience.

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

Sincerely,

A handwritten signature in blue ink that reads "Thad Altman".

Thad Altman

CC: Tim Sadberry, Staff Director, 201 The Capitol
Michelle Sanders, Committee Administrative Assistant

TA/svb

REPLY TO:

- 8710 Astronaut Blvd, Cape Canaveral, FL 32920 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

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)

4/8/15 Meeting Date

SB 1082 Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Eric Stern

Job Title Florida PTA

Address Street

Phone

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 PTA

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

Lobbyist registered with Legislature: [] Yes [] No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 8, 2015 Meeting Date

1082 Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Carlos Martinez

Job Title Public Defender, 11th Circuit

Address 1320 NW 14th Street Street

Phone 305.545.1000

Miami City

Florida State

33125 Zip

Email cmartinez@pdmiami.com

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

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

Representing Florida Public Defender Association, 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.

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S-001 (10/14/14)

APPEARANCE RECORD

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

4/8/2015

Meeting Date

SB 1082

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Catherine Craig-Myers

Job Title Executive Director

Address 3333 W Pensacola St

Phone 294 9960

Street

Tallahassee

Fl

32303

City

State

Zip

Email Cathy@fjja.org

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

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

Representing Florida Juvenile Justice Association

Appearing at request of Chair: [] Yes [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)

APPEARANCE RECORD

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

4/8/15

Meeting Date

1082

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Samantha Sexton

Job Title Associate Dir. of Government Affairs

Address One W. Adams St. #301

Phone 904-383-9403

Street

Jacksonville

Fl

32202

City

State

Zip

Email samantha.sexton@pacectr.org

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

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

Representing PACE

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

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-8-15
Meeting Date

SB 1082
Bill Number (if applicable)

Topic Direct File

Amendment Barcode (if applicable)

Name Rev. Rick Branch

Job Title Minister

Address 5995 Adelyn Rd.

Phone 850-324-9874

Pensacola, FL
City State Zip

Email rbranch@cox.net

Speaking: For Against Information

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

Representing Escambia Youth Justice Coalition + First United Meth. Church, Pensacola

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)

4/8/15
Meeting Date

1082
Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 201 W Park Ave

Phone _____

Tallahassee
City State Zip

Email _____

Speaking: For Against Information

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

Representing Florida Conference of Catholic Bishops

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)

4/8

Meeting Date

1082

Bill Number (if applicable)

Topic SB 1082

Amendment Barcode (if applicable)

Name Natale Kato

Job Title _____

Address 102 W. Park ave

Phone 763 221-3151

Street

Tallahassee

City

FL

State

32303

Zip

Email _____

Speaking: For Against Information

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

Representing Human Rights Watch

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)

4-8-15

Meeting Date

1082

SB 1082
Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Travis Keels

Job Title Director of Public Affairs

Address 100 N Duval St

Phone 904-571-1410

Street

Tallahassee

City

FL

State

32301

Zip

Email tkeels@jamesmadison.org

Speaking: 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 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)

4/8/15

Meeting Date

CS/SB-1082

Bill Number (if applicable)

Topic Juvenile Justice-Direct File

Amendment Barcode (if applicable)

Name Phil Archer

Job Title State Attorney - 18th Circuit

Address 2725 Judge From Jamieson

Phone (321) 637-5575

Viera Fl.

City State Zip

Email _____

Speaking: For Against Information

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

Representing Florida Prosecuting Attorneys Association (FPAA)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 1098

INTRODUCER: Criminal Justice Committee and Senator Bradley

SUBJECT: Controlled Substances

DATE: April 7, 2015

REVISED: 04/09/15

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/CS
2.	Harkness	Sadberry	ACJ	Favorable
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1098 places several synthetic cannabinoids in Schedule I of the controlled substance schedules. As a result of this scheduling, a person who possesses, purchases, delivers, sells, manufactures, or brings into this state any of these substances may be subject to criminal prosecution and punishment.

This bill has an insignificant fiscal impact.

This bill takes effect upon becoming law.

II. Present Situation:

Schedule I Controlled Substances

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 penalties, which penalties may be imposed for unlawful possession, sale, etc., and the conditions under which the substance can be legally possessed, prescribed, sold, etc. Relevant to the bill, a substance in Schedule I is considered to have a high

potential for abuse¹ and no currently accepted medical use in treatment in the United States and, in its use under medical supervision, does not meet accepted safety standards.²

Non-Trafficking Controlled Substance Offenses

The bill does not amend s. 893.135, F.S., the drug trafficking statute, to list the synthetic cannabinoids the bill schedules. Therefore, possession, sale, etc., of these substances is subject to criminal penalties under s. 893.13, F.S.³

Under the bill, these substances are listed in s. 893.03(1)(c), F.S. (Schedule I(c) of the controlled substance schedules). Delivering, selling, manufacturing, bringing into this state, or possessing with intent to sell, manufacture, or deliver a controlled substance listed in s. 893.03(1)(c), F.S., is a third degree felony.⁴ However, if any of these acts are committed within 1,000 feet of certain designated places, the felony degree and penalties are greater.⁵ For example, selling a controlled substance listed in s. 893.03(1)(c), F.S., within 1,000 feet of the real property of a child care facility or secondary school is a second degree felony.⁶

Possessing, purchasing, or possessing with intent to purchase, a controlled substance listed in s. 893.13(1)(c), F.S., is a third degree felony.⁷

Synthetic Cannabinoids

“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.”⁸

The Florida Department of Law Enforcement (department) has provided the following information relevant to the synthetic cannabinoids that the bill schedules:

¹ “Potential for abuse” means that a substance has properties of a central nervous system stimulant or depressant or an hallucinogen that create a substantial likelihood of its being: (a) Used in amounts that create a hazard to the user’s health or the safety of the community; (b) Diverted from legal channels and distributed through illegal channels; or (c) Taken on the user’s own initiative rather than on the basis of professional medical advice. Section 893.02(20), F.S.

² Section 893.03(1), F.S.

³ 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.

⁴ Section 893.13(1)(a)2., (4)(b), and (5)(b), F.S. A third degree felony is punishable by up to five 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 Section 893.13(1)(c)-(f) and (h), F.S.

⁶ Section 893.13(1)(c)2., F.S. A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both. Sections 775.082 and 775.083, F.S.

⁷ Section 893.13(2)(a)2. and (6)(a), F.S.

⁸ “Synthetic Cannabinoid Drug Information,” Redwood Toxicology Laboratory, available at https://www.redwoodtoxicology.com/resources/drug_info/synthetic_cannabinoids (last viewed on March 9, 2015).

Florida law enforcement has noted the emergence of new chemical variants of several substances included in the most recent revisions to Section 893.03(1)(c), Florida Statutes, which became effective in June 2014. Although technically different from currently scheduled substances, these substances are generally classifiable as synthetic cannabinoids. These substances are being abused because they are ostensibly legal and oftentimes perceived as a safer alternative to illegal drugs such as marijuana. In many cases they are more dangerous and are commonly available over the Internet. These substances are often purchased in wholesale quantities to be redistributed in specialty smoke shops and convenience stores, making them easily available to Florida's children and young adults. Abuse of these substances presents severe health risks and an immediate danger to the health, safety, and welfare of Florida residents and visitors.

The department has received information through recent crime laboratory submissions indicating that the referenced compounds are being inaccurately labeled and marketed as legitimate household products under a variety of pseudo brand names. The products usually contain the disclaimer "not for human consumption," but are sold in specialty smoke shops, over the Internet and in convenience stores for prices that are disproportionately high for the household product they purport to be (up to \$110.00 for 10 gram packets). Furthermore, a pattern has emerged in which the distributors of these substances respond to the scheduling of additional controlled substances by introducing new variants with labels on the packaging that claim to conform to the new laws. In response to these trends, the Florida Department of Health issued a press release on July 16, 2013 warning the public about the health risks associated with illicit synthetic substances such as those referenced here. The State Surgeon General and Secretary of Health, Dr. John Armstrong stated, "Illicit synthetic drugs are dangerous to Florida's children, adults and families. These drugs destroy lives, and are threats to public health and safety."⁹

III. Effect of Proposed Changes:

The bill places the following substances in Schedule I of the controlled substance schedules:

- AB-CHMINACA: N-[1-(aminocarbonyl)-2-methylpropyl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide;
- FUB-PB-22: Quinolin-8-yl-1-(4-fluorobenzyl)-1H-indole-3-carboxylate;
- Fluoro-NNEI: 1-(Fluoropentyl)-N-(naphthalen-1-yl)-1H-indole-3-carboxamide;
- Fluoro-AMB: Methyl 2-(1-(fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate; and
- THJ-2201: [1-(5-Fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone.

This scheduling will also apply to optical, positional, or geometric isomers, and salts of isomers of any of these substances, if the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.¹⁰

⁹ Analysis of SB 1098 (February 23, 2015), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice). This analysis is further cited as "FDLE Analysis."

¹⁰ Section 893.03(1)(c), F.S.

As a result of this scheduling, a person who possesses, purchases, delivers, sells, manufactures, or brings into this state any of these substances may be subject to criminal prosecution and punishment.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1098 may impact private businesses if they sell a product containing any of the synthetic cannabinoids scheduled by the bill. These businesses would be prohibited from selling products containing any of these substances.

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 insignificant prison bed impact in that the bill may increase the Department of Corrections' prison bed population by 10 or fewer beds annually. This prison bed impact results in a fiscal impact of less than \$180,000 a year to general revenue.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 893.03 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes to incorporate the amendment made to s. 893.03, F.S., in references to that statute: 39.01, 316.193, 322.2616, 327.35, 440.102, 458.3265, 459.0137, 782.04, 893.0356, 893.05, 893.12, 893.13, 893.135, 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.)

CS by Criminal Justice on March 23, 2015:

The committee substitute:

- Corrects chemical nomenclature used to describe two scheduled synthetic cannabinoids; and
- Changes the effective date.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senator Bradley

591-02778-15

20151098c1

1 A bill to be entitled
 2 An act relating to controlled substances; amending s.
 3 893.03, F.S.; adding certain substances to the
 4 Schedule I list of controlled substances; reenacting
 5 ss. 39.01(30) (a) and (g), 316.193(5), 322.2616(2) (c),
 6 327.35(5), 440.102(11) (b), 458.3265(1) (e),
 7 459.0137(1) (e), 782.04(1) (a) and (4), 893.0356(2) (a)
 8 and (5), 893.05(1), 893.12(2) (b), (c), and (d),
 9 893.13(1) (a), (c), (d), (e), (f), and (h), (2) (a),
 10 (4) (b), (5) (b), and (7) (a), 893.135(1) (k) and (l), and
 11 921.0022(3) (b), (c), and (e), F.S., relating to the
 12 definitions used in ch. 39, F.S., driving under the
 13 influence, suspension of driver licenses, boating
 14 under the influence, drug-free workplace programs,
 15 pain-management clinics, murder, controlled substance
 16 analogs, practitioners and persons administering
 17 controlled substances in their absence, contraband
 18 seizure and forfeiture, controlled substance offenses,
 19 offenses involving trafficking in controlled
 20 substances, and the offense severity ranking chart of
 21 the Criminal Punishment Code, respectively, to
 22 incorporate the amendment made to s. 893.03, F.S., in
 23 references thereto; providing an effective date.
 24
 25 Be It Enacted by the Legislature of the State of Florida:
 26
 27 Section 1. Paragraph (c) of subsection (1) of section
 28 893.03, Florida Statutes, is amended to read:
 29 893.03 Standards and schedules.—The substances enumerated

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30 in this section are controlled by this chapter. The controlled
 31 substances listed or to be listed in Schedules I, II, III, IV,
 32 and V are included by whatever official, common, usual,
 33 chemical, or trade name designated. The provisions of this
 34 section shall not be construed to include within any of the
 35 schedules contained in this section any excluded drugs listed
 36 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded
 37 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical
 38 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted
 39 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt
 40 Anabolic Steroid Products."
 41 (1) SCHEDULE I.—A substance in Schedule I has a high
 42 potential for abuse and has no currently accepted medical use in
 43 treatment in the United States and in its use under medical
 44 supervision does not meet accepted safety standards. The
 45 following substances are controlled in Schedule I:
 46 (c) Unless specifically excepted or unless listed in
 47 another schedule, any material, compound, mixture, or
 48 preparation that contains any quantity of the following
 49 hallucinogenic substances or that contains any of their salts,
 50 isomers, including optical, positional, or geometric isomers,
 51 and salts of isomers, if the existence of such salts, isomers,
 52 and salts of isomers is possible within the specific chemical
 53 designation:
 54 1. Alpha-ethyltryptamine.
 55 2. 2-Amino-4-methyl-5-phenyl-2-oxazoline (4-
 56 methylaminorex).
 57 3. 2-Amino-5-phenyl-2-oxazoline (Aminorex).
 58 4. 4-Bromo-2,5-dimethoxyamphetamine.

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59 5. 4-Bromo-2,5-dimethoxyphenethylamine.
 60 6. Bufotenine.
 61 7. Cannabis.
 62 8. Cathinone.
 63 9. Diethyltryptamine.
 64 10. 2,5-Dimethoxyamphetamine.
 65 11. 2,5-Dimethoxy-4-ethylamphetamine (DOET).
 66 12. Dimethyltryptamine.
 67 13. N-Ethyl-1-phenylcyclohexylamine (PCE) (Ethylamine
 68 analog of phencyclidine).
 69 14. N-Ethyl-3-piperidyl benzilate.
 70 15. N-ethylamphetamine.
 71 16. Fenethylamine.
 72 17. N-Hydroxy-3,4-methylenedioxyamphetamine.
 73 18. Ibogaine.
 74 19. Lysergic acid diethylamide (LSD).
 75 20. Mescaline.
 76 21. Methcathinone.
 77 22. 5-Methoxy-3,4-methylenedioxyamphetamine.
 78 23. 4-methoxyamphetamine.
 79 24. 4-methoxymethamphetamine.
 80 25. 4-Methyl-2,5-dimethoxyamphetamine.
 81 26. 3,4-Methylenedioxy-N-ethylamphetamine.
 82 27. 3,4-Methylenedioxyamphetamine.
 83 28. N-Methyl-3-piperidyl benzilate.
 84 29. N,N-dimethylamphetamine.
 85 30. Parahexyl.
 86 31. Peyote.
 87 32. N-(1-Phenylcyclohexyl)-pyrrolidine (PCPY) (Pyrrolidine

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88 analog of phencyclidine).
 89 33. Psilocybin.
 90 34. Psilocyn.
 91 35. *Salvia divinorum*, except for any drug product approved
 92 by the United States Food and Drug Administration which contains
 93 *Salvia divinorum* or its isomers, esters, ethers, salts, and
 94 salts of isomers, esters, and ethers, if the existence of such
 95 isomers, esters, ethers, and salts is possible within the
 96 specific chemical designation.
 97 36. Salvinorin A, except for any drug product approved by
 98 the United States Food and Drug Administration which contains
 99 Salvinorin A or its isomers, esters, ethers, salts, and salts of
 100 isomers, esters, and ethers, if the existence of such isomers,
 101 esters, ethers, and salts is possible within the specific
 102 chemical designation.
 103 37. Tetrahydrocannabinols.
 104 38. 1-[1-(2-Thienyl)-cyclohexyl]-piperidine (TCP)
 105 (Thiophene analog of phencyclidine).
 106 39. 3,4,5-Trimethoxyamphetamine.
 107 40. 3,4-Methylenedioxy-methcathinone.
 108 41. 3,4-Methylenedioxy-pyrovalerone (MDPV).
 109 42. Methylenedioxy-methcathinone.
 110 43. Methoxy-methcathinone.
 111 44. Fluoromethcathinone.
 112 45. Methylethcathinone.
 113 46. 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-
 114 yl)phenol, also known as CP 47,497 and its dimethyloctyl (C8)
 115 homologue.
 116 47. (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-

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117 methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol,
 118 also known as HU-210.
 119 48. 1-Pentyl-3-(1-naphthoyl)indole, also known as JWH-018.
 120 49. 1-Butyl-3-(1-naphthoyl)indole, also known as JWH-073.
 121 50. 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl) indole, also
 122 known as JWH-200.
 123 51. BZP (Benzylpiperazine).
 124 52. Fluorophenylpiperazine.
 125 53. Methylphenylpiperazine.
 126 54. Chlorophenylpiperazine.
 127 55. Methoxyphenylpiperazine.
 128 56. DBZP (1,4-dibenzylpiperazine).
 129 57. TFMPP (3-Trifluoromethylphenylpiperazine).
 130 58. MBDB (Methylbenzodioxolylbutanamine).
 131 59. 5-Hydroxy-alpha-methyltryptamine.
 132 60. 5-Hydroxy-N-methyltryptamine.
 133 61. 5-Methoxy-N-methyl-N-isopropyltryptamine.
 134 62. 5-Methoxy-alpha-methyltryptamine.
 135 63. Methyltryptamine.
 136 64. 5-Methoxy-N,N-dimethyltryptamine.
 137 65. 5-Methyl-N,N-dimethyltryptamine.
 138 66. Tyramine (4-Hydroxyphenethylamine).
 139 67. 5-Methoxy-N,N-Diisopropyltryptamine.
 140 68. DiPT (N,N-Diisopropyltryptamine).
 141 69. DPT (N,N-Dipropyltryptamine).
 142 70. 4-Hydroxy-N,N-diisopropyltryptamine.
 143 71. N,N-Diallyl-5-Methoxytryptamine.
 144 72. DOI (4-Iodo-2,5-dimethoxyamphetamine).
 145 73. DOC (4-Chloro-2,5-dimethoxyamphetamine).

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146 74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
 147 75. 2C-T-4 (2,5-Dimethoxy-4-isopropylthiophenethylamine).
 148 76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
 149 77. 2C-T (2,5-Dimethoxy-4-methylthiophenethylamine).
 150 78. 2C-T-2 (2,5-Dimethoxy-4-ethylthiophenethylamine).
 151 79. 2C-T-7 (2,5-Dimethoxy-4-(n)-propylthiophenethylamine).
 152 80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
 153 81. Butylone (beta-keto-N-methylbenzodioxolylpropylamine).
 154 82. Ethcathinone.
 155 83. Ethylone (3,4-methylenedioxy-N-ethylcathinone).
 156 84. Naphyrone (naphthylpyrovalerone).
 157 85. N-N-Dimethyl-3,4-methylenedioxy-cathinone.
 158 86. N-N-Diethyl-3,4-methylenedioxy-cathinone.
 159 87. 3,4-methylenedioxy-propiofenone.
 160 88. 2-Bromo-3,4-Methylenedioxypropiofenone.
 161 89. 3,4-methylenedioxy-propiofenone-2-oxime.
 162 90. N-Acetyl-3,4-methylenedioxy-cathinone.
 163 91. N-Acetyl-N-Methyl-3,4-Methylenedioxy-cathinone.
 164 92. N-Acetyl-N-Ethyl-3,4-Methylenedioxy-cathinone.
 165 93. Bromomethcathinone.
 166 94. Buphedrone (alpha-methylamino-butyrophenone).
 167 95. Eutylone (beta-Keto-Ethylbenzodioxolylbutanamine).
 168 96. Dimethylcathinone.
 169 97. Dimethylmethcathinone.
 170 98. Pentylone (beta-Keto-Methylbenzodioxolylpentanamine).
 171 99. (MDPPP) 3,4-Methylenedioxy-alpha-
 172 pyrrolidinopropiofenone.
 173 100. (MDPBP) 3,4-Methylenedioxy-alpha-
 174 pyrrolidinobutiophenone.

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175 101. Methoxy-alpha-pyrrolidinopropiophenone (MOPPP).

176 102. Methyl-alpha-pyrrolidinohexiophenone (MPHP).

177 103. Benocyclidine (BCP) or

178 benzothiophenylcyclohexylpiperidine (BTCP).

179 104. Fluoromethylaminobutyrophenone (F-MABP).

180 105. Methoxypyrrolidinobutyrophenone (MeO-PBP).

181 106. Ethyl-pyrrolidinobutyrophenone (Et-PBP).

182 107. 3-Methyl-4-Methoxymethcathinone (3-Me-4-MeO-MCAT).

183 108. Methyl-ethylaminobutyrophenone (Me-EABP).

184 109. Methylamino-butyrophenone (MABP).

185 110. Pyrrolidinopropiophenone (PPP).

186 111. Pyrrolidinobutyrophenone (PBP).

187 112. Pyrrolidinovalerophenone (PVP).

188 113. Methyl-alpha-pyrrolidinopropiophenone (MPPP).

189 114. JWH-007 (1-pentyl-2-methyl-3-(1-naphthoyl)indole).

190 115. JWH-015 (2-Methyl-1-propyl-1H-indol-3-yl)-1-

191 naphthalenylmethanone).

192 116. JWH-019 (Naphthalen-1-yl-(1-hexylindol-3-

193 yl)methanone).

194 117. JWH-020 (1-heptyl-3-(1-naphthoyl)indole).

195 118. JWH-072 (Naphthalen-1-yl-(1-propyl-1H-indol-3-

196 yl)methanone).

197 119. JWH-081 (4-methoxynaphthalen-1-yl-(1-pentylindol-3-

198 yl)methanone).

199 120. JWH-122 (1-pentyl-3-(4-methyl-1-naphthoyl)indole).

200 121. JWH-133 ((6aR,10aR)-3-(1,1-Dimethylbutyl)-6a,7,10,10a-

201 tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran).

202 122. JWH-175 (3-(naphthalen-1-ylmethyl)-1-pentyl-1H-

203 indole).

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204 123. JWH-201 (1-pentyl-3-(4-methoxyphenylacetyl)indole).

205 124. JWH-203 (2-(2-chlorophenyl)-1-(1-pentylindol-3-

206 yl)ethanone).

207 125. JWH-210 (4-ethylnaphthalen-1-yl-(1-pentylindol-3-

208 yl)methanone).

209 126. JWH-250 (2-(2-methoxyphenyl)-1-(1-pentylindol-3-

210 yl)ethanone).

211 127. JWH-251 (2-(2-methylphenyl)-1-(1-pentyl-1H-indol-3-

212 yl)ethanone).

213 128. JWH-302 (1-pentyl-3-(3-methoxyphenylacetyl)indole).

214 129. JWH-398 (1-pentyl-3-(4-chloro-1-naphthoyl)indole).

215 130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-

216 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-

217 ol).

218 131. HU-308 ([(1R,2R,5R)-2-[2,6-dimethoxy-4-(2-methyloctan-

219 2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl]

220 methanol).

221 132. HU-331 (3-hydroxy-2-[(1R,6R)-3-methyl-6-(1-

222 methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-

223 1,4-dione).

224 133. CB-13 (Naphthalen-1-yl-(4-pentylloxynaphthalen-1-

225 yl)methanone).

226 134. CB-25 (N-cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-

227 undecanamide).

228 135. CB-52 (N-cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-

229 undecanamide).

230 136. CP 55,940 (2-[(1R,2R,5R)-5-hydroxy-2-(3-

231 hydroxypropyl)cyclohexyl]-5-(2-methyloctan-2-yl)phenol).

232 137. AM-694 (1-[(5-fluoropentyl)-1H-indol-3-yl]-2-

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233 iodophenyl)methanone).

234 138. AM-2201 (1-[(5-fluoropentyl)-1H-indol-3-yl]-

235 (naphthalen-1-yl)methanone).

236 139. RCS-4 ((4-methoxyphenyl) (1-pentyl-1H-indol-3-

237 yl)methanone).

238 140. RCS-8 (1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-

239 methoxyphenylethano).

240 141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-

241 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-

242 naphthalenylmethanone).

243 142. WIN55,212-3 ([[3S]-2,3-Dihydro-5-methyl-3-(4-

244 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-

245 naphthalenylmethanone).

246 143. Pentedrone (2-(methylamino)-1-phenyl-1-pentanone).

247 144. Fluoroamphetamine.

248 145. Fluoromethamphetamine.

249 146. Methoxetamine.

250 147. Methiopropamine.

251 148. 4-Methylbuphedrone (2-Methylamino-1-(4-

252 methylphenyl)butan-1-one).

253 149. APB ((2-aminopropyl)benzofuran).

254 150. APDB ((2-aminopropyl)-2,3-dihydrobenzofuran).

255 151. UR-144 ((1-pentyl-1H-indol-3-yl) (2,2,3,3-

256 tetramethylcyclopropyl)methanone).

257 152. XLR11 ((1-(5-fluoropentyl)-1H-indol-3-yl) (2,2,3,3-

258 tetramethylcyclopropyl)methanone).

259 153. (1-(5-chloropentyl)-1H-indol-3-yl) (2,2,3,3-

260 tetramethylcyclopropyl)methanone.

261 154. AKB48 (1-pentyl-N-tricyclo[3.3.1.1^{3,7}]dec-1-yl-1H-

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262 indazole-3-carboxamide).

263 155. AM-2233 ((2-iodophenyl) [1-[(1-methyl-2-

264 piperidinyl)methyl]-1H-indol-3-yl]-methanone).

265 156. STS-135 (1-(5-fluoropentyl)-N-tricyclo[3.3.1.1^{3,7}]dec-

266 1-yl-1H-indole-3-carboxamide).

267 157. URB-597 ((3'-(aminocarbonyl) [1,1'-biphenyl]-3-yl)-

268 cyclohexylcarbamate).

269 158. URB-602 ([1,1'-biphenyl]-3-yl-carbamic acid,

270 cyclohexyl ester).

271 159. URB-754 (6-methyl-2-[(4-methylphenyl) amino]-1-

272 benzoxazin-4-one).

273 160. 2C-D (2-(2,5-Dimethoxy-4-methylphenyl)ethanamine).

274 161. 2C-H (2-(2,5-Dimethoxyphenyl)ethanamine).

275 162. 2C-N (2-(2,5-Dimethoxy-4-nitrophenyl)ethanamine).

276 163. 2C-P (2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine).

277 164. 25I-NBOMe (4-iodo-2,5-dimethoxy-N-[(2-

278 methoxyphenyl)methyl]-benzeneethanamine).

279 165. 3,4-Methylenedioxyamphetamine (MDMA).

280 166. PB-22 (1-pentyl-8-quinolinyl ester-1H-indole-3-

281 carboxylic acid).

282 167. 5-Fluoro PB-22 (8-quinolinyl ester-1-(5-fluoropentyl)-

283 1H-indole-3-carboxylic acid).

284 168. BB-22 (1-(cyclohexylmethyl)-8-quinolinyl ester-1H-

285 indole-3-carboxylic acid).

286 169. 5-Fluoro AKB48 (N-((3s,5s,7s)-adamantan-1-yl)-1-(5-

287 fluoropentyl)-1H-indazole-3-carboxamide).

288 170. AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-

289 pentyl-1H-indazole-3-carboxamide).

290 171. AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-

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291 (4-fluorobenzyl)-1H-indazole-3-carboxamide).

292 172. ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-

293 1-pentyl-1H-indazole-3-carboxamide).

294 173. Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-

295 yl)-1-(fluoropentyl)-1H-indole-3-carboxamide).

296 174. 25B-NBOMe (4-bromo-2,5-dimethoxy-N-[(2-methoxyphenyl)

297 methyl]-benzeneethanamine).

298 175. 2C-C-NBOMe (4-chloro-2,5-dimethoxy-N-[(2-

299 methoxyphenyl)methyl]-benzeneethanamine).

300 176. AB-CHMINACA: N-[1-(aminocarbonyl)-2-methylpropyl]-1-

301 (cyclohexylmethyl)-1H-indazole-3-carboxamide.

302 177. FUB-PB-22: Quinolin-8-yl-1-(4-fluorobenzyl)-1H-indole-

303 3-carboxylate.

304 178. Fluoro-NNEI: 1-(Fluoropentyl)-N-(naphthalen-1-yl)-1H-

305 indole-3-carboxamide.

306 179. Fluoro-AMB: Methyl 2-(1-(fluoropentyl)-1H-indazole-3-

307 carboxamido)-3-methylbutanoate.

308 180. THJ-2201: [1-(5-Fluoropentyl)-1H-indazol-3-

309 yl](naphthalen-1-yl)methanone.

310 Section 2. For the purpose of incorporating the amendment

311 made by this act to section 893.03, Florida Statutes, in

312 references thereto, paragraphs (a) and (g) of subsection (30) of

313 section 39.01, Florida Statutes, are reenacted to read:

314 39.01 Definitions.—When used in this chapter, unless the

315 context otherwise requires:

316 (30) "Harm" to a child's health or welfare can occur when

317 any person:

318 (a) Inflicts or allows to be inflicted upon the child

319 physical, mental, or emotional injury. In determining whether

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320 harm has occurred, the following factors must be considered in

321 evaluating any physical, mental, or emotional injury to a child:

322 the age of the child; any prior history of injuries to the

323 child; the location of the injury on the body of the child; the

324 multiplicity of the injury; and the type of trauma inflicted.

325 Such injury includes, but is not limited to:

326 1. Willful acts that produce the following specific

327 injuries:

328 a. Sprains, dislocations, or cartilage damage.

329 b. Bone or skull fractures.

330 c. Brain or spinal cord damage.

331 d. Intracranial hemorrhage or injury to other internal

332 organs.

333 e. Asphyxiation, suffocation, or drowning.

334 f. Injury resulting from the use of a deadly weapon.

335 g. Burns or scalding.

336 h. Cuts, lacerations, punctures, or bites.

337 i. Permanent or temporary disfigurement.

338 j. Permanent or temporary loss or impairment of a body part

339 or function.

340

341 As used in this subparagraph, the term "willful" refers to the

342 intent to perform an action, not to the intent to achieve a

343 result or to cause an injury.

344 2. Purposely giving a child poison, alcohol, drugs, or

345 other substances that substantially affect the child's behavior,

346 motor coordination, or judgment or that result in sickness or

347 internal injury. For the purposes of this subparagraph, the term

348 "drugs" means prescription drugs not prescribed for the child or

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349 not administered as prescribed, and controlled substances as
350 outlined in Schedule I or Schedule II of s. 893.03.

351 3. Leaving a child without adult supervision or arrangement
352 appropriate for the child's age or mental or physical condition,
353 so that the child is unable to care for the child's own needs or
354 another's basic needs or is unable to exercise good judgment in
355 responding to any kind of physical or emotional crisis.

356 4. Inappropriate or excessively harsh disciplinary action
357 that is likely to result in physical injury, mental injury as
358 defined in this section, or emotional injury. The significance
359 of any injury must be evaluated in light of the following
360 factors: the age of the child; any prior history of injuries to
361 the child; the location of the injury on the body of the child;
362 the multiplicity of the injury; and the type of trauma
363 inflicted. Corporal discipline may be considered excessive or
364 abusive when it results in any of the following or other similar
365 injuries:

- 366 a. Sprains, dislocations, or cartilage damage.
- 367 b. Bone or skull fractures.
- 368 c. Brain or spinal cord damage.
- 369 d. Intracranial hemorrhage or injury to other internal
370 organs.
- 371 e. Asphyxiation, suffocation, or drowning.
- 372 f. Injury resulting from the use of a deadly weapon.
- 373 g. Burns or scalding.
- 374 h. Cuts, lacerations, punctures, or bites.
- 375 i. Permanent or temporary disfigurement.
- 376 j. Permanent or temporary loss or impairment of a body part
377 or function.

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378 k. Significant bruises or welts.

379 (g) Exposes a child to a controlled substance or alcohol.
380 Exposure to a controlled substance or alcohol is established by:

- 381 1. A test, administered at birth, which indicated that the
382 child's blood, urine, or meconium contained any amount of
383 alcohol or a controlled substance or metabolites of such
384 substances, the presence of which was not the result of medical
385 treatment administered to the mother or the newborn infant; or
386 2. Evidence of extensive, abusive, and chronic use of a
387 controlled substance or alcohol by a parent when the child is
388 demonstrably adversely affected by such usage.

389
390 As used in this paragraph, the term "controlled substance" means
391 prescription drugs not prescribed for the parent or not
392 administered as prescribed and controlled substances as outlined
393 in Schedule I or Schedule II of s. 893.03.

394 Section 3. For the purpose of incorporating the amendment
395 made by this act to section 893.03, Florida Statutes, in a
396 reference thereto, subsection (5) of section 316.193, Florida
397 Statutes, is reenacted to read:

398 316.193 Driving under the influence; penalties.—

399 (5) The court shall place all offenders convicted of
400 violating this section on monthly reporting probation and shall
401 require completion of a substance abuse course conducted by a
402 DUI program licensed by the department under s. 322.292, which
403 must include a psychosocial evaluation of the offender. If the
404 DUI program refers the offender to an authorized substance abuse
405 treatment provider for substance abuse treatment, in addition to
406 any sentence or fine imposed under this section, completion of

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407 all such education, evaluation, and treatment is a condition of
 408 reporting probation. The offender shall assume reasonable costs
 409 for such education, evaluation, and treatment. The referral to
 410 treatment resulting from a psychosocial evaluation shall not be
 411 waived without a supporting independent psychosocial evaluation
 412 conducted by an authorized substance abuse treatment provider
 413 appointed by the court, which shall have access to the DUI
 414 program's psychosocial evaluation before the independent
 415 psychosocial evaluation is conducted. The court shall review the
 416 results and recommendations of both evaluations before
 417 determining the request for waiver. The offender shall bear the
 418 full cost of this procedure. The term "substance abuse" means
 419 the abuse of alcohol or any substance named or described in
 420 Schedules I through V of s. 893.03. If an offender referred to
 421 treatment under this subsection fails to report for or complete
 422 such treatment or fails to complete the DUI program substance
 423 abuse education course and evaluation, the DUI program shall
 424 notify the court and the department of the failure. Upon receipt
 425 of the notice, the department shall cancel the offender's
 426 driving privilege, notwithstanding the terms of the court order
 427 or any suspension or revocation of the driving privilege. The
 428 department may temporarily reinstate the driving privilege on a
 429 restricted basis upon verification from the DUI program that the
 430 offender is currently participating in treatment and the DUI
 431 education course and evaluation requirement has been completed.
 432 If the DUI program notifies the department of the second failure
 433 to complete treatment, the department shall reinstate the
 434 driving privilege only after notice of completion of treatment
 435 from the DUI program. The organization that conducts the

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436 substance abuse education and evaluation may not provide
 437 required substance abuse treatment unless a waiver has been
 438 granted to that organization by the department. A waiver may be
 439 granted only if the department determines, in accordance with
 440 its rules, that the service provider that conducts the substance
 441 abuse education and evaluation is the most appropriate service
 442 provider and is licensed under chapter 397 or is exempt from
 443 such licensure. A statistical referral report shall be submitted
 444 quarterly to the department by each organization authorized to
 445 provide services under this section.

446 Section 4. For the purpose of incorporating the amendment
 447 made by this act to section 893.03, Florida Statutes, in a
 448 reference thereto, paragraph (c) of subsection (2) of section
 449 322.2616, Florida Statutes, is reenacted to read:

450 322.2616 Suspension of license; persons under 21 years of
 451 age; right to review.-

452 (2)

453 (c) When a driver subject to this section has a blood-
 454 alcohol or breath-alcohol level of 0.05 or higher, the
 455 suspension shall remain in effect until such time as the driver
 456 has completed a substance abuse course offered by a DUI program
 457 licensed by the department. The driver shall assume the
 458 reasonable costs for the substance abuse course. As part of the
 459 substance abuse course, the program shall conduct a substance
 460 abuse evaluation of the driver, and notify the parents or legal
 461 guardians of drivers under the age of 19 years of the results of
 462 the evaluation. The term "substance abuse" means the abuse of
 463 alcohol or any substance named or described in Schedules I
 464 through V of s. 893.03. If a driver fails to complete the

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465 substance abuse education course and evaluation, the driver
466 license shall not be reinstated by the department.

467 Section 5. For the purpose of incorporating the amendment
468 made by this act to section 893.03, Florida Statutes, in a
469 reference thereto, subsection (5) of section 327.35, Florida
470 Statutes, is reenacted to read:

471 327.35 Boating under the influence; penalties; "designated
472 drivers."—

473 (5) In addition to any sentence or fine, the court shall
474 place any offender convicted of violating this section on
475 monthly reporting probation and shall require attendance at a
476 substance abuse course specified by the court; and the agency
477 conducting the course may refer the offender to an authorized
478 service provider for substance abuse evaluation and treatment,
479 in addition to any sentence or fine imposed under this section.
480 The offender shall assume reasonable costs for such education,
481 evaluation, and treatment, with completion of all such
482 education, evaluation, and treatment being a condition of
483 reporting probation. Treatment resulting from a psychosocial
484 evaluation may not be waived without a supporting psychosocial
485 evaluation conducted by an agency appointed by the court and
486 with access to the original evaluation. The offender shall bear
487 the cost of this procedure. The term "substance abuse" means the
488 abuse of alcohol or any substance named or described in
489 Schedules I-V of s. 893.03.

490 Section 6. For the purpose of incorporating the amendment
491 made by this act to section 893.03, Florida Statutes, in a
492 reference thereto, paragraph (b) of subsection (11) of section
493 440.102, Florida Statutes, is reenacted to read:

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494 440.102 Drug-free workplace program requirements.—The
495 following provisions apply to a drug-free workplace program
496 implemented pursuant to law or to rules adopted by the Agency
497 for Health Care Administration:

498 (11) PUBLIC EMPLOYEES IN MANDATORY-TESTING OR SPECIAL-RISK
499 POSITIONS.—

500 (b) An employee who is employed by a public employer in a
501 special-risk position may be discharged or disciplined by a
502 public employer for the first positive confirmed test result if
503 the drug confirmed is an illicit drug under s. 893.03. A
504 special-risk employee who is participating in an employee
505 assistance program or drug rehabilitation program may not be
506 allowed to continue to work in any special-risk or mandatory-
507 testing position of the public employer, but may be assigned to
508 a position other than a mandatory-testing position or placed on
509 leave while the employee is participating in the program.
510 However, the employee shall be permitted to use any accumulated
511 annual leave credits before leave may be ordered without pay.

512 Section 7. For the purpose of incorporating the amendment
513 made by this act to section 893.03, Florida Statutes, in a
514 reference thereto, paragraph (e) of subsection (1) of section
515 458.3265, Florida Statutes, is reenacted to read:

516 458.3265 Pain-management clinics.—

517 (1) REGISTRATION.—

518 (e) The department shall deny registration to any pain-
519 management clinic owned by or with any contractual or employment
520 relationship with a physician:

521 1. Whose Drug Enforcement Administration number has ever
522 been revoked.

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523 2. Whose application for a license to prescribe, dispense,
524 or administer a controlled substance has been denied by any
525 jurisdiction.

526 3. Who has been convicted of or pleaded guilty or nolo
527 contendere to, regardless of adjudication, an offense that
528 constitutes a felony for receipt of illicit and diverted drugs,
529 including a controlled substance listed in Schedule I, Schedule
530 II, Schedule III, Schedule IV, or Schedule V of s. 893.03, in
531 this state, any other state, or the United States.

532 Section 8. For the purpose of incorporating the amendment
533 made by this act to section 893.03, Florida Statutes, in a
534 reference thereto, paragraph (e) of subsection (1) of section
535 459.0137, Florida Statutes, is reenacted to read:

536 459.0137 Pain-management clinics.—

537 (1) REGISTRATION.—

538 (e) The department shall deny registration to any pain-
539 management clinic owned by or with any contractual or employment
540 relationship with a physician:

541 1. Whose Drug Enforcement Administration number has ever
542 been revoked.

543 2. Whose application for a license to prescribe, dispense,
544 or administer a controlled substance has been denied by any
545 jurisdiction.

546 3. Who has been convicted of or pleaded guilty or nolo
547 contendere to, regardless of adjudication, an offense that
548 constitutes a felony for receipt of illicit and diverted drugs,
549 including a controlled substance listed in Schedule I, Schedule
550 II, Schedule III, Schedule IV, or Schedule V of s. 893.03, in
551 this state, any other state, or the United States.

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552 Section 9. For the purpose of incorporating the amendment
553 made by this act to section 893.03, Florida Statutes, in
554 references thereto, paragraph (a) of subsection (1) and
555 subsection (4) of section 782.04, Florida Statutes, are
556 reenacted to read:

557 782.04 Murder.—

558 (1) (a) The unlawful killing of a human being:

559 1. When perpetrated from a premeditated design to effect
560 the death of the person killed or any human being;

561 2. When committed by a person engaged in the perpetration
562 of, or in the attempt to perpetrate, any:

563 a. Trafficking offense prohibited by s. 893.135(1),

564 b. Arson,

565 c. Sexual battery,

566 d. Robbery,

567 e. Burglary,

568 f. Kidnapping,

569 g. Escape,

570 h. Aggravated child abuse,

571 i. Aggravated abuse of an elderly person or disabled adult,

572 j. Aircraft piracy,

573 k. Unlawful throwing, placing, or discharging of a

574 destructive device or bomb,

575 l. Carjacking,

576 m. Home-invasion robbery,

577 n. Aggravated stalking,

578 o. Murder of another human being,

579 p. Resisting an officer with violence to his or her person,

580 q. Aggravated fleeing or eluding with serious bodily injury

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581 or death,

582 r. Felony that is an act of terrorism or is in furtherance

583 of an act of terrorism; or

584 3. Which resulted from the unlawful distribution of any

585 substance controlled under s. 893.03(1), cocaine as described in

586 s. 893.03(2)(a)4., opium or any synthetic or natural salt,

587 compound, derivative, or preparation of opium, or methadone by a

588 person 18 years of age or older, when such drug is proven to be

589 the proximate cause of the death of the user,

590

591 is murder in the first degree and constitutes a capital felony,

592 punishable as provided in s. 775.082.

593 (4) The unlawful killing of a human being, when perpetrated

594 without any design to effect death, by a person engaged in the

595 perpetration of, or in the attempt to perpetrate, any felony

596 other than any:

597 (a) Trafficking offense prohibited by s. 893.135(1),

598 (b) Arson,

599 (c) Sexual battery,

600 (d) Robbery,

601 (e) Burglary,

602 (f) Kidnapping,

603 (g) Escape,

604 (h) Aggravated child abuse,

605 (i) Aggravated abuse of an elderly person or disabled

606 adult,

607 (j) Aircraft piracy,

608 (k) Unlawful throwing, placing, or discharging of a

609 destructive device or bomb,

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610 (l) Unlawful distribution of any substance controlled under

611 s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., or

612 opium or any synthetic or natural salt, compound, derivative, or

613 preparation of opium by a person 18 years of age or older, when

614 such drug is proven to be the proximate cause of the death of

615 the user,

616 (m) Carjacking,

617 (n) Home-invasion robbery,

618 (o) Aggravated stalking,

619 (p) Murder of another human being,

620 (q) Aggravated fleeing or eluding with serious bodily

621 injury or death,

622 (r) Resisting an officer with violence to his or her

623 person, or

624 (s) Felony that is an act of terrorism or is in furtherance

625 of an act of terrorism,

626

627 is murder in the third degree and constitutes a felony of the

628 second degree, punishable as provided in s. 775.082, s. 775.083,

629 or s. 775.084.

630 Section 10. For the purpose of incorporating the amendment

631 made by this act to section 893.03, Florida Statutes, in

632 references thereto, paragraph (a) of subsection (2) and

633 subsection (5) of section 893.0356, Florida Statutes, are

634 reenacted to read:

635 893.0356 Control of new substances; findings of fact;

636 "controlled substance analog" defined.—

637 (2)(a) As used in this section, "controlled substance

638 analog" means a substance which, due to its chemical structure

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639 and potential for abuse, meets the following criteria:

- 640 1. Is substantially similar to that of a controlled
641 substance listed in Schedule I or Schedule II of s. 893.03; and
642 2. Has a stimulant, depressant, or hallucinogenic effect on
643 the central nervous system or is represented or intended to have
644 a stimulant, depressant, or hallucinogenic effect on the central
645 nervous system substantially similar to or greater than that of
646 a controlled substance listed in Schedule I or Schedule II of s.
647 893.03.

648 (5) A controlled substance analog shall, for purposes of
649 drug abuse prevention and control, be treated as a controlled
650 substance in Schedule I of s. 893.03.

651 Section 11. For the purpose of incorporating the amendment
652 made by this act to section 893.03, Florida Statutes, in a
653 reference thereto, subsection (1) of section 893.05, Florida
654 Statutes, is reenacted to read:

655 893.05 Practitioners and persons administering controlled
656 substances in their absence.—

657 (1) A practitioner, in good faith and in the course of his
658 or her professional practice only, may prescribe, administer,
659 dispense, mix, or otherwise prepare a controlled substance, or
660 the practitioner may cause the same to be administered by a
661 licensed nurse or an intern practitioner under his or her
662 direction and supervision only. A veterinarian may so prescribe,
663 administer, dispense, mix, or prepare a controlled substance for
664 use on animals only, and may cause it to be administered by an
665 assistant or orderly under the veterinarian's direction and
666 supervision only. A certified optometrist licensed under chapter
667 463 may not administer or prescribe a controlled substance

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668 listed in Schedule I or Schedule II of s. 893.03.

669 Section 12. For the purpose of incorporating the amendment
670 made by this act to section 893.03, Florida Statutes, in
671 references thereto, paragraphs (b), (c), and (d) of subsection
672 (2) of section 893.12, Florida Statutes, are reenacted to read:
673 893.12 Contraband; seizure, forfeiture, sale.—

674 (2)
675 (b) All real property, including any right, title,
676 leasehold interest, and other interest in the whole of any lot
677 or tract of land and any appurtenances or improvements, which
678 real property is used, or intended to be used, in any manner or
679 part, to commit or to facilitate the commission of, or which
680 real property is acquired with proceeds obtained as a result of,
681 a violation of any provision of this chapter related to a
682 controlled substance described in s. 893.03(1) or (2) may be
683 seized and forfeited as provided by the Florida Contraband
684 Forfeiture Act except that no property shall be forfeited under
685 this paragraph to the extent of an interest of an owner or
686 lienholder by reason of any act or omission established by that
687 owner or lienholder to have been committed or omitted without
688 the knowledge or consent of that owner or lienholder.

689 (c) All moneys, negotiable instruments, securities, and
690 other things of value furnished or intended to be furnished by
691 any person in exchange for a controlled substance described in
692 s. 893.03(1) or (2) or a listed chemical in violation of any
693 provision of this chapter, all proceeds traceable to such an
694 exchange, and all moneys, negotiable instruments, and securities
695 used or intended to be used to facilitate any violation of any
696 provision of this chapter or which are acquired with proceeds

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697 obtained in violation of any provision of this chapter may be
 698 seized and forfeited as provided by the Florida Contraband
 699 Forfeiture Act, except that no property shall be forfeited under
 700 this paragraph to the extent of an interest of an owner or
 701 lienholder by reason of any act or omission established by that
 702 owner or lienholder to have been committed or omitted without
 703 the knowledge or consent of that owner or lienholder.

704 (d) All books, records, and research, including formulas,
 705 microfilm, tapes, and data which are used, or intended for use,
 706 or which are acquired with proceeds obtained, in violation of
 707 any provision of this chapter related to a controlled substance
 708 described in s. 893.03(1) or (2) or a listed chemical may be
 709 seized and forfeited as provided by the Florida Contraband
 710 Forfeiture Act.

711 Section 13. For the purpose of incorporating the amendment
 712 made by this act to section 893.03, Florida Statutes, in
 713 references thereto, paragraphs (a), (c), (d), (e), (f), and (h)
 714 of subsection (1), paragraph (a) of subsection (2), paragraph
 715 (b) of subsection (4), paragraph (b) of subsection (5), and
 716 paragraph (a) of subsection (7) of section 893.13, Florida
 717 Statutes, are reenacted to read:

718 893.13 Prohibited acts; penalties.—

719 (1) (a) Except as authorized by this chapter and chapter
 720 499, a person may not sell, manufacture, or deliver, or possess
 721 with intent to sell, manufacture, or deliver, a controlled
 722 substance. A person who violates this provision with respect to:

723 1. A controlled substance named or described in s.
 724 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4.
 725 commits a felony of the second degree, punishable as provided in

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726 s. 775.082, s. 775.083, or s. 775.084.

727 2. A controlled substance named or described in s.
 728 893.03(1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6.,
 729 (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) commits a felony of
 730 the third degree, punishable as provided in s. 775.082, s.
 731 775.083, or s. 775.084.

732 3. A controlled substance named or described in s.
 733 893.03(5) commits a misdemeanor of the first degree, punishable
 734 as provided in s. 775.082 or s. 775.083.

735 (c) Except as authorized by this chapter, a person may not
 736 sell, manufacture, or deliver, or possess with intent to sell,
 737 manufacture, or deliver, a controlled substance in, on, or
 738 within 1,000 feet of the real property comprising a child care
 739 facility as defined in s. 402.302 or a public or private
 740 elementary, middle, or secondary school between the hours of 6
 741 a.m. and 12 midnight, or at any time in, on, or within 1,000
 742 feet of real property comprising a state, county, or municipal
 743 park, a community center, or a publicly owned recreational
 744 facility. As used in this paragraph, the term "community center"
 745 means a facility operated by a nonprofit community-based
 746 organization for the provision of recreational, social, or
 747 educational services to the public. A person who violates this
 748 paragraph with respect to:

749 1. A controlled substance named or described in s.
 750 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4.
 751 commits a felony of the first degree, punishable as provided in
 752 s. 775.082, s. 775.083, or s. 775.084. The defendant must be
 753 sentenced to a minimum term of imprisonment of 3 calendar years
 754 unless the offense was committed within 1,000 feet of the real

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755 property comprising a child care facility as defined in s.
 756 402.302.

757 2. A controlled substance named or described in s.
 758 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 759 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 760 the second degree, punishable as provided in s. 775.082, s.
 761 775.083, or s. 775.084.

762 3. Any other controlled substance, except as lawfully sold,
 763 manufactured, or delivered, must be sentenced to pay a \$500 fine
 764 and to serve 100 hours of public service in addition to any
 765 other penalty prescribed by law.

766

767 This paragraph does not apply to a child care facility unless
 768 the owner or operator of the facility posts a sign that is not
 769 less than 2 square feet in size with a word legend identifying
 770 the facility as a licensed child care facility and that is
 771 posted on the property of the child care facility in a
 772 conspicuous place where the sign is reasonably visible to the
 773 public.

774 (d) Except as authorized by this chapter, a person may not
 775 sell, manufacture, or deliver, or possess with intent to sell,
 776 manufacture, or deliver, a controlled substance in, on, or
 777 within 1,000 feet of the real property comprising a public or
 778 private college, university, or other postsecondary educational
 779 institution. A person who violates this paragraph with respect
 780 to:

781 1. A controlled substance named or described in s.
 782 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
 783 commits a felony of the first degree, punishable as provided in

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784 s. 775.082, s. 775.083, or s. 775.084.

785 2. A controlled substance named or described in s.
 786 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 787 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 788 the second degree, punishable as provided in s. 775.082, s.
 789 775.083, or s. 775.084.

790 3. Any other controlled substance, except as lawfully sold,
 791 manufactured, or delivered, must be sentenced to pay a \$500 fine
 792 and to serve 100 hours of public service in addition to any
 793 other penalty prescribed by law.

794 (e) Except as authorized by this chapter, a person may not
 795 sell, manufacture, or deliver, or possess with intent to sell,
 796 manufacture, or deliver, a controlled substance not authorized
 797 by law in, on, or within 1,000 feet of a physical place for
 798 worship at which a church or religious organization regularly
 799 conducts religious services or within 1,000 feet of a
 800 convenience business as defined in s. 812.171. A person who
 801 violates this paragraph with respect to:

802 1. A controlled substance named or described in s.
 803 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
 804 commits a felony of the first degree, punishable as provided in
 805 s. 775.082, s. 775.083, or s. 775.084.

806 2. A controlled substance named or described in s.
 807 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 808 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 809 the second degree, punishable as provided in s. 775.082, s.
 810 775.083, or s. 775.084.

811 3. Any other controlled substance, except as lawfully sold,
 812 manufactured, or delivered, must be sentenced to pay a \$500 fine

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813 and to serve 100 hours of public service in addition to any
814 other penalty prescribed by law.

815 (f) Except as authorized by this chapter, a person may not
816 sell, manufacture, or deliver, or possess with intent to sell,
817 manufacture, or deliver, a controlled substance in, on, or
818 within 1,000 feet of the real property comprising a public
819 housing facility at any time. As used in this section, the term
820 "real property comprising a public housing facility" means real
821 property, as defined in s. 421.03(12), of a public corporation
822 created as a housing authority pursuant to part I of chapter
823 421. A person who violates this paragraph with respect to:

824 1. A controlled substance named or described in s.
825 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
826 commits a felony of the first degree, punishable as provided in
827 s. 775.082, s. 775.083, or s. 775.084.

828 2. A controlled substance named or described in s.
829 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
830 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
831 the second degree, punishable as provided in s. 775.082, s.
832 775.083, or s. 775.084.

833 3. Any other controlled substance, except as lawfully sold,
834 manufactured, or delivered, must be sentenced to pay a \$500 fine
835 and to serve 100 hours of public service in addition to any
836 other penalty prescribed by law.

837 (h) Except as authorized by this chapter, a person may not
838 sell, manufacture, or deliver, or possess with intent to sell,
839 manufacture, or deliver, a controlled substance in, on, or
840 within 1,000 feet of the real property comprising an assisted
841 living facility, as that term is used in chapter 429. A person

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842 who violates this paragraph with respect to:

843 1. A controlled substance named or described in s.
844 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
845 commits a felony of the first degree, punishable as provided in
846 s. 775.082, s. 775.083, or s. 775.084.

847 2. A controlled substance named or described in s.
848 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
849 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
850 the second degree, punishable as provided in s. 775.082, s.
851 775.083, or s. 775.084.

852 (2)(a) Except as authorized by this chapter and chapter
853 499, a person may not purchase, or possess with intent to
854 purchase, a controlled substance. A person who violates this
855 provision with respect to:

856 1. A controlled substance named or described in s.
857 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
858 commits a felony of the second degree, punishable as provided in
859 s. 775.082, s. 775.083, or s. 775.084.

860 2. A controlled substance named or described in s.
861 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
862 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
863 the third degree, punishable as provided in s. 775.082, s.
864 775.083, or s. 775.084.

865 3. A controlled substance named or described in s.
866 893.03(5) commits a misdemeanor of the first degree, punishable
867 as provided in s. 775.082 or s. 775.083.

868 (4) Except as authorized by this chapter, a person 18 years
869 of age or older may not deliver any controlled substance to a
870 person younger than 18 years of age, use or hire a person

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871 younger than 18 years of age as an agent or employee in the sale
872 or delivery of such a substance, or use such person to assist in
873 avoiding detection or apprehension for a violation of this
874 chapter. A person who violates this provision with respect to:

875 (b) A controlled substance named or described in s.
876 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
877 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
878 the second degree, punishable as provided in s. 775.082, s.
879 775.083, or s. 775.084.

880

881 Imposition of sentence may not be suspended or deferred, and the
882 person so convicted may not be placed on probation.

883 (5) A person may not bring into this state any controlled
884 substance unless the possession of such controlled substance is
885 authorized by this chapter or unless such person is licensed to
886 do so by the appropriate federal agency. A person who violates
887 this provision with respect to:

888 (b) A controlled substance named or described in s.
889 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
890 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
891 the third degree, punishable as provided in s. 775.082, s.
892 775.083, or s. 775.084.

893 (7)(a) A person may not:

894 1. Distribute or dispense a controlled substance in
895 violation of this chapter.

896 2. Refuse or fail to make, keep, or furnish any record,
897 notification, order form, statement, invoice, or information
898 required under this chapter.

899 3. Refuse entry into any premises for any inspection or

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900 refuse to allow any inspection authorized by this chapter.

901 4. Distribute a controlled substance named or described in
902 s. 893.03(1) or (2) except pursuant to an order form as required
903 by s. 893.06.

904 5. Keep or maintain any store, shop, warehouse, dwelling,
905 building, vehicle, boat, aircraft, or other structure or place
906 which is resorted to by persons using controlled substances in
907 violation of this chapter for the purpose of using these
908 substances, or which is used for keeping or selling them in
909 violation of this chapter.

910 6. Use to his or her own personal advantage, or reveal, any
911 information obtained in enforcement of this chapter except in a
912 prosecution or administrative hearing for a violation of this
913 chapter.

914 7. Possess a prescription form unless it has been signed by
915 the practitioner whose name appears printed thereon and
916 completed. This subparagraph does not apply if the person in
917 possession of the form is the practitioner whose name appears
918 printed thereon, an agent or employee of that practitioner, a
919 pharmacist, or a supplier of prescription forms who is
920 authorized by that practitioner to possess those forms.

921 8. Withhold information from a practitioner from whom the
922 person seeks to obtain a controlled substance or a prescription
923 for a controlled substance that the person making the request
924 has received a controlled substance or a prescription for a
925 controlled substance of like therapeutic use from another
926 practitioner within the previous 30 days.

927 9. Acquire or obtain, or attempt to acquire or obtain,
928 possession of a controlled substance by misrepresentation,

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929 fraud, forgery, deception, or subterfuge.

930 10. Affix any false or forged label to a package or
931 receptacle containing a controlled substance.932 11. Furnish false or fraudulent material information in, or
933 omit any material information from, any report or other document
934 required to be kept or filed under this chapter or any record
935 required to be kept by this chapter.936 12. Store anhydrous ammonia in a container that is not
937 approved by the United States Department of Transportation to
938 hold anhydrous ammonia or is not constructed in accordance with
939 sound engineering, agricultural, or commercial practices.940 13. With the intent to obtain a controlled substance or
941 combination of controlled substances that are not medically
942 necessary for the person or an amount of a controlled substance
943 or substances that is not medically necessary for the person,
944 obtain or attempt to obtain from a practitioner a controlled
945 substance or a prescription for a controlled substance by
946 misrepresentation, fraud, forgery, deception, subterfuge, or
947 concealment of a material fact. For purposes of this
948 subparagraph, a material fact includes whether the person has an
949 existing prescription for a controlled substance issued for the
950 same period of time by another practitioner or as described in
951 subparagraph 8.952 Section 14. For the purpose of incorporating the amendment
953 made by this act to section 893.03, Florida Statutes, in
954 references thereto, paragraphs (k) and (l) of subsection (1) of
955 section 893.135, Florida Statutes, are reenacted to read:956 893.135 Trafficking; mandatory sentences; suspension or
957 reduction of sentences; conspiracy to engage in trafficking.-

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958 (1) Except as authorized in this chapter or in chapter 499
959 and notwithstanding the provisions of s. 893.13:960 (k)1. A person who knowingly sells, purchases,
961 manufactures, delivers, or brings into this state, or who is
962 knowingly in actual or constructive possession of, 10 grams or
963 more of any of the following substances described in s.

964 893.03(1)(c):

- 965 a. 3,4-Methylenedioxyamphetamine (MDMA);
- 966 b. 4-Bromo-2,5-dimethoxyamphetamine;
- 967 c. 4-Bromo-2,5-dimethoxyphenethylamine;
- 968 d. 2,5-Dimethoxyamphetamine;
- 969 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
- 970 f. N-ethylamphetamine;
- 971 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
- 972 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
- 973 i. 4-methoxyamphetamine;
- 974 j. 4-methoxymethamphetamine;
- 975 k. 4-Methyl-2,5-dimethoxyamphetamine;
- 976 l. 3,4-Methylenedioxy-N-ethylamphetamine;
- 977 m. 3,4-Methylenedioxyamphetamine;
- 978 n. N,N-dimethylamphetamine;
- 979 o. 3,4,5-Trimethoxyamphetamine;
- 980 p. 3,4-Methylenedioxyamphetaminone;
- 981 q. 3,4-Methylenedioxypropylamphetamine (MDPV); or
- 982 r. Methylmethcathinone,

983
984 individually or analogs thereto or isomers thereto or in any
985 combination of or any mixture containing any substance listed in
986 sub-subparagraphs a.-r., commits a felony of the first degree,

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987 which felony shall be known as "trafficking in Phenethylamines,"
 988 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 989 2. If the quantity involved:
 990 a. Is 10 grams or more, but less than 200 grams, such
 991 person shall be sentenced to a mandatory minimum term of
 992 imprisonment of 3 years and shall be ordered to pay a fine of
 993 \$50,000.
 994 b. Is 200 grams or more, but less than 400 grams, such
 995 person shall be sentenced to a mandatory minimum term of
 996 imprisonment of 7 years and shall be ordered to pay a fine of
 997 \$100,000.
 998 c. Is 400 grams or more, such person shall be sentenced to
 999 a mandatory minimum term of imprisonment of 15 years and shall
 1000 be ordered to pay a fine of \$250,000.
 1001 3. A person who knowingly manufactures or brings into this
 1002 state 30 kilograms or more of any of the following substances
 1003 described in s. 893.03(1)(c):
 1004 a. 3,4-Methylenedioxyamphetamine (MDMA);
 1005 b. 4-Bromo-2,5-dimethoxyamphetamine;
 1006 c. 4-Bromo-2,5-dimethoxyphenethylamine;
 1007 d. 2,5-Dimethoxyamphetamine;
 1008 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
 1009 f. N-ethylamphetamine;
 1010 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
 1011 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
 1012 i. 4-methoxyamphetamine;
 1013 j. 4-methoxymethamphetamine;
 1014 k. 4-Methyl-2,5-dimethoxyamphetamine;
 1015 l. 3,4-Methylenedioxy-N-ethylamphetamine;

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1016 m. 3,4-Methylenedioxyamphetamine;
 1017 n. N,N-dimethylamphetamine;
 1018 o. 3,4,5-Trimethoxyamphetamine;
 1019 p. 3,4-Methylenedioxyamphetaminone;
 1020 q. 3,4-Methylenedioxypropionylamphetamine (MDPPV); or
 1021 r. Methylmethcathinone,
 1022
 1023 individually or analogs thereto or isomers thereto or in any
 1024 combination of or any mixture containing any substance listed in
 1025 sub-subparagraphs a.-r., and who knows that the probable result
 1026 of such manufacture or importation would be the death of any
 1027 person commits capital manufacture or importation of
 1028 Phenethylamines, a capital felony punishable as provided in ss.
 1029 775.082 and 921.142. A person sentenced for a capital felony
 1030 under this paragraph shall also be sentenced to pay the maximum
 1031 fine provided under subparagraph 1.
 1032 (1)1. Any person who knowingly sells, purchases,
 1033 manufactures, delivers, or brings into this state, or who is
 1034 knowingly in actual or constructive possession of, 1 gram or
 1035 more of lysergic acid diethylamide (LSD) as described in s.
 1036 893.03(1)(c), or of any mixture containing lysergic acid
 1037 diethylamide (LSD), commits a felony of the first degree, which
 1038 felony shall be known as "trafficking in lysergic acid
 1039 diethylamide (LSD)," punishable as provided in s. 775.082, s.
 1040 775.083, or s. 775.084. If the quantity involved:
 1041 a. Is 1 gram or more, but less than 5 grams, such person
 1042 shall be sentenced to a mandatory minimum term of imprisonment
 1043 of 3 years, and the defendant shall be ordered to pay a fine of
 1044 \$50,000.

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1045 b. Is 5 grams or more, but less than 7 grams, such person
 1046 shall be sentenced to a mandatory minimum term of imprisonment
 1047 of 7 years, and the defendant shall be ordered to pay a fine of
 1048 \$100,000.

1049 c. Is 7 grams or more, such person shall be sentenced to a
 1050 mandatory minimum term of imprisonment of 15 calendar years and
 1051 pay a fine of \$500,000.

1052 2. Any person who knowingly manufactures or brings into
 1053 this state 7 grams or more of lysergic acid diethylamide (LSD)
 1054 as described in s. 893.03(1)(c), or any mixture containing
 1055 lysergic acid diethylamide (LSD), and who knows that the
 1056 probable result of such manufacture or importation would be the
 1057 death of any person commits capital manufacture or importation
 1058 of lysergic acid diethylamide (LSD), a capital felony punishable
 1059 as provided in ss. 775.082 and 921.142. Any person sentenced for
 1060 a capital felony under this paragraph shall also be sentenced to
 1061 pay the maximum fine provided under subparagraph 1.

1062 Section 15. For the purpose of incorporating the amendment
 1063 made by this act to section 893.03, Florida Statutes, in
 1064 references thereto, paragraphs (b), (c), and (e) of subsection
 1065 (3) of section 921.0022, Florida Statutes, are reenacted to
 1066 read:

1067 921.0022 Criminal Punishment Code; offense severity ranking
 1068 chart.—

1069 (3) OFFENSE SEVERITY RANKING CHART

1070 (b) LEVEL 2

1071

Florida Statute	Felony Degree	Description
-----------------	---------------	-------------

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1072 379.2431 3rd Possession of 11 or
 (1) (e) 3. fewer marine turtle eggs
 in violation of the
 Marine Turtle Protection
 Act.

1073 379.2431 3rd Possession of more than
 (1) (e) 4. 11 marine turtle eggs in
 violation of the Marine
 Turtle Protection Act.

1074 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.

1075 517.07(2) 3rd Failure to furnish a
 prospectus meeting
 requirements.

1076 590.28(1) 3rd Intentional burning of
 lands.

1077 784.05(3) 3rd Storing or leaving a
 loaded firearm within

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			reach of minor who uses it to inflict injury or death.
1078	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
1079	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
1080	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
1081	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
1082	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
1083	812.014(2)(d)	3rd	Grand theft, 3rd degree;

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			\$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
1084	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
1085	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
1086	817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
1087	817.52(3)	3rd	Failure to redeliver hired vehicle.
1088	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
1089			

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1090	817.60(5)	3rd	Dealing in credit cards of another.
	817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
1091	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
1092	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
1093	831.01	3rd	Forgery.
1094	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
1095	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
1096	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.

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1097	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
1098	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
1099	832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
1100	843.08	3rd	Falsely impersonating an officer.
1101	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., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs other than cannabis.
1102	893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.
1103			

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1104	(c) LEVEL 3		
1105	Florida Statute	Felony Degree	Description
1106	119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
1107	316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
1108	316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
1109	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
1110	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
1111	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile

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			home.
1112	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
1113	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
1114	327.35(2)(b)	3rd	Felony BUI.
1115	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
1116	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
1117	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
1118			

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	379.2431	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
1119	(1) (e) 5.		
	379.2431	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
	(1) (e) 6.		
1120	400.9935(4)	3rd	Operating a clinic without a license or filing false license application or other required information.
1121	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
1122	501.001(2) (b)	2nd	Tampers with a consumer product or the container

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			using materially false/misleading information.
1123	624.401(4) (a)	3rd	Transacting insurance without a certificate of authority.
1124	624.401(4) (b) 1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
1125	626.902(1) (a) & (b)	3rd	Representing an unauthorized insurer.
1126	697.08	3rd	Equity skimming.
1127	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
1128	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
1129	806.10(2)	3rd	Interferes with or assaults

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			firefighter in performance of duty.
1130	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
1131	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
1132	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
1133	815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.
1134	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
1135	817.233	3rd	Burning to defraud insurer.
1136	817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor

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	591-02778-15		20151098c1
			vehicle accidents.
1137	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
1138	817.236	3rd	Filing a false motor vehicle insurance application.
1139	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
1140	817.413(2)	3rd	Sale of used goods as new.
1141	817.505(4)	3rd	Patient brokering.
1142	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
1143	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
1144			

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	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
1145			
	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
1146			
	843.19	3rd	Injure, disable, or kill police dog or horse.
1147			
	860.15(3)	3rd	Overcharging for repairs and parts.
1148			
	870.01(2)	3rd	Riot; inciting or encouraging.
1149			
	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
1150			
	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2.,

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	591-02778-15		20151098c1
			(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 university.
1151			
	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
1152			
	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
1153			
	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
1154			
	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery,

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	591-02778-15		20151098c1	
			misrepresentation, etc.	
1155	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.	
1156	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.	
1157	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.	
1158	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.	
1159	893.13(8)(a)3.	3rd	Knowingly write a	

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			prescription for a controlled substance for a fictitious person.	
1160	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.	
1161	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.	
1162	944.47	3rd	Introduce contraband to correctional facility.	
1163	(1)(a)1. & 2.			
	944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.	
1164	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).	
1165				
1166	(e) LEVEL 5			

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1167	Florida Statute	Felony Degree	Description
1168	316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
1169	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
1170	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
1171	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
1172	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
1173	379.3671	3rd	Willful molestation,

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	(2)(c)3.		possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
1174	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
1175	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
1176	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
1177	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
1178	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or

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			authority; premium collected \$20,000 or more but less than \$100,000.	
1179	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.	
1180	790.01(2)	3rd	Carrying a concealed firearm.	
1181	790.162	2nd	Threat to throw or discharge destructive device.	
1182	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.	
1183	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.	
1184	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.	
1185				

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	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.	
1186	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.	
1187	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.	
1188	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.	
1189	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.	
1190	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.	
1191	812.019(1)	2nd	Stolen property; dealing in or trafficking in.	
1192				

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1193	812.131(2)(b)	3rd	Robbery by sudden snatching.
	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
1194	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
1195	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
1196	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.
1197	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment

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			avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.
1198	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
1199	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
1200	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
1201	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc.,

1202	591-02778-15		20151098c1	which includes sexual conduct by a child.
1203	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.
1204	843.01	3rd		Resist officer with violence to person; resist arrest with violence.
1205	847.0135(5) (b)	2nd		Lewd or lascivious exhibition using computer; offender 18 years or older.
1206	847.0137 (2) & (3)	3rd		Transmission of pornography by electronic device or equipment.
1207	847.0138 (2) & (3)	3rd		Transmission of material harmful to minors to a minor by electronic device or equipment.

1208	591-02778-15 874.05(1) (b)	2nd	20151098c1	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
1209	874.05(2) (a)	2nd		Encouraging or recruiting person under 13 years of age to join a criminal gang.
1210	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).
1210	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

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municipal park or
publicly owned
recreational facility or
community center.

1211

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.

1212

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.

1213

893.13(1)(f)1.

1st

Sell, manufacture, or
deliver cocaine (or
other s. 893.03(1)(a),

591-02778-15

20151098c1

(1)(b), (1)(d), or
(2)(a), (2)(b), or
(2)(c)4. drugs) within
1,000 feet of public
housing facility.

1214

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.,
(2)(c)5., (2)(c)6.,
(2)(c)7., (2)(c)8.,
(2)(c)9., (3), or (4)
drugs).

1215

893.1351(1)

3rd

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

1216

1217

Section 16. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Appropriations Subcommittee on Criminal and Civil Justice

Subject: Committee Agenda Request

Date: March 26, 2015

I respectfully request that **Senate Bill # 1098**, relating to Controlled Substances, be placed on the:

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

A handwritten signature in black ink, appearing to read "Rob Bradley".

Senator Rob Bradley
Florida Senate, District 7

THE FLORIDA SENATE
APPEARANCE RECORD

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

8 April 15
Meeting Date

1098
Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Barney Bishop II

Job Title Pres & CEO

Address 204 S. Monroe St.

Phone 577-3032

Street

City

Tallah

FL

State

32301

Zip

Email

Speaking: For Against Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/8/15
Meeting Date

1098
Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Lisa Hurley

Job Title Legislative Director, FAE

Address 100 S. Monroe St.

Phone 922-4300

Street

City

Tallahassee

State

Zip

Email

Speaking: For Against Information

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

Representing FL Assoc Counties

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

APPEARANCE RECORD

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

8 Apr 2015
Meeting Date

1098
Bill Number (if applicable)

Topic Controlled Subl Bath Salts

Amendment Barcode (if applicable)

Name Jill Gran

Job Title Leg Affairs Dir

Address 2868 Mahan Dr

Phone 878 2196

Street Tallahassee State FL Zip 32308

Email jill@fudaa.org

Speaking: For Against Information

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

Representing Florida Alcohol + Drug Abuse Assoc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/SB 1106 (694962)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; and Senator Flores

SUBJECT: Human Trafficking

DATE: April 10, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.	Clodfelter	Sadberry	ACJ	Recommend: Fav/CS
3.			AP	

I. Summary:

PCS/SB 1106 amends s. 796.07, F.S., relating to prostitution, by enhancing the criminal penalties for a person who solicits, induces, entices, or procures another to commit prostitution, lewdness, or assignation as follows:

- A first violation becomes a first degree misdemeanor (currently a second degree misdemeanor);
- A second violation becomes a third degree felony (currently a first degree misdemeanor); and
- A third or subsequent violation becomes a second degree felony (currently a third degree felony).

The bill requires such person to perform 100 hours of community service and to pay for and attend an educational program about the negative effects of prostitution and human trafficking, if one exists. The bill allows a judge to order the offender's vehicle, if one is used in the offense, to be impounded or immobilized for up to 60 days (unless certain exceptions apply).

A person convicted of a second or subsequent solicitation violation under the bill is required to serve a minimum of 10 days in county jail.

The bill also amends s. 943.0583, F.S., relating to human trafficking victim expunction, to require the court to allow an advocate from the state attorney's office, law enforcement agency, safe house or safe foster home, or residential facility offering services to adult human trafficking victims to be present with the victim/petitioner during any expunction court proceeding.

The Criminal Justice Impact Conference (CJIC) has determined that this bill will result in an insignificant increase in the need for state prison beds.

The bill has an effective date of October 1, 2015.

II. Present Situation:

Prostitution

The human trafficking statute recognizes that many victims of human trafficking are forced to work in prostitution or the sexual entertainment industry.¹ Prostitution is criminalized in ch. 796, F.S. It is defined as the “giving or receiving of the body for sexual activity² for hire but excludes sexual activity between spouses.”³ Prohibited activities include, among others, soliciting, inducing, enticing, or procuring another to commit prostitution, lewdness⁴, or assignation^{5, 6}.

A first solicitation violation is punishable as a second degree misdemeanor⁷, a second violation as a first degree misdemeanor⁸, and a third or subsequent violation as a third degree felony⁹ under s. 796.07(4), F.S. A civil penalty of \$5,000 is also required to be assessed, unless the offender is acquitted or the case is dismissed.¹⁰

Finally, the statute requires that a person who is charged with a third violation be offered admission to a pretrial intervention program or substance abuse treatment program under s. 948.08, F.S.¹¹

Human Trafficking Victim Expunction

Section 943.0583, F.S., authorizes a victim of human trafficking to petition the court for an expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed while he or she was a victim of human trafficking.¹² The statute defines “victim of human trafficking” to mean a person subjected to coercion for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.¹³

The court of original jurisdiction over the crime sought to be expunged is the court designated in the statute to hear the victim’s petition.¹⁴ A petition must be initiated by the petitioner with due

¹ Section 787.06(1)(b), F.S.

² Section 796.07(1)(d), F.S., defines “sexual activity” to mean oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation; however, it does not include acts done for bona fide medical purposes.

³ Section 796.07(1)(a), F.S.

⁴ Section 796.07(1)(b), F.S., defines “lewdness” as any indecent or obscene act.

⁵ Section 796.07(1)(c), F.S., defines “assignation” as making an appointment or engagement for prostitution or lewdness.

⁶ Section 796.07(2)(f), F.S.

⁷ Incarceration not exceeding 60 days in county jail and/or a fine not exceeding \$500. Sections 775.082 and 775.083, F.S.

⁸ Incarceration not exceeding one year in county jail and/or a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

⁹ Imprisonment not exceeding 5 years and/or a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

¹⁰ Section 796.07(6), F.S.

¹¹ Section 796.07(5), F.S.

¹² “Human trafficking” is defined under s. 787.06(2)(d), F.S., as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.

¹³ Section 943.0583(1)(c), F.S.

¹⁴ Section 943.0583(2), F.S.

diligence after the victim has ceased being a victim of human trafficking or has sought human trafficking services.¹⁵ A petition to expunge must be accompanied by the following:

- A sworn statement attesting that the petitioner is eligible for an expunction to the best of his or her knowledge and does not have other petitions to expunge or seal pending before any court; and
- Official documentation of the petitioner's status as a human trafficking victim, if any exists.¹⁶

The petitioner or the petitioner's attorney is allowed under the statute to appear at the hearing telephonically, via video conference, or by other electronic means.¹⁷

If the court grants relief to the petitioner, the clerk of the court must certify copies of the expunction order to the appropriate state attorney or statewide prosecutor and the arresting agency. The Florida Department of Law Enforcement (department) is responsible for forwarding the order to expunge to the Federal Bureau of Investigation.¹⁸

Any criminal justice agency having custody of such record, except the department, must physically destroy the record. Human trafficking victims receiving a record expunction under this statute are lawfully able to deny or fail to acknowledge the covered arrests, except if they are applying for employment with a criminal justice agency or are a defendant in a criminal prosecution.¹⁹

III. Effect of Proposed Changes:

Prostitution

The bill amends s. 796.07, F.S., by enhancing the criminal penalties for a person who solicits, induces, entices, or procures another to commit prostitution, lewdness, or assignation as follows:

- A first violation becomes a first degree misdemeanor (currently a second degree misdemeanor);
- A second violation becomes a third degree felony (currently a first degree misdemeanor); and
- A third or subsequent violation becomes a second degree felony²⁰ (currently a third degree felony).

The bill requires such person to perform 100 hours of community service and to pay for and attend an educational program about the negative effects of prostitution and human trafficking, if one exists.

It also requires a person convicted of a second or subsequent solicitation violation to serve a minimum of 10 days in county jail.

¹⁵ Section 943.0583(4), F.S.

¹⁶ Section 943.0583(6), F.S.

¹⁷ Section 943.0583(7) (b), F.S.

¹⁸ Section 943.0583(7)(c), F.S.

¹⁹ Section 943.0583(8), F.S.

²⁰ Punishable by imprisonment not exceeding 15 years and/or a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

The bill prohibits a person who is charged with a third or subsequent solicitation violation from attending a pretrial intervention program or substance abuse program.

The bill also allows a judge to order the offender's vehicle, if one is used in the offense, to be impounded or immobilized for up to 60 days. The order of impoundment or immobilization must include the names and telephone numbers of all immobilization agencies meeting the conditions of s. 316.193(13).²¹ Within seven business days after the order is issued, the clerk of the court must send notice by certified mail, return receipt requested, to the registered owner of the vehicle, if the registered owner is a person other than the defendant, and to each person of record claiming a lien against the vehicle.

The owner of the vehicle may request the court to dismiss the order, and the court must dismiss the order, at no cost to the owner, if it finds any of the following to be true:

- The owner's family has no other private or public means of transportation;
- The vehicle was stolen at the time of the offense;
- The owner bought the vehicle after the offense was committed and it was not done to circumvent the order and allow the defendant continued access; or
- The vehicle is owned by the defendant but is operated solely by employees of the defendant or employees of a business owned by the defendant.

If the court denies the request to dismiss the order, the petitioner may request an evidentiary hearing. At that hearing, if the court finds that any of the above circumstances exist, it must dismiss the order, at no cost to the owner.

Human Trafficking Victim Expunction

The bill amends s. 943.0583, F.S., to require the court to allow an advocate from the state attorney's office, law enforcement agency, safe house or safe foster home, or residential facility offering services to adult human trafficking victims to be present with the petitioner during any expunction court proceeding. This requirement only applies if the petitioner requests it and an advocate is available.

The bill also provides that any court in the circuit in which the petitioner was arrested may order expunction of a human trafficking victim's criminal record if the court has jurisdiction over the class of offense or offenses sought to be expunged. Currently, expunction can only be ordered by "the court of original jurisdiction over the crime sought to be expunged."

Finally, the bill amends ss. 456.074, 480.041, and 480.043, F.S., to make a technical and conforming cross-reference change.

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

²¹ These conditions include, among others: having verifiable experience in immobilizing vehicles, maintaining accurate records, and employing persons that meet specified requirements.

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 convicted of soliciting prostitution may be subject to potentially higher fines under PCS/SB 1106. Their vehicles may also be subject to immobilization, which could have a positive fiscal impact on immobilization companies.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) met on February 27, 2015, and determined that this bill will result in an increase in the need for state prison beds. However, the impact will be insignificant because of the low volume of offenses.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 796.07 and 943.0583.

The bill makes technical and conforming cross-reference changes to the following sections of the Florida Statutes: 456.074, 480.041, and 480.043.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on April 8, 2015:

The committee substitute amends the bill to provide that any court in the circuit in which a human trafficking victim was arrested may order expungement of the victim’s criminal record if the court has jurisdiction over the class of offense or offenses sought to be expunged.

- B. **Amendments:**

None.



328998

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Flores) recommended the following:

Senate Amendment (with title amendment)

Delete lines 165 - 170

and insert:

(2) Notwithstanding any other provision of law, upon the filing of a petition as provided in this section, any court in the circuit in which the petitioner was arrested ~~the court of original jurisdiction over the crime sought to be expunged~~ may order a criminal justice agency to expunge the criminal history record of a victim of human trafficking who complies with the



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11 requirements of this section so long as the court has
12 jurisdiction over the class of offense or offenses sought to be
13 expunged. A petition need not be filed in the court where the
14 petitioner's criminal proceeding or proceedings originally took
15 place. This section

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

17 And the title is amended as follows:

18 Delete line 16

19 and insert:

20 that any court in the circuit in which the

By Senator Flores

37-00751A-15

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1 A bill to be entitled
 2 An act relating to human trafficking; amending s.
 3 796.07, F.S.; providing enhanced criminal penalties
 4 for soliciting another to commit prostitution and
 5 similar offenses; requiring persons convicted of such
 6 offenses to perform community service and pay for and
 7 attend an education program; requiring the court to
 8 impose minimum mandatory terms of incarceration for
 9 persons convicted two or more times of soliciting
 10 another to commit prostitution and similar offenses;
 11 providing for impoundment of a vehicle used in
 12 soliciting another to commit prostitution and similar
 13 offenses; providing an opportunity for owners to
 14 prevent the impoundment or immobilization in certain
 15 circumstances; amending s. 943.0583, F.S.; providing
 16 that a circuit court in the circuit in which the
 17 petitioner was arrested may expunge the criminal
 18 history record of a victim of human trafficking;
 19 requiring a judge to allow an advocate to be present
 20 with a human trafficking victim in an expunction
 21 hearing in certain circumstances; amending ss.
 22 456.074, 480.041, and 480.043, F.S.; conforming
 23 provisions to changes made by the act; providing an
 24 effective date.

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

27
 28 Section 1. Section 796.07, Florida Statutes, is amended to
 29 read:

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

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30 796.07 Prohibiting prostitution and related acts.—
 31 (1) As used in this section:
 32 (a) "Prostitution" means the giving or receiving of the
 33 body for sexual activity for hire but excludes sexual activity
 34 between spouses.
 35 (b) "Lewdness" means any indecent or obscene act.
 36 (c) "Assignment" means the making of any appointment or
 37 engagement for prostitution or lewdness, or any act in
 38 furtherance of such appointment or engagement.
 39 (d) "Sexual activity" means oral, anal, or vaginal
 40 penetration by, or union with, the sexual organ of another; anal
 41 or vaginal penetration of another by any other object; or the
 42 handling or fondling of the sexual organ of another for the
 43 purpose of masturbation; however, the term does not include acts
 44 done for bona fide medical purposes.
 45 (2) It is unlawful:
 46 (a) To own, establish, maintain, or operate any place,
 47 structure, building, or conveyance for the purpose of lewdness,
 48 assignment, or prostitution.
 49 (b) To offer, or to offer or agree to secure, another for
 50 the purpose of prostitution or for any other lewd or indecent
 51 act.
 52 (c) To receive, or to offer or agree to receive, any person
 53 into any place, structure, building, or conveyance for the
 54 purpose of prostitution, lewdness, or assignment, or to permit
 55 any person to remain there for such purpose.
 56 (d) To direct, take, or transport, or to offer or agree to
 57 direct, take, or transport, any person to any place, structure,
 58 or building, or to any other person, with knowledge or

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59 reasonable cause to believe that the purpose of such directing,
60 taking, or transporting is prostitution, lewdness, or
61 assignation.

62 (e) To offer to commit, or to commit, or to engage in,
63 prostitution, lewdness, or assignation.

64 (f) To solicit, induce, entice, or procure another to
65 commit prostitution, lewdness, or assignation.

66 (g) To reside in, enter, or remain in, any place,
67 structure, or building, or to enter or remain in any conveyance,
68 for the purpose of prostitution, lewdness, or assignation.

69 (h) To aid, abet, or participate in any of the acts or
70 things enumerated in this subsection.

71 (i) To purchase the services of any person engaged in
72 prostitution.

73 (3) (a) In the trial of a person charged with a violation of
74 this section, testimony concerning the reputation of any place,
75 structure, building, or conveyance involved in the charge,
76 testimony concerning the reputation of any person residing in,
77 operating, or frequenting such place, structure, building, or
78 conveyance, and testimony concerning the reputation of the
79 defendant is admissible in evidence in support of the charge.

80 (b) Notwithstanding any other provision of law, a police
81 officer may testify as an offended party in an action regarding
82 charges filed pursuant to this section.

83 (4) (a) A person who violates any provision of this section,
84 other than paragraph (2) (f), commits:

85 1. ~~(a)~~ A misdemeanor of the second degree for a first
86 violation, punishable as provided in s. 775.082 or s. 775.083.

87 2. ~~(b)~~ A misdemeanor of the first degree for a second

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88 violation, punishable as provided in s. 775.082 or s. 775.083.

89 3. ~~(e)~~ A felony of the third degree for a third or
90 subsequent violation, punishable as provided in s. 775.082, s.
91 775.083, or s. 775.084.

92 (b) ~~(5)~~ A person who is charged with a third or subsequent
93 violation of this section, other than paragraph (2) (f), shall be
94 offered admission to a pretrial intervention program or a
95 substance abuse treatment program as provided in s. 948.08.

96 (5) (a) A person who violates paragraph (2) (f) commits:

97 1. A misdemeanor of the first degree for a first violation,
98 punishable as provided in s. 775.082 or s. 775.083.

99 2. A felony of the third degree for a second violation,
100 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

101 3. A felony of the second degree for a third or subsequent
102 violation, punishable as provided in s. 775.082, s. 775.083, or
103 s. 775.084.

104 (b) In addition to any other penalty imposed, the court
105 shall order a person convicted of a violation of paragraph
106 (2) (f) to:

107 1. Perform 100 hours of community service; and

108 2. Pay for and attend an educational program about the
109 negative effects of prostitution and human trafficking, such as
110 a sexual violence prevention education program, if such program
111 exists in the judicial circuit in which the offender is
112 sentenced.

113 (c) In addition to any other penalty imposed, the court
114 shall sentence a person convicted of a second or subsequent
115 violation of paragraph (2) (f) to a minimum mandatory period of
116 incarceration of 10 days.

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117 (d)1. If a person who violates paragraph (2) (f) uses a
 118 vehicle in the course of the violation, the judge, upon the
 119 person's conviction, may issue an order for the impoundment or
 120 immobilization of the vehicle for a period of up to 60 days. The
 121 order of impoundment or immobilization must include the names
 122 and telephone numbers of all immobilization agencies meeting all
 123 of the conditions of s. 316.193(13). Within 7 business days
 124 after the date that the court issues the order of impoundment or
 125 immobilization, the clerk of the court must send notice by
 126 certified mail, return receipt requested, to the registered
 127 owner of the vehicle, if the registered owner is a person other
 128 than the defendant, and to each person of record claiming a lien
 129 against the vehicle.

130 2. The owner of the vehicle may request the court to
 131 dismiss the order. The court must dismiss the order, and the
 132 owner of the vehicle will incur no costs, if the owner of the
 133 vehicle alleges and the court finds to be true any of the
 134 following:

- 135 a. The owner's family has no other private or public means
 136 of transportation;
 137 b. The vehicle was stolen at the time of the offense;
 138 c. The owner purchased the vehicle after the offense was
 139 committed, and the sale was not made to circumvent the order and
 140 allow the defendant continued access to the vehicle; or
 141 d. The vehicle is owned by the defendant but is operated
 142 solely by employees of the defendant or employees of a business
 143 owned by the defendant.

144 3. If the court denies the request to dismiss the order,
 145 the petitioner may request an evidentiary hearing. If, at the

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146 evidentiary hearing, the court finds to be true any of the
 147 circumstances described in sub-subparagraphs 2.a.-d., the court
 148 must dismiss the order and the owner of the vehicle will incur
 149 no costs.

150 (6) A person who violates paragraph (2) (f) shall be
 151 assessed a civil penalty of \$5,000 if the violation results in
 152 any judicial disposition other than acquittal or dismissal. Of
 153 the proceeds from each penalty assessed under this subsection,
 154 the first \$500 shall be paid to the circuit court administrator
 155 for the sole purpose of paying the administrative costs of
 156 treatment-based drug court programs provided under s. 397.334.
 157 The remainder of the penalty assessed shall be deposited in the
 158 Operations and Maintenance Trust Fund of the Department of
 159 Children and Families for the sole purpose of funding safe
 160 houses and safe foster homes as provided in s. 409.1678.

161 Section 2. Subsections (2) and (7) and paragraph (a) of
 162 subsection (8) of section 943.0583, Florida Statutes, are
 163 amended to read:

164 943.0583 Human trafficking victim expunction.—

165 (2) Notwithstanding any other provision of law, a circuit
 166 court in the circuit in which the petitioner was arrested ~~the~~
 167 ~~court of original jurisdiction over the crime sought to be~~
 168 ~~expunged~~ may order a criminal justice agency to expunge the
 169 criminal history record of a victim of human trafficking who
 170 complies with the requirements of this section. This section
 171 does not confer any right to the expunction of any criminal
 172 history record, and any request for expunction of a criminal
 173 history record may be denied at the discretion of the court.

174 (7) (a) In judicial proceedings under this section, a copy

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175 of the completed petition to expunge shall be served upon the
 176 appropriate state attorney or the statewide prosecutor and upon
 177 the arresting agency; however, it is not necessary to make any
 178 agency other than the state a party. The appropriate state
 179 attorney or the statewide prosecutor and the arresting agency
 180 may respond to the court regarding the completed petition to
 181 expunge.

182 (b) The petitioner or the petitioner's attorney may appear
 183 at any hearing under this section telephonically, via video
 184 conference, or by other electronic means.

185 (c) The court shall allow an advocate from a state
 186 attorney's office, law enforcement agency, safe house, or safe
 187 foster home as defined in s. 409.1678(1), or a residential
 188 facility offering services to adult victims of human trafficking
 189 to be present with the petitioner during any court proceedings
 190 or hearings under this section, if the petitioner has made such
 191 a request and the advocate is able to be present.

192 (d)(e) If relief is granted by the court, the clerk of the
 193 court shall certify copies of the order to the appropriate state
 194 attorney or the statewide prosecutor and the arresting agency.
 195 The arresting agency is responsible for forwarding the order to
 196 any other agency listed in the court order to which the
 197 arresting agency disseminated the criminal history record
 198 information to which the order pertains. The department shall
 199 forward the order to expunge to the Federal Bureau of
 200 Investigation. The clerk of the court shall certify a copy of
 201 the order to any other agency that the records of the court
 202 reflect has received the criminal history record from the court.

203 (8) (a) Any criminal history record of a minor or an adult

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204 that is ordered expunged ~~by the court of original jurisdiction~~
 205 ~~over the charges sought to be expunged~~ pursuant to this section
 206 must be physically destroyed or obliterated by any criminal
 207 justice agency having custody of such record, except that any
 208 criminal history record in the custody of the department must be
 209 retained in all cases.

210 Section 3. Paragraph (1) of subsection (5) of section
 211 456.074, Florida Statutes, is amended to read:

212 456.074 Certain health care practitioners; immediate
 213 suspension of license.-

214 (5) The department shall issue an emergency order
 215 suspending the license of a massage therapist or establishment
 216 as defined in chapter 480 upon receipt of information that the
 217 massage therapist, a person with an ownership interest in the
 218 establishment, or, for a corporation that has more than \$250,000
 219 of business assets in this state, the owner, officer, or
 220 individual directly involved in the management of the
 221 establishment has been convicted or found guilty of, or has
 222 entered a plea of guilty or nolo contendere to, regardless of
 223 adjudication, a felony offense under any of the following
 224 provisions of state law or a similar provision in another
 225 jurisdiction:

226 (1) Section 796.07(4)(a)3. ~~796.07(4)(e)~~, relating to a
 227 felony of the third degree for a third or subsequent violation
 228 of s. 796.07, relating to prohibiting prostitution and related
 229 acts.

230 Section 4. Paragraph (1) of subsection (7) of section
 231 480.041, Florida Statutes, is amended to read:

232 480.041 Massage therapists; qualifications; licensure;

Page 8 of 10

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

37-00751A-15

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233 endorsement.-

234 (7) The board shall deny an application for a new or
 235 renewal license if an applicant has been convicted or found
 236 guilty of, or enters a plea of guilty or nolo contendere to,
 237 regardless of adjudication, a felony offense under any of the
 238 following provisions of state law or a similar provision in
 239 another jurisdiction:

240 (1) Section 796.07(4)(a)3. ~~796.07(4)(e)~~, relating to a
 241 felony of the third degree for a third or subsequent violation
 242 of s. 796.07, relating to prohibiting prostitution and related
 243 acts.

244 Section 5. Paragraph (1) of subsection (8) of section
 245 480.043, Florida Statutes, is amended to read:

246 480.043 Massage establishments; requisites; licensure;
 247 inspection.-

248 (8) The department shall deny an application for a new or
 249 renewal license if a person with an ownership interest in the
 250 establishment or, for a corporation that has more than \$250,000
 251 of business assets in this state, the owner, officer, or
 252 individual directly involved in the management of the
 253 establishment has been convicted or found guilty of, or entered
 254 a plea of guilty or nolo contendere to, regardless of
 255 adjudication, a felony offense under any of the following
 256 provisions of state law or a similar provision in another
 257 jurisdiction:

258 (1) Section 796.07(4)(a)3. ~~796.07(4)(e)~~, relating to a
 259 felony of the third degree for a third or subsequent violation
 260 of s. 796.07, relating to prohibiting prostitution and related
 261 acts.

Page 9 of 10

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262

Section 6. This act shall take effect October 1, 2015.

Page 10 of 10

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/15

Meeting Date

SB 1106

Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Eric Stern

Job Title Florida PTA

Address Street

Phone

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 PTA

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

Lobbyist registered with Legislature: [] Yes [] No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/15

Meeting Date

1106

Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Justin Day

Job Title Director

Address Street 701 S. Howard Ave, Suite 106-324

Phone 850 222 8900

City Tampa FL State Zip 33606

Email jday@cardenaspartners.com

Speaking: [] For [] Against [] Information

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

Representing More Too Life

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)

4/8/15
Meeting Date

1106
Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 201 W Park Ave

Phone _____

Street

Tallahassee

32301

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Florida Conference of Catholic Bishops

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)

4-8-15
Meeting Date

1106
Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Samantha Sexton

Job Title Associate Director - Government Affairs

Address One W Adams St. #301

Phone 404-363-4403

Street

Jacksonville

FL

32202

Email samantha.sexton@pacecenter.org

City

State

Zip

Speaking: For Against Information

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

Representing PACE

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)

8 Apr 15
Meeting Date

SB 1106
Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title Pres & CEO

Address 204 S. Monroe St.

Phone 577.3032

Street

Tall

FL

32301

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/SB 1170 (308648)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; and Senator Bradley

SUBJECT: Problem-solving Courts

DATE: April 10, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1170 authorizes cases in a veterans' court or a mental health court to be transferred between counties in the same manner current law authorizes the transfer of drug court cases. The bill also defines the term "problem-solving court" to include drug courts, veterans' courts, and mental health courts.

Under existing law, drug courts, veterans' courts, and mental health courts enable qualifying defendants to participate in pretrial or post-adjudication diversion programs. Although each court type has a similar function, only drug courts are authorized to transfer a case from one county having a drug court program to another county having a drug court program.

This bill enables veterans' courts and mental health courts to transfer cases to other counties on the same basis and under similar conditions as that provided for cases in which defendants are eligible for drug court treatment programs. As is the case for drug court transfers, the county to which the mental health or veterans' court case is transferred must first approve the transfer. Likewise, the court to which the case has been transferred retains jurisdiction to dispose of the case upon the defendant's successful completion of the program, order continued treatment, or authorize prosecution.

The bill designates drug courts, veterans' courts, and mental health courts as problem-solving courts.

This bill does not have a discernable fiscal impact.

The bill takes effect July 1, 2015.

II. Present Situation:

Transfer of Criminal Cases Between Counties

Florida law authorizes the transfer of a criminal case between counties in instances in which:

- An indictment or information is pending in one county and a defendant is arrested or held in another county, if the defendant requests in writing to plea guilty or nolo contendere, waive trial in the county in which the warrant was issued, and consent to disposition of the case in another county. The prosecutor of the court in which the indictment or information is pending must also consent to the transfer.¹
- An indictment or information is not pending and a defendant is arrested on a warrant issued upon a complaint in a county other than the county of arrest and requests in writing that he or she wishes to plea guilty or nolo contendere, to waive trial in the county in which the warrant was issued, and consent to disposition of the case in the county in which the defendant was arrested. The prosecuting attorney must also consent to the transfer.
- A defendant is eligible to participate in a drug court treatment program as part of a pretrial intervention program. Additionally, the drug court must consent and the following conditions must be met:
 - The authorized representatives of the drug court programs consult about the transfer;
 - The trial court accepts a plea from the defendant of nolo contendere and enters a transfer order² for the clerk to transfer the case to the county which has accepted the defendant into its drug court program; and
 - Once the transfer takes place, the clerk must schedule a hearing before the drug court for the defendant to begin the drug court program.³

If a case is transferred to a county where the defendant successfully completes a drug court program, the court that received the transfer will dispose of the case by dismissing the criminal charges.⁴ If the court finds that the defendant failed to successfully complete the program, the court may order the defendant to continue education and treatment including through substance-abuse treatment or jail-based treatment programs, or authorize the prosecution of the criminal charges.⁵

¹ The formal charging document in a criminal case is known as an indictment or an information. Indictments are returned by a grand jury and presented to the court, and an information is made by a prosecutor in the absence of an indictment by the grand jury. BLACK'S LAW DICTIONARY (10th ed. 2014).

² The transfer order must include all documents relating to the case, including the probable cause affidavit, charging documents, witness statements, the defendant's written consent to abide by all rules of the drug court program, and the defendant's contact information. Section 910.035(5)(c), F.S.

³ Section 910.035(1), (2), and (5), F.S.

⁴ Section 948.08(6)(c), F.S.

⁵ *Id.*

Pre-trial Intervention in Criminal Cases

The Department of Corrections (DOC) supervises pretrial intervention programs for defendants who have criminal charges pending. Pretrial intervention is available to defendants who are charged with a misdemeanor or third degree felony as a first offense or who have previously committed one nonviolent misdemeanor.⁶

Before a case may be transferred to another county, the following is required:

- Approval from the administrator of the pretrial intervention program, a victim, the state attorney, and the judge who presided at the initial first appearance of the defendant;
- Voluntary and written agreement from the defendant; and
- Knowing and intelligent waiver of speedy trial rights from the defendant during the term of diversion.⁷

While a defendant is in the program, criminal charges remain pending. If the defendant fails to successfully complete the program, the program administrator may recommend further supervision or the state attorney may resume prosecution of the case. The defendant does not have the right to a public defender unless the offender is subject to incarceration if convicted.⁸ If the defendant successfully completes the program, the program administrator may recommend that charges be dismissed without prejudice.⁹

The purpose of pretrial intervention is to offer eligible defendants a sentencing alternative in the form of counseling, education, supervision, and medical and psychological treatment as appropriate.¹⁰

Veterans Programs and Courts for Criminal Offenders

The Use of Veterans' Courts Nationally

A 2012 national survey found that 71 percent of participants in veterans' courts experienced trauma while serving in the military.¹¹ More recently, in 2014 a veterans' court report found that 46 percent of participants were diagnosed with substance abuse and mental health problems.

Veterans' courts are modeled after other specialty courts, such as drug courts and mental health courts. The goal of specialty courts is to provide treatment interventions to resolve underlying causes of criminal behavior to "reintegrate court participants into society, reduce future involvement with the criminal justice system, and promote public safety."¹²

⁶ A misdemeanor is punishable by up to 1 year term in a county jail and a \$500 to a \$1,000 fine. Sections 775.08(2) and 775.083(1)(d) and (e), F.S. A felony is punishable by a minimum of more than a 1 year term of imprisonment in a state penitentiary and fines that range from \$5,000 to \$15,000. Sections 775.08(1) and 775.083(1)(a) through (d), F.S.

⁷ Section 948.08 (2), F.S.

⁸ Section 948.08(3) and (4), F.S.

⁹ Section 948.08(5), F.S. If a case is dismissed without prejudice, the case can be refiled at a later time.

¹⁰ Section 948.08(1), F.S.

¹¹ Office of Program Policy Analysis & Government Accountability, Research Memorandum, *State-Funded Veterans' Courts in Florida*, pg. 1 (Jan. 30, 2015).

¹² *Id.*

Like other specialty courts, veterans' courts require the defendant to appear before the court over a specified period of time. On average, it takes 12 to 18 months for a veterans' court to dispose of a case.¹³

Veterans' Courts in Florida Law

The 2012 Florida Legislature placed into law the "T. Patt Maney Veterans' Treatment Intervention Act."¹⁴ The law:

- Recognizes veterans' courts;
- Requires courts to hold a pre-sentencing hearing if a combat veteran alleges military-related injury, to determine if the defendant suffers from certain conditions, such as post-traumatic stress disorder, a traumatic brain injury, or substance abuse due to military service;
- Establishes pretrial and post-adjudication intervention programs for combat veterans having pending criminal charges or convictions; and
- Enables counties to establish programs to divert eligible defendants who are veterans into treatment programs.

Veterans' Courts

The chief judge of each judicial circuit may establish a Military Veterans and Servicemembers Court Program to serve the special needs of veterans and servicemembers who are convicted of criminal offenses.¹⁵ In sentencing defendants, these specialty courts will consider whether military-related conditions, such as mental illness, traumatic brain injury, or substance abuse can be addressed through programs designed to serve the specific needs of the participant.¹⁶

As of January 2015, 21 veterans' courts in 20 counties operate in Florida.¹⁷ Seven courts received funding from state general revenue. From July 2013 to October 2014, 45 participants graduated from the state-funded courts.¹⁸ Fifty-two percent of the participants faced felony charges, mainly third-degree felonies.¹⁹ Sixty-two percent of the participants in state-funded veterans' courts between July 2013 and October 2014 had a dual diagnosis of mental health issues and substance abuse.

¹³ *Id.*

¹⁴ Senate Bill 138 (ch. 2012-159, Laws of Fla.).

¹⁵ Section 1.01(14), F.S., defines a veteran as a person who served in active military, naval, or air service who was discharged or released under honorable conditions or who later received an upgraded discharge under honorable conditions. A servicemember is defined as a person serving as a member of the United States Armed Forces on active duty or state active duty and members of the Florida National Guard and United States Reserve Forces. Section 250.01(19), F.S.

¹⁶ The authority for Veterans' Courts Programs is in ch. 394, F.S., which addresses mental health. Section 394.47891, F.S.

¹⁷ Office of Program Policy Analysis & Government Accountability, *supra* note 11 at 2 and 8. Alachua, Clay, Duval, Okaloosa, Orange, Pasco, and Pinellas counties received state general revenue funding to operate in Fiscal Year 2014-15. Other counties having veterans' courts are Brevard, Broward, Collier, Hillsborough, Indian River, Lake, Lee, Marion, Osceola, Palm Beach, Seminole, St. Lucie, and Volusia counties. Volusia County maintains two veterans' courts.

¹⁸ *Id.* at 3.

¹⁹ *Id.* at 5.

Pre-trial Intervention Programs

To be eligible to participate in diversion programs, veterans can be charged with misdemeanors²⁰ or felonies²¹. However, veterans must not be charged with a disqualifying felony offense.

Disqualifying offenses are serious felony offenses and include:

- Kidnapping and attempted kidnapping;
- Murder or attempted murder;
- Aggravated battery or attempted aggravated battery;
- Sexual battery or attempted sexual battery;
- Lewd or lascivious battery and certain other sexual offenses against children;
- Robbery or attempted robbery;
- Burglary or attempted burglary;
- Aggravated assault;
- Aggravated stalking; and
- Treason.²²

Prior to placement in a program, a veterans' treatment intervention team must develop an individualized coordinated strategy for the veteran. The team must present the coordinated strategy to the veteran in writing before he or she agrees to enter the program. The strategy is modeled after the ten therapeutic jurisprudence principles and key components for treatment-based drug court programs.²³

During the time that the defendant is allotted participation in the treatment program, the court retains jurisdiction in the case. At the end of the program, the court considers recommendations for disposition by the state attorney and the program administrator. If the veteran successfully completes the treatment program, the court must dismiss the criminal charges. If the court finds that the veteran did not successfully complete the program, the court can either order the veteran to continue in education and treatment or authorize the state attorney to proceed with prosecution.

Eligible veterans who successfully complete the diversion program may petition the court to order the expunction of the arrest record and the plea.

Post-adjudication Treatment Programs

Veterans and servicemembers²⁴ on probation or community control who committed a crime on or after July 1, 2012, and who suffer from military-related mental illness, traumatic brain injury,

²⁰ Section 948.16 (2)(a), F.S., establishes the misdemeanor pretrial veterans' treatment intervention program.

²¹ Section 948.08(7)(a), F.S., authorizes courts to consider veterans charged with non-disqualifying felonies for pretrial veterans' treatment intervention programs.

²² Section 948.06(8)(c), F.S.

²³ Section 948.08(7)(b), F.S., requires a coordinated strategy for veterans charged with felonies who are participating in pretrial intervention programs. Section 948.16(2)(b), F.S., requires a coordinated strategy for veterans charged with misdemeanors. Section 397.334(4), F.S., requires treatment based court programs to include therapeutic jurisprudence principles and components recognized by the United States Department of Justice and adopted by the Florida Supreme Court Treatment-based Drug Court Steering Committee.

²⁴ Section 1.01(14), F.S., defines a veteran as a person who served in active military, naval, or air service who was discharged or released under honorable conditions or who later received an upgraded discharge under honorable conditions. A

or substance abuse may also qualify for treatment programs. A court may impose, as a condition of probation or community control, successful completion of a mental health or substance abuse treatment program.²⁵

Mental Health Courts

Florida law does not recognize the specialty court of a mental health court.

III. Effect of Proposed Changes:

This bill enables veterans' courts and mental health courts to transfer cases to other counties on the same basis, and under similar conditions as that provided for cases in which defendants are eligible for drug court treatment programs. The bill defines drug courts, veterans' courts and mental health courts as "problem-solving courts."

As is the case for drug court transfers, the county to which the mental health or veterans' court case is transferred must first approve the transfer. Likewise, the court to which the case has been transferred retains jurisdiction to dispose of the case upon the defendant's successful completion of the program, order continued treatment, or authorize prosecution.

The bill establishes the term "problem-solving court" to apply to the specialty courts of drug courts, veterans' courts, and mental health courts.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill requires consent from a receiving county prior to transfer. Therefore, a county does not have to accept transfer of a problem-solving court case and provide services.

For this reason, the bill does not appear to create a mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

servicemember is defined as a person serving as a member of the United States Armed Forces on active duty or state active duty and members of the Florida National Guard and United States Reserve Forces. (Section 250.01(19), F.S.)

²⁵ Section 948.21, F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

PCS/SB 1170 may facilitate a person's participation in a veterans' court program or mental health court program by allowing a defendant to participate in a program in his or her home county instead of the county where a crime occurred.

C. Government Sector Impact:

Although the original legislation creating veterans' courts in 2012 included an appropriation, this bill does not.

The Office of the State Courts Administrator (OSCA) expects no judicial or court workload impact from this bill as cases would be transferred and no net additional cases would be generated. Additional orders of transfer and completion of necessary paperwork resulting from the bill may have a minimal fiscal impact on expenditures.²⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 910.035 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.)**Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on April 8, 2015:**

The committee substitute:

- Makes technical changes to the bill.
- Requires specific information to be included in the transfer order when transferring a problem-solving court case to another county.

²⁶ Office of the State Courts Administrator, *2015 Judicial Impact Statement* (March 10, 2015); on file with the Senate Judiciary Committee.

B. Amendments:

None.

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



231456

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (5) of section 910.035, Florida
Statutes, is amended to read:

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

(5) TRANSFER FOR PARTICIPATION IN A PROBLEM-SOLVING COURT.-

(a) For purposes of this subsection, the term "problem-



231456

11 solving court” means a drug court pursuant to s. 948.01, s.
12 948.06, s. 948.08, s. 948.16, or s. 948.20; a veterans’ court
13 pursuant to s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; or
14 a mental health court.

15 (b) Any person eligible for participation in a problem-
16 solving ~~drug~~ court shall, upon request by the person or a court,
17 ~~treatment program pursuant to s. 948.08(6) may be eligible to~~
18 have the case transferred to a county other than that in which
19 the charge arose if the person agrees to the transfer, ~~the drug~~
20 ~~court program agrees and if the following conditions are met:~~

21 ~~(a) the authorized representative of the trial ~~drug~~ court~~
22 ~~consults program of the county requesting to transfer the case~~
23 ~~shall consult~~ with the authorized representative of the problem-
24 solving ~~drug~~ court ~~program~~ in the county to which transfer is
25 desired, and both representatives agree to the transfer.

26 (c) ~~(b)~~ If all parties agree to the transfer as required by
27 paragraph (b), approval for transfer is received from all
28 ~~parties,~~ the trial court shall ~~accept a plea of nolo contendere~~
29 ~~and~~ enter a transfer order directing the clerk to transfer the
30 case to the county which has accepted the defendant into its
31 problem-solving ~~drug~~ court ~~program~~.

32 (d) 1. ~~(c)~~ When transferring a pretrial problem-solving court
33 case, the transfer order shall include a copy of the probable
34 cause affidavit; any charging documents in the case; all
35 reports, witness statements, test results, evidence lists, and
36 other documents in the case; the defendant’s mailing address and
37 telephone ~~phone~~ number; and the defendant’s written consent to
38 abide by the rules and procedures of the receiving county’s
39 problem-solving ~~drug~~ court ~~program~~.



231456

40 2. When transferring a postadjudicatory problem-solving
41 court case, the transfer order shall include a copy of the
42 charging documents in the case; the final disposition; all
43 reports, test results, and other documents in the case; the
44 defendant's mailing address and telephone number; and the
45 defendant's written consent to abide by the rules and procedures
46 of the receiving county's problem-solving court.

47 ~~(e)(d)~~ After the transfer takes place, the receiving clerk
48 shall set the matter for a hearing before the problem-solving
49 drug court in the receiving jurisdiction to program judge and
50 ~~the court shall~~ ensure the defendant's entry into the problem-
51 solving drug court program.

52 ~~(f)(e)~~ Upon successful completion of the problem-solving
53 ~~drug~~ court program, the jurisdiction to which the case has been
54 transferred shall dispose of the case ~~pursuant to s. 948.08(6).~~
55 If the defendant does not complete the problem-solving drug
56 court program successfully, the jurisdiction to which the case
57 has been transferred shall dispose of the case within the
58 guidelines of the Criminal Punishment Code.

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

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

61 And the title is amended as follows:

62 Delete everything before the enacting clause
63 and insert:

64 A bill to be entitled
65 An act relating to defendants in specialized courts;
66 amending s. 910.035, F.S.; providing a definition;
67 requiring a trial court to transfer certain criminal
68 cases involving participants in specified programs to



231456

69
70

another jurisdiction having such a program under
certain conditions; providing an effective date.

By Senator Bradley

7-00661A-15

20151170__

A bill to be entitled

An act relating to problem-solving courts; amending s. 910.035, F.S.; defining the term "problem-solving court"; authorizing a person eligible for participation in a problem-solving court to transfer his or her case to another county's problem-solving court under certain circumstances; making technical changes; providing an effective date.

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

Section 1. Section 910.035, Florida Statutes, is amended to read:

910.035 Transfer from county for plea and sentence or participation in a problem-solving court.-

(1) INDICTMENT OR INFORMATION PENDING.—A defendant arrested or held in a county other than that in which an indictment or information is pending against him or her may state in writing that he or she wishes to plead guilty or nolo contendere, to waive trial in the county in which the indictment or information is pending, and to consent to disposition of the case in the county in which the defendant was arrested or is held, subject to the approval of the prosecuting attorney of the court in which the indictment or information is pending. Upon receipt of the defendant's statement and the written approval of the prosecuting attorney, the clerk of the court in which the indictment or information is pending shall transmit the papers in the proceeding, or certified copies thereof, to the clerk of the court of competent jurisdiction for the county in which the

Page 1 of 4

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

7-00661A-15

20151170__

defendant is held, and the prosecution shall continue in that county upon the information or indictment originally filed. In the event a fine is imposed upon the defendant in that county, two-thirds thereof shall be returned to the county in which the indictment or information was originally filed.

(2) INDICTMENT OR INFORMATION NOT PENDING.—A defendant arrested on a warrant issued upon a complaint in a county other than the county of arrest may state in writing that he or she wishes to plead guilty or nolo contendere, to waive trial in the county in which the warrant was issued, and to consent to disposition of the case in the county in which the defendant was arrested, subject to the approval of the prosecuting attorney of the court in which the indictment or information is pending. Upon receipt of the defendant's statement and the written approval of the prosecuting attorney, and upon the filing of an information or the return of an indictment, the clerk of the court from which the warrant was issued shall transmit the papers in the proceeding, or certified copies thereof, to the clerk of the court of competent jurisdiction in the county in which the defendant was arrested, and the prosecution shall continue in that county upon the information or indictment originally filed.

(3) EFFECT OF NOT GUILTY PLEA.—If, after the proceeding has been transferred pursuant to subsection (1) or subsection (2), the defendant pleads not guilty, the clerk shall return the papers to the court in which the prosecution was commenced, and the proceeding shall be restored to the docket of that court. The defendant's statement that he or she wishes to plead guilty or nolo contendere shall not be used against the defendant.

Page 2 of 4

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

7-00661A-15

20151170__

59 (4) APPEARANCE IN RESPONSE TO A SUMMONS.—For the purpose of
60 initiating a transfer under this section, a person who appears
61 in response to a summons shall be treated as if he or she had
62 been arrested on a warrant in the county of such appearance.

63 (5) TRANSFERS FOR PARTICIPATION IN A PROBLEM-SOLVING
64 COURT.—For purposes of this subsection, the term “problem-
65 solving court” means a drug court pursuant to s. 948.01, s.
66 948.06, s. 948.08, s. 948.16, or s. 948.20; a veterans’ court
67 pursuant to s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; or
68 a mental health court. ~~A~~ Any person eligible for participation
69 in a problem-solving drug court treatment program pursuant to s.
70 948.08(6) may be eligible to have the case transferred to a
71 county other than that in which the charge arose if the problem-
72 solving drug court program agrees and these procedures ~~if the~~
73 ~~following conditions~~ are met:

74 (a) The authorized representative of the problem-solving
75 drug court program of the county requesting to transfer the case
76 shall consult with the authorized representative of the problem-
77 solving drug court program in the county to which transfer is
78 desired.

79 (b) If approval for transfer is received from all parties,
80 the trial court ~~must shall~~ accept, in the case of a pretrial
81 problem-solving court, a plea of nolo contendere and enter a
82 transfer order directing the clerk to transfer the case to the
83 county ~~that~~ which has accepted the defendant into its problem-
84 solving drug court program.

85 (c) The transfer order ~~must shall~~ include a copy of the
86 probable cause affidavit, in the case of a pre-trial problem-
87 solving court; any charging or sentencing documents in the case;

Page 3 of 4

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

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88 all reports, witness statements, test results, evidence lists,
89 and other documents in the case; the defendant’s mailing address
90 and phone number; and the defendant’s written consent to abide
91 by the rules and procedures of the receiving county’s problem-
92 solving drug court program.

93 (d) After the transfer takes place, the clerk shall set the
94 matter for a hearing before the problem-solving drug court
95 program judge, and the court shall ensure the defendant’s entry
96 into the problem-solving drug court program.

97 (e) Upon successful completion of the problem-solving drug
98 court program, the jurisdiction to which the case has been
99 transferred shall dispose of the case ~~pursuant to s. 948.08(6)~~.
100 If the defendant does not complete the problem-solving drug
101 court program successfully, the jurisdiction to which the case
102 has been transferred shall dispose of the case within the
103 guidelines of the Criminal Punishment Code.

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

Page 4 of 4

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



The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Appropriations Subcommittee on Criminal and Civil Justice

Subject: Committee Agenda Request

Date: March 12, 2015

I respectfully request that **Senate Bill # 1170**, relating to Problem Saving Court, be placed on the:

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

A handwritten signature in black ink, appearing to read "Rob Bradley".

Senator Rob Bradley
Florida Senate, District 7

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 8, 2015

1170

Meeting Date

Bill Number (if applicable)

Topic Problem-Solving Courts

Amendment Barcode (if applicable)

Name Bob Dillinger

Job Title Public Defender, 6th Circuit

Address 14250 49th Street North

Phone 727.464.6516

Street

Clearwater

Florida

33762

Email bdilling@weararethehope.org

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing Florida Public Defender Association, 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)

4/8/15

1170

Meeting Date

Bill Number (if applicable)

Topic Problem Solving Courts

Amendment Barcode (if applicable)

Name Lisa Hurley

Job Title Legislative Director, FAE

Address 100 Blumrose St

Phone 900.4300

Street

City

State

Zip

Email

Speaking: [] For [] Against [] Information

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

Representing FL Assac Counties

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)

SB 1170
Bill Number (if applicable)

Meeting Date _____
Topic Mental Health Ct. transferability Amendment Barcode (if applicable) _____
Name Sally Heyman
Job Title County Commissioner
Address 111 NW 4 ST Phone 305-375-5128
Street _____
City Miami State FL Zip 33128 Email heyman@mi-dade.com
Speaking: For Against Information Waive Speaking: In Support Against
(The Chair will read this information into the record.)
Representing Miami-Dade County
Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date April 2015 Bill Number (if applicable) 1170
Topic Problem Solv Courts Amendment Barcode (if applicable) _____
Name Jill Gran
Job Title Legis Affairs Dir
Address 2868 Mahan Drive Phone 878-2194
Street _____
City Tallahassee State FL Zip 32308 Email jill@fudaa.org
Speaking: For Against Information Waive Speaking: In Support Against
(The Chair will read this information into the record.)
Representing Florida Alcohol & Drug Abuse Assoc
Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/8/15
Meeting Date

1170
Bill Number (if applicable)

Topic Problem-Solving Courts

Amendment Barcode (if applicable)

Name Steven Leifman

Job Title County Court Judge (11th Circuit); Chair of Supreme Court Task Force on Mental Health + Substance Abuse Issues in the Court

Address 1351 NW 12 St. Phone 305-548-5394

Street

Miami

City

FL

State

33125

Zip

Email _____

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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)

4/8/15

Meeting Date

1170

Bill Number (if applicable)

Topic Specialty Courts

Amendment Barcode (if applicable)

Name Dan Hendrickson

Job Title legislative liaison

Address 319 E Park Ave

Phone 850/570-1967

Street

Tallahassee

City

FL

State

32301

Zip

Email danbhendrickson@comcast.net

Speaking: For Against Information

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

Representing Big Bend Mental Health Coalition, NAMI Tallahassee, NorthFlaVeterans Standdown Legal

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)

8 Apr 15
Meeting Date

5B1170
Bill Number (if applicable)

Topic Problem-solving Courts

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title Pres & CEO

Address 204 S. Monroe

Phone 577-3032

Street

Tall

FL

32301

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 1248

INTRODUCER: Judiciary Committee and Senator Stargel

SUBJECT: Family Law

DATE: April 7, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	Favorable
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1248 makes various changes to laws relating to the amount and duration of alimony awards, grounds, and procedures for modifying an alimony award due to a substantial change in circumstances, and timesharing with children.

Regarding alimony awarded to assist a party with legal fees and costs in a dissolution of marriage case, this bill requires the court to consider need and ability to pay, and the same bases for alimony required of all alimony determinations in dissolution cases.

With respect to alimony amounts, the bill establishes presumptive alimony ranges, for courts to use in determining the amount and duration of alimony awards. The presumptive amounts are determined by formulas based in part on the difference between the parties' gross incomes and the duration of their marriage. However, the combination of alimony and child support may not exceed 55 percent of the obligor's income. The bill also generally limits the duration of an alimony award to 25 to 75 percent of the duration of the parties' marriage.

The bill specifies events that constitute a substantial change in circumstances which are grounds for modifying or terminating an alimony award. These grounds include increases in the recipient's income, the involuntary underemployment or unemployment of the obligor, and the obligor's retirement. This bill authorizes an obligor to request that the court preapprove the customary retirement date for the obligor's profession one year in advance of retirement.

The bill also lessens the proof required to show the existence of a supportive relationship between an alimony recipient and another person.

To protect an award of alimony, the court may order an obligor to purchase a security, such as a life insurance policy or a bond. Security is modifiable if the underlying alimony award is modified.

With respect to timesharing with a child, the bill establishes a presumption that approximately equal timesharing with a child by both parents is in the child's best interest. However, a court may establish an unequal timesharing arrangement if after the consideration of a number of factors, unequal timesharing is supported by written findings of fact.

The bill provides that it does not affect the duration of existing alimony awards.

The bill applies to:

- All initial alimony determinations and all alimony modification actions pending as of its October 1, 2015 effective date; and
- All future initial determinations of alimony and alimony modification actions.

The bill does not have a fiscal impact.

The effective date of the bill is October 1, 2015. However, for the court to consider modifying a preexisting alimony obligation based on a provision of the bill, the petition must be before the court for a reason other than the enactment of the bill.

II. Present Situation:

Alimony Pendente Lite

Alimony pendente lite is temporary alimony awarded after a marital party files for dissolution of marriage. The right to temporary alimony ends when the divorce becomes final, which is after the appeal process has run.¹ Florida law stipulates that a party may request alimony pendente lite through petition or motion, and if well-founded, the court must order a reasonable amount.²

Bases for Alimony

Chapter 61, F.S., addresses dissolution of marriage proceedings. Alimony is based on both financial need and the ability to pay.³ After making an initial determination to award alimony, the court must consider:

- The standard of living established during the marriage.
- The length of marriage.
- Ages and physical and emotional condition of the parties.
- Financial resources of the parties.

¹ 24A AM. JR. 2D *Divorce and Separation* §615.

² Section 61.071, F.S.

³ Section 61.08(2), F.S.

- Earning capacity, education level, vocational skill, and employability of the parties.
- Marital contributions, including homemaking, child care, and education and career building of the other party.
- Responsibilities of each party towards minor children.
- Tax treatment and consequences of alimony awards.
- All sources of income.
- Any other factor that advances equity and justice.⁴

The court may consider adultery by either spouse in a decision to award alimony.⁵

To protect an alimony award, the court may order an obligor to maintain a life insurance policy.⁶

Determination of Alimony Based on Length of Marriage

Limitations on Alimony in Florida

In determining the duration or form of an alimony award, the court applies presumptions based on the duration of the marriage. The length of marriage runs from the date of marriage until the date of the filing for dissolution of marriage.⁷

Florida law categorizes marriage lengths as follows:

- A short-term marriage is a marriage of less than seven years.
- A moderate-term marriage is a marriage of more than seven but less than 17 years.
- A long-term marriage is a marriage of 17 years or more.⁸

Florida law appears to create a presumption in favor of permanent periodic alimony following a long-term marriage.⁹ A similar presumption appears to exist in favor of durational alimony following a moderate-term marriage or following a long-term marriage if permanent alimony is not appropriate. Durational alimony generally may not exceed the length of the marriage.¹⁰

The law appears to disfavor permanent alimony following a moderate-term marriage by requiring clear and convincing evidence for an award of permanent alimony. Permanent alimony for a short-term marriage is reserved for exceptional circumstances.

Limitations on Alimony in Other States

Some states have limited alimony based on the duration of the marriage:

- Colorado: Provides a table that calculates the term of support for marriages of at least three years and up to 20 years in length. After 20 years of marriage, the court may award an indefinite term of alimony.¹¹

⁴ Section 61.08(2)(a) through (j), F.S.

⁵ Section 61.08(1), F.S.

⁶ Section 61.08(3), F.S.

⁷ *Id.*

⁸ Section 61.08(4), F.S.

⁹ Section 61.08(8), F.S.

¹⁰ Section 61.08(4), F.S.

¹¹ Colo. Rev. Stat. Ann. s. 14-10-114.

- Delaware: Permits alimony for a period of up to 50 percent of the length of marriage, except that if a party is married for 20 years or longer, alimony may be indefinite.¹²
- Maine: Provides a rebuttable presumption that general support may not be awarded if the parties were married for less than 10 years as of the date of the filing of the petition.¹³
- Texas: Disfavors alimony for marriages of less than 10 years unless the obligee meets certain conditions and if so, caps the duration of alimony at five years. Alimony is capped at 20 percent of the payor’s gross income, or \$2,500 a month, whichever is less.¹⁴
- Massachusetts: No longer authorizes permanent alimony in most dissolution of marriage cases. Limits permanent alimony awards to marriages of 20 years or longer if the award is otherwise appropriate. Reserves the possibility of permanent alimony for shorter marriages if an award is in the interests of justice.¹⁵
- Utah: Prohibits alimony awards for a duration longer than the length of the marriage, unless the court finds extenuating circumstances.¹⁶

Forms of Alimony

Florida Law

Florida law recognizes various forms of alimony, including bridge-the-gap, rehabilitative, durational, and permanent periodic alimony.¹⁷ See the table on the next page for additional information on the various types of alimony authorized under current law.

Types of Alimony				
	<i>Bridge-the-gap</i>	<i>Rehabilitative</i>	<i>Durational</i>	<i>Permanent</i>
<i>Purpose</i>	Allows a party to transition from being married to being single upon showing legitimate short-term need.	Assists a party in becoming self-sufficient through skills training, education, or work experience.	Provides a party with economic assistance for a set period of time after a marriage of short or moderate duration, or a marriage of long duration if no need exists for a permanent award.	Provides for the needs and necessities of life as established during the marriage for a party who lacks the financial ability to maintain needs.
<i>Length of Time</i>	Up to 2 years.	Temporary.	Set period of time but not to exceed length of marriage.	Permanent.

¹² Del. Code Ann. title 14, s. 1512

¹³ Me. Rev. Stat. Ann. title 19-A, s. 951A.

¹⁴ Tex. Fam. Code Ann. Sections 8.054 and 8.055.

¹⁵ Mass. Gen. Laws Chapter 208, Section 49.

¹⁶ Utah Code Ann. s. 30-3-5.

¹⁷ Section 61.08(1), F.S.

Types of Alimony (Cont.)				
<i>Modifiable/ Termination</i>	Not modifiable in amount or duration. Can terminate upon death or remarriage of recipient.	Modifiable upon a showing of a substantial change in circumstances, including cohabitation. Can be terminated upon noncompliance or completion of the rehabilitative plan.	Modifiable or terminated based on a substantial change in circumstances, including cohabitation. Length of award may not change unless exceptional circumstances are shown. Terminates upon death or remarriage of recipient.	Modifiable upon a substantial change in circumstances, including cohabitation. Terminates upon death or remarriage of recipient.
<i>How Established</i>		Requires inclusion of a specific and defined rehabilitative plan.		Awardable if appropriate for a marriage of long duration, upon a showing of clear and convincing evidence for a marriage of moderate duration, and with written findings of exceptional circumstances for a marriage of short duration.

Modification and Termination of Alimony

Four bases exist for a court to reconsider an alimony award, including whether to terminate alimony:

- A substantial change in circumstances of either party;
- Cohabitation by the obligee;
- Remarriage by the obligee; or
- Death of either party.¹⁸

¹⁸ Section 61.08(8), F.S.

Substantial Change of Circumstance

A motion for modification may be made by either party for the court to consider a substantial change in circumstances.¹⁹ If the court modifies support on this basis, the court may modify support retroactively to the date of the filing of the action.²⁰

Cohabitation

To modify alimony on an assertion of cohabitation between the alimony obligee and a third party, the court must find:

- The existence of a supportive relationship between the recipient and a third party; and
- That the recipient lives with the third party.

To determine whether a relationship is supportive, the court will examine:

- The extent to which the obligee and the third party hold themselves out as a married couple;
- The length of time that the third party has resided with the obligee;
- Whether the obligee and the third party have jointly purchased property;
- The extent to which the obligee and third party commingle financial assets; and
- The extent to which one of the parties supports the other party.²¹

The burden is on the obligor to show by a preponderance of evidence that a supportive relationship exists.²²

Parenting and Time-sharing

Florida Law

The public policy of the state is for each minor child to have “frequent and continuing contact with both parents.”²³ Additionally, a court must order shared parental responsibility for a minor child unless the court finds that shared responsibility would be detrimental to the child.²⁴ In determining timesharing with each parent, a court must evaluate the relative fitness of each parent on 19 specific statutory factors plus “any other factor that is relevant” to the court’s determination.

¹⁹ Section 61.14(1)(a), F.S. Courts have found a substantial change in circumstance where an obligor’s health deteriorated due to two heart attacks. He was unable to continue gainful employment and received social security disability income as his full income (*Scott v. Scott*, 2012 WL 5621672, 1 (Fla. 5th DCA 2012)). An obligor demonstrated a showing of a substantial change in circumstance through a detrimental impact on his business in manufacturing cathode ray television tubes due to advancing technology that made his product obsolete. The court also noted that the obligor was forced to remove money from family trust accounts to meet his alimony obligation. (*Shawfrank v. Shawfrank*, 97 So. 3d 934, 937 (Fla. 1st DCA 2012)). The court found a substantial change in circumstance where financial affidavits showed that the obligee’s income jumped from \$1,710 to \$4,867 a month, making her income higher than the obligor’s income of \$3,418 a month. (*Koski v. Koski*, 98 So. 3d 93, 94 (Fla. 4th DCA 2012)).

²⁰ Section 61.14(1)(a), F.S.

²¹ Section 61.14(b), F.S.

²² Section 61.14(1)(b)1., F.S.

²³ Section 61.13(2)(c)1., F.S.

²⁴ Section 61.13 (2)(c)2., F.S.

Equal Time-sharing in other States

No state has required the court to order equal time-sharing or joint custody of minor children. A number of states, in addition to Florida, provide in law a presumption that joint custody is in the best interest of the child. These states are the District of Columbia, Idaho, Minnesota, New Mexico, South Dakota, Texas, Utah, Virginia, West Virginia, and Wisconsin. Other states provide the presumption only if the parents agree. These states are Alabama, California, Connecticut, Maine, Michigan, Mississippi, Nevada, New Hampshire, and Vermont.²⁵

Several state legislatures recently amended laws on child custody to encourage equal time-sharing. Arkansas codified a preference for joint custody.²⁶ The South Dakota Legislature passed a law that permits the court to order joint physical custody when the court has awarded joint legal custody if it is in the best interest of the child.²⁷ The Utah Legislature enacted a rebuttable presumption for joint legal custody. Grounds for rebutting the presumption include domestic violence and physical or mental needs of a parent or child.²⁸

Child Support Enforcement

Congress passed into law Title IV-D of the Social Security Act²⁹ to require states to provide specific child support enforcement services to receive federal funding under the Aid for Dependent Children (AFDC) Program.³⁰ Services are available to single-parent families on public assistance who are entitled to child support from the other parent.

Florida established the Child Support Enforcement Application and Program Revenue Trust Fund (trust fund) to provide a trust fund for deposits of Title IV-D program income.³¹ The trust fund is administered by the state Department of Revenue.³² The clerk of the court of each circuit operates a depository for alimony transactions, support, maintenance, and support payments.³³ A fee is collected for payments made in non-Title IV-D cases to fund the depository.³⁴

III. Effect of Proposed Changes:

This bill makes various changes to laws applicable to dissolution of marriage cases in the areas of alimony, support, and time-sharing with children.

²⁵ National Conference of State Legislatures, *Shared/Joint Custody Enactments 2012* (Feb. 2015).

²⁶ AR s. 901.

²⁷ South Dakota House Bill 1055 (Chapter 141).

²⁸ Utah HB 88 (Chapter 269); HB 107 (Chapter 271).

²⁹ 42 USC §§ 651-669 (1988)

³⁰ Ashish Prasad, *Rights Without Remedies: Section 1983 Enforcement of Title IV-D of the Social Security Act*, 60 U.CHI. L. REV. 197, 197 (1993).

³¹ Section 61.1814(1), F.S.

³² *Id.*

³³ Section 61.181(1)(a), F.S.

³⁴ Section 61.181(2)(a) and (b), F.S.

Alimony Awarded During a Pending Suit—Alimony Pendente Lite

Alimony pendente lite is temporary alimony awarded after a marital party files for dissolution of marriage. The bill requires the court to consider the bases for alimony (without the formula) after determining a need for alimony pendente lite and an ability to pay.

Alimony Awarded through a Final Court Order

Under the bill, a court must determine the amount of an alimony award in a multi-step process, from making initial findings, applying guidelines, and considering other factors, including factors which might justify a deviation from guidelines. The bill also establishes presumptive alimony duration ranges which range from 25 to 75 percent of the length of the marriage. The bill does not maintain the distinctions in current law relating to the duration or purposes of bridge-the-gap, rehabilitative, durational, or permanent alimony.

Initial Findings

In determining alimony, a court must make initial written findings based on:

- The amount of each party's monthly gross income, including potential income and actual or potential income from nonmarital property distributed to each party; and
- The years of marriage.

The courts must look at net income, rather than gross income, in calculating alimony and support. In instances in which trial courts have erroneously used a party's gross income, the appellate courts have routinely reversed those decisions.³⁵ In instances in which an obligor is self-employed, the court may start with gross income and subtract from it ordinary business expenses to arrive at net income.

This bill specifies that income considered in alimony calculations is gross income. Gross income is recurring income from any source and includes:

- Income from salaries, overtime pay, and wages, including tips declared to the Internal Revenue Service or tips imputed to bring the employee's gross earnings to the minimum wage for the number of hours worked, whichever is greater, commissions, bonuses; and dividends, and severance pay;
- Pension pay and retirement benefits actually received;
- Spousal support received from a previous marriage;
- Trust income and distributions regularly received, relied upon, or readily available to the beneficiary, royalties, income from estates, annuity payments, capital gains, recurring gains derived from dealings in property, rental income (gross receipts minus ordinary and necessary expenses required to produce the income), interest, and continuing monetary gifts;
- Payments received as an independent contractor for labor or services, which must be considered income from self-employment; money drawn by a self-employed person for personal use that is deducted as a business expense, and expense reimbursements or in-kind payments or benefits received by a party in the course of employment, self-employment, or operation of a business which reduces personal living expenses;

³⁵ *Kingsbury v. Kingsbury*, 116 So. 3d 473, 474 (Fla. 1st DCA 2013); *Vanzant v. Vanzant*, 82 So. 3d 991, 993 (Fla. 1st DCA 2011); *Vega v. Vega*, 877 So. 2d 882, 883 (Fla. 3d DCA 2004).

- Workers' compensation; unemployment benefits, social security benefits, including those actually received based on disability, disability insurance benefits and funds paid from health, accident, disability, or casualty insurance if the insurance replaces wages; and
- Income from general partnerships, limited partnerships, closely held corporations, or limited liability companies, except that if the party is a passive investor with a minority interest in the company, income is limited to actual cash distributions received.

Gross income does not include:

- Child support payments received;
- Public assistance benefits;
- Social security benefits received by a parent on behalf of a minor child due to death or disability of a parent or stepparent; and
- Earnings or gains on retirement accounts, including individual retirement accounts, except that the earnings or gains are income if a party takes a distribution from the account, and if a party is able to take a distribution tax-free and chooses not to, the court may consider as income the distribution that could have been taken.

For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income equals gross receipts minus ordinary and necessary expenses. Ordinary and necessary expenses do not include amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses or investment tax credits or any other business expenses determined by the court to be inappropriate for determining gross income for purposes of calculating alimony.

The bill defines "potential income" as income which could be earned by a party using best efforts, and includes potential income from employment, investment of assets, or use of property in a financially prudent manner. Potential income from employment is income a party could reasonably expect to earn working at a locally available, full-time job based on the person's education, training, and experience. A person is considered to be underemployed if he or she is not working full-time in a position which is appropriate based on his or her education, training, and experience, and which is available in the local area. A person is not underemployed if he or she is enrolled in an educational program that can reasonably expect to result in a degree or certification and higher income within the foreseeable future. A court generally must impute income to a party who is voluntarily unemployed or underemployed.

The court must consider years of marriage based on whole years, calculated from the date of marriage until the date of the filing for dissolution.

This bill creates a rebuttable presumption against alimony for marriages of two years or less. The party seeking alimony may rebut the presumption by showing:

- The party seeking alimony has a clear and convincing need for alimony;
- The party from whom alimony is sought has an ability to pay alimony; and
- An inequity would result if the court does not award alimony.

If the court finds that the party rebuts the presumption, the court must provide written findings. Alimony will then be awarded under the formula.

Alimony Guidelines

This bill establishes formulas for use by the court after making its initial findings in alimony determinations, unless the parties agree to an amount otherwise. After making initial findings, the court will calculate the presumptive alimony ranges based upon two formulas. The formulas provide a presumptive range for alimony as follows:

- At the low end of the range: 0.015 x the years of marriage x the difference between the monthly gross income of the parties; and
- At the high end of the range: 0.020 x the years of marriage x the difference between the monthly gross income of the parties.

The formula bases the years of marriage at 20 for both the low and the high end of the range. However, if a court establishes the duration of the alimony award at 50 percent or less of the length of the marriage, the court is required to use the actual years of marriage, up to 25 years to calculate the high end of a presumptive alimony amount range.

<i>Difference in the Parties' Monthly Incomes</i>		Presumptive Alimony Amount Ranges						
<i>\$20,000</i>	High	\$1,200	\$2,000	\$4,000	\$4,800	\$6,000	\$8,000	\$8,000
	Low	\$900	\$1,500	\$3,000	\$3,600	\$4,500	\$6,000	\$6,000
<i>\$15,000</i>	High	\$900	\$1,500	\$3,000	\$3,600	\$4,500	\$6,000	\$6,000
	Low	\$675	\$1,125	\$2,250	\$2,700	\$3,375	\$4,500	\$4,500
<i>\$10,000</i>	High	\$600	\$1,000	\$2,000	\$2,400	\$3,000	\$4,000	\$4,000
	Low	\$450	\$750	\$1,500	\$1,800	\$2,250	\$3,000	\$3,000
<i>\$8,000</i>	High	\$480	\$800	\$1,600	\$1,920	\$2,400	\$3,200	\$3,200
	Low	\$360	\$600	\$1,200	\$1,440	\$1,800	\$2,400	\$2,400
<i>\$7,000</i>	High	\$420	\$700	\$1,400	\$1,680	\$2,100	\$2,800	\$2,800
	Low	\$315	\$525	\$1,050	\$1,260	\$1,575	\$2,100	\$2,100
<i>\$6,000</i>	High	\$360	\$600	\$1,200	\$1,440	\$1,800	\$2,400	\$2,400
	Low	\$270	\$450	\$900	\$1,080	\$1,350	\$1,800	\$1,800
<i>\$5,000</i>	High	\$300	\$500	\$1,000	\$1,200	\$1,500	\$2,000	\$2,000
	Low	\$225	\$375	\$750	\$900	\$1,125	\$1,500	\$1,500
<i>\$4,000</i>	High	\$240	\$400	\$800	\$960	\$1,200	\$1,600	\$1,600
	Low	\$180	\$300	\$600	\$720	\$900	\$1,200	\$1,200
<i>\$3,000</i>	High	\$180	\$300	\$600	\$720	\$900	\$1,200	\$1,200
	Low	\$135	\$225	\$450	\$540	\$675	\$900	\$900
<i>\$2,000</i>	High	\$120	\$200	\$400	\$480	\$600	\$800	\$800
	Low	\$90	\$150	\$300	\$360	\$450	\$600	\$600
<i>Length of Marriage</i>		3	5	10	12	15	20	25
		Years	Years	Years	Years	Years	Years	Years

The court retains flexibility to determine alimony within the presumptive alimony ranges.

Bases for Alimony (Considered by the Court after Presumptive Alimony is Calculated):

Presumptive alimony may then be established by the court within the presumptive ranges, based on the following:

- The financial resources of the obligee and the obligor, including the actual or potential income from nonmarital or marital property or any other source and the ability of each spouse to meet his or her reasonable needs;
- The standard of living of the parties during the marriage considering that there will be two households to maintain after the dissolution of marriage and that neither party may be able to maintain the same standard of living they had while married;
- The equitable distribution of marital property, including whether an unequal distribution of marital property was made to reduce or alleviate the need for alimony;
- Both parties' income, employment, and employability, obtainable through reasonable diligence and additional training or education, and any necessary reduction in employment due to parenting or circumstances of the parties;
- Whether a party could reduce the need for alimony by pursuing additional educational or vocational training, including the length of time required and anticipated costs of training;
- Whether one party has historically earned higher or lower income than that at the time of trial;
- Whether a party has foregone or postponed economic, educational, or employment opportunities during the course of the marriage;
- Whether either party has caused the unreasonable depletion or dissipation of marital assets;
- The amount of temporary alimony and the number of months temporary alimony was paid to the recipient spouse;
- The age, health, and physical and mental condition of the parties, including health care needs and costs;
- Significant economic or noneconomic contributions to the marriage or to the economic, educational, or occupational advancement of a party, including services rendered in homemaking, child care, education, and career building of the other party, payment by one spouse of the other spouse's separate debts, or enhancement of the other spouse's personal or real property;
- The tax consequence of the alimony award; and
- Any other factor necessary to provide equity and justice between the parties.

If the court awards alimony, the court must include in written findings that the obligor has the financial ability to pay alimony.

Under no circumstance may a court order alimony and child support that, when combined, constitutes more than 55 percent of the obligor's net income. This change appears to codify case law, as appellate courts have reversed awards of trial courts where the percent of income awarded as support is considered unreasonable. The Fourth District Court of Appeal found that the trial court committed an abuse of discretion in awarding combined alimony and child support totaling 58 percent of the obligor's net income.³⁶ The appellate court noted that the trial court had legitimate grounds on which to order permanent alimony. The former wife earned only a

³⁶ *Thomas v. Thomas*, 418 So. 2d 316, (Fla. 4th DCA 1982).

two-year college degree and supported her husband as a teacher's aide while he secured a law school education. She then became a homemaker. However, the court noted that the excessive award left the obligor with just \$330 a month on which to live after paying for rent and a car loan.³⁷

In *Casella v. Casella*, the same appellate court ruled clearly excessive an award of combined alimony and child support that approached 70 percent of the husband's net income.³⁸ A 1990 case, the court reversed the trial court on the basis that the award left the obligor with just \$800 a month on which to live.

To protect an award of alimony, the court may require an obligor to purchase or maintain a decreasing term life insurance policy or a bond, or provide other security to protect the alimony award. To award security, a court must find the existence of special circumstances and make specific evidentiary findings about the availability, cost, and financial impact on the obligor. Security is modifiable if the underlying alimony award is reduced.

Deviation from Guidelines

The court may determine an award of alimony that is outside the presumptive alimony amount or alimony duration ranges only if the court makes specific written findings that the application of the ranges is inappropriate or inequitable after considering all the factors used as the bases of alimony.

Even if the court does not intend to award alimony at the time, the court may reserve the issue of alimony by awarding alimony of \$1.00 a year under the durational guidelines if:

- A party who has traditionally been the breadwinner temporarily lacks the ability to pay support but is reasonably anticipated to have the ability to pay in the future; or
- A party is presently able to work but for whom a medical condition with a reasonable degree of medical certainty may inhibit the ability to pay in the future.

The courts routinely award nominal alimony to reserve the issue of alimony at a later date.³⁹

Tax and Alimony

Unless otherwise stated in the agreement between the parties or by the court through judgment or order, alimony is deductible from income by the obligor and included in the income of the obligee for tax purposes.

The agreement between the parties may provide or the court, after considering equities and tax efficiencies, may order alimony to be nondeductible from income by the obligor and not includable in the income of the obligee.

³⁷ *Id.* at 316-317.

³⁸ *Casella v. Casella*, 569 So. 2d 848, 849 (Fla. 4th DCA 1990). The court stopped short of ruling that a particular percentage constitutes a bright-line rule, and instead, ruled that each case must be determined individually.

³⁹ *Lightcap v. Lightcap*, 14 So. 3d 259, 260 (Fla. 3d DCA 2009). "Here the trial court did not abuse its discretion when it granted the former wife nominal alimony. Nominal alimony would permit her to apply for modification upon a proper showing if and when the former husband achieves his full earning potential in the future."

Payment of Alimony in Depository

Under the bill, for orders on alimony entered into on or after January 1, 1985, the court must order that payments of alimony be made through a depository. For orders on alimony entered before January 1, 1985, upon appearance by one or both parties before the court to modify or enforce the order, the court must modify the order require that alimony payments to be made through the depository.

Alimony payments do not need to be directed through the depository:

- If there is no minor child; or
- If there is a minor child and both parties agree to payment without the depository.

However, a payee may subsequently file an affidavit with the clerk of the court a verified motion that an obligor has been in default or arrearages in payment. No later than 15 days after receiving the motion, the court must:

- Hold an evidentiary hearing establishing the default and arrearages;
- Issue an order that the clerk establish or amend an existing family law case history account; and
- Advise the parties that future payments must be directed through the depository.

A Title IV-D agency, currently the Department of Revenue, can also request payments to be made through the depository.

Timesharing with Children

This bill creates a rebuttable presumption that approximately equal timesharing with a minor child by both parents is in the best interest of the child. A party may overcome the presumption by providing evidence based on factors that affect the welfare and interests of the child and the circumstance of the family.

In addition to the factors currently in law, this bill adds the following:

- The amount of timesharing requested by each parent; and
- The frequency that a parent would likely leave the child in the care of a nonrelative on evenings and weekends when the other parent would be available and willing to provide care.

If the initial permanent timesharing schedule does not provide for approximately equal time-sharing the court order must include written findings of fact justifying its order for unequal timesharing.

Substantial Change in Circumstance Justifying the Modification of Alimony

Existing law authorizes the court to modify alimony upon a showing of a substantial change in circumstances. However, a court may not decrease or increase the duration of alimony provided for in the agreement or order.

Under the bill, upon the filing of a petition by the obligor, the court may temporarily reduce or suspend the obligor's payment of alimony while the petition is pending. However, if either party unreasonably pursues or defends an action, the other party is entitled to pay reasonable attorney fees and costs of the prevailing party.

Rebuttable Presumption

This bill creates a rebuttable presumption that alimony must be modified or terminated if the courts finds that the obligor's retirement is a substantial change in circumstance.

The presumption can be rebutted by the following factors:

- The age of the parties;
- The health of the parties;
- Assets and liabilities of the parties;
- Earned or imputed income of the parties;
- The ability of the parties to maintain part-time or full-time employment; and
- Any other factor deemed relevant by the court.

New Grounds for a Substantial Change in Circumstance

This bill establishes new substantial changes in circumstance:

- If the actual income of a party exceeds by at least 10 percent the amount the court imputed to the party when the court initially determined alimony, the other party may seek an immediate modification of alimony. An increase in an obligor's income alone does not constitute a basis for modification unless at the time the court established alimony, the court determined that the obligor was underemployed or unemployed but did not impute income at his or her maximum potential income.
- If an obligor becomes involuntarily underemployed or unemployed for six months after the court enters its final order for alimony, the obligor is entitled to pursue an immediate modification of alimony.
- Retirement is a substantial change in circumstance if:
 - The obligor has reached the age for eligibility to receive full retirement benefits under the Social Security Act and has retired;
 - The obligor has reached the customary retirement age for his or her occupation and has retired from that occupation; or
 - The obligor retires early and the court determines that the retirement is reasonable based upon the obligor's age, health, motivation for retirement, and impact on the obligee.

At least one court has refused modification of alimony on the basis that an obligor voluntarily retired early. Here the court held that the obligor did not establish voluntary retirement as a circumstance beyond his control.⁴⁰ In this case, the obligor retired early at the age of 63, after 40 years of steady employment.⁴¹

⁴⁰ *Ward v. Ward*, 502 So. 2d 477, 478 (FLA. 3D DCA 1987).

⁴¹ *Id.*

An obligor may file an action within a year of his or her anticipated retirement date for the court to determine the customary retirement date for the obligor's profession. Allowing the obligor to file in advance of retirement helps the obligor to plan.

Remarriage of Obligor is not a Substantial Change in Circumstance

The bill clarifies that remarriage of the obligor is not a substantial change in circumstance.

Financial information of a subsequent spouse of a party paying or receiving alimony is inadmissible and may not be considered as part of any modification action unless a party is claiming that his or her income has decreased since the marriage. If the party makes this claim, financial information is admissible for a limited purpose.

Supportive Relationship

Regarding the change in circumstance that is the presence of a supportive relationship between an obligee and another person, this bill expands the requirement that the relationship currently exist, to one which existed within the previous year before the date of the filing of the petition for modification or termination of alimony.

The bill adds as a factor for the court to use in determining to modify alimony based on a supportive relationship whether the obligor's failure, in whole or in part, to comply with all court-ordered financial obligations contributed to the need to have a supportive relationship.

This bill requires the obligor to demonstrate by a preponderance of the evidence that a supportive relationship exists or has existed within the previous year before the filing date of the petition for modification. The obligor is not required to prove the cohabitation of the obligee. These changes reduce the burden on an obligor to show a supportive relationship.

If an obligor prevails in a showing of a supportive relationship, reduction or termination of alimony is retroactive to the date of the filing of the petition.

Advancing Trial

The court must give priority to cases that have remained pending for more than two years from the initial date a party files a petition if a party requests that the case advance to trial.

Application of the Bill

A court may not modify the duration of an award of alimony initially established under the provisions of this bill. However, the formulas, factors, and other provisions of the bill will apply to the resolution of a petition for modification.

This bill applies to:

- All initial alimony determinations and all alimony modification actions pending as of the bill's October 1, 2015, effective date; and
- All future initial determinations of alimony and alimony modification actions.

The bill takes effect October 1, 2015.

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:

Most alimony awards are based on marital settlement agreements (MSAs), which are incorporated into final judgments in dissolution of marriage cases. Courts consider these MSAs as contracts. Courts interpret challenges to MSAs on the same basis as other forms of contract.⁴² “A marital settlement agreement entered into by the parties and ratified by a final judgment is a contract, subject to the laws of contract.”⁴³

Although, existing s. 61.14, F.S., gives courts broad authority to modify MSAs, the power of the legislature to reach back to existing contracts is restricted by Article I, s. 10, of the Florida Constitution which provides, in part: “No ... ex post facto law or law impairing the obligation of contracts shall be passed.” As such, the extent to which the Legislature may authorize the provisions of the bill to apply to preexisting alimony awards is not clear.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that CS/SB 1248 more clearly defines gross income, provides guidelines for alimony, and establishes new bases for a substantial change in circumstance justifying a

⁴² The First District Court of Appeal applied contract law in determining whether to admit parol evidence, or evidence outside the contract (MSA), on the basis that the contract language contains a latent ambiguity (*Toussaint v. Toussaint*, 107 So. 3d 474, 477-478 (Fla. 1st DCA 2013)). A latent ambiguity, requiring extrinsic evidence, existed where an MSA failed to address financing of college education and the contract otherwise provided for equal payments for education costs (*Riera v. Riera*, 86 So. 3d 1163, 1166—67 (Fla. 3d DCA 2012)). The court found no breach of contract from the plain language of the MSA. (*McCord v. McCord*, 94 So. 3d 719 (Fla. 2nd DCA 2012)).

⁴³ *Ferguson v. Ferguson*, 54 So. 3d 553, 556 (Fla. 3d DCA 2011).

modification of alimony, this bill may reduce time spent in litigation which will reduce costs.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) anticipates that the bill would have an indeterminate impact on judicial workload, due to the substantial revisions in determining alimony.⁴⁴ While OSCA cannot accurately determine the bill's fiscal impact, if any, OSCA did not offer data to support the need for additional court resources to address the bill's changes to the alimony statutes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The child support guidelines in section 61.30, F.S., define gross income differently than the way gross income is defined in the bill. The reason for the different definitions is not apparent.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 61.071, 61.08, 61.13, 61.14, and 61.30.

This bill creates section 61.192 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 Judiciary on March 24, 2015:

The committee substitute:

- Revises the formula to increase the minimum amounts of the presumptive alimony range;
- Provides for larger monthly award of alimony for marriages exceeding 20 years if the duration of the award is limited to no more than half of the marriage's length.;
- Authorizes the court to require an obligor to purchase a security, such as a life insurance policy or a bond to protect an award of alimony, subject to modification if alimony is reduced or terminated;
- Regarding imputation of income, requires actual income to exceed 10 percent the amount imputed to that party before the other party can request an immediate modification of alimony;

⁴⁴ Office of the State Courts Administrator (OSCA), *2015 Judicial Impact Statement* (March 20, 2015).

- Regarding alimony awarded to assist a party with legal fees and costs in a dissolution of marriage case, requires the court to consider need and ability to pay and the same bases for alimony required of all alimony determinations in dissolution cases; and
- Authorizes an obligor to request that the court preapprove the customary retirement date for the obligor's profession one year in advance of retirement.

B. Amendments:

None.

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

By the Committee on Judiciary; and Senator Stargel

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1 A bill to be entitled
 2 An act relating to family law; amending s. 61.071,
 3 F.S.; requiring a court to consider certain alimony
 4 factors and make specific written findings of fact
 5 after making specified determinations; prohibiting a
 6 court from using certain presumptive alimony
 7 guidelines in calculating alimony pendente lite;
 8 amending s. 61.08, F.S.; defining terms; requiring a
 9 court to make specified initial written findings in a
 10 dissolution of marriage proceeding where a party has
 11 requested alimony; requiring a court to make specified
 12 findings before ruling on a request for alimony;
 13 providing for determinations of presumptive alimony
 14 amount range and duration range; providing
 15 presumptions concerning alimony awards depending on
 16 the duration of marriages; providing for imputation of
 17 income in certain circumstances; providing for awards
 18 of nominal alimony in certain circumstances; providing
 19 for taxability and deductibility of alimony awards;
 20 prohibiting a combined award of alimony and child
 21 support from constituting more than a specified
 22 percentage of a payor's net income; authorizing the
 23 court to order a party to protect an alimony award by
 24 specified means; providing for termination of an
 25 award; authorizing a court to modify or terminate the
 26 amount of an initial alimony award; prohibiting a
 27 court from modifying the duration of an alimony award;
 28 providing for payment of awards; amending s. 61.13,
 29 F.S.; creating a presumption that approximately equal

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30 time-sharing by both parents is in the best interests
 31 of the child; revising a finite list of factors that a
 32 court must evaluate when determining whether the
 33 presumption of approximately equal time-sharing is
 34 overcome; requiring a court order to be supported by
 35 written findings of fact under certain circumstances;
 36 amending s. 61.14, F.S.; providing that a party may
 37 pursue an immediate modification of alimony in certain
 38 circumstances; revising factors to be considered in
 39 determining whether an existing award of alimony
 40 should be reduced or terminated because of an alleged
 41 supportive relationship; providing for burden of proof
 42 for claims concerning the existence of supportive
 43 relationships; providing for the effective date of a
 44 reduction or termination of an alimony award;
 45 providing that the remarriage of an alimony obligor is
 46 not a substantial change in circumstance; providing
 47 that the financial information of a spouse of a party
 48 paying or receiving alimony is inadmissible and
 49 undiscoverable; providing an exception; providing for
 50 modification or termination of an award based on a
 51 party's retirement; providing a presumption upon a
 52 finding of a substantial change in circumstance;
 53 specifying factors to be considered in determining
 54 whether to modify or terminate an award based on a
 55 substantial change in circumstance; providing for a
 56 temporary suspension of an obligor's payment of
 57 alimony while his or her petition for modification or
 58 termination is pending; providing for an effective

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59 date of a modification or termination of an award;
 60 providing for an award of attorney fees and costs for
 61 unreasonably pursuing or defending a modification of
 62 an award; amending s. 61.30, F.S.; providing that
 63 whenever a combined alimony and child support award
 64 constitutes more than a specified percentage of a
 65 payor's net income, the child support award be
 66 adjusted to reduce the combined total; creating s.
 67 61.192, F.S.; providing for motions to advance the
 68 trial of certain actions if a specified period has
 69 passed since the initial service on the respondent;
 70 providing applicability; providing an effective date.

71
 72 Be It Enacted by the Legislature of the State of Florida:

73
 74 Section 1. Section 61.071, Florida Statutes, is amended to
 75 read:

76 61.071 Alimony pendente lite; suit money.—In every
 77 proceeding for dissolution of the marriage, a party may claim
 78 alimony and suit money in the petition or by motion, and if the
 79 petition is well founded, the court shall allow a reasonable sum
 80 therefor. If a party in any proceeding for dissolution of
 81 marriage claims alimony or suit money in his or her answer or by
 82 motion, and the answer or motion is well founded, the court
 83 shall allow a reasonable sum therefor. After determining there
 84 is a need for alimony and that there is an ability to pay
 85 alimony, the court shall consider the alimony factors in s.
 86 61.08(4)(b)1.-14. and make specific written findings of fact
 87 regarding the relevant factors that justify an award of alimony

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88 under this section. The court may not use the presumptive
 89 alimony guidelines in s. 61.08 to calculate alimony under this
 90 section.

91 Section 2. Section 61.08, Florida Statutes, is amended to
 92 read:

93 (Substantial rewording of section. See
 94 s. 61.08, F.S., for present text.)

95 61.08 Alimony.—

96 (1) DEFINITIONS.—As used in this section, unless the
 97 context otherwise requires, the term:

98 (a)1. "Gross income" means recurring income from any source
 99 and includes, but is not limited to:

100 a. Income from salaries.

101 b. Wages, including tips declared by the individual for
 102 purposes of reporting to the Internal Revenue Service or tips
 103 imputed to bring the employee's gross earnings to the minimum
 104 wage for the number of hours worked, whichever is greater.

105 c. Commissions.

106 d. Payments received as an independent contractor for labor
 107 or services, which payments must be considered income from self-
 108 employment.

109 e. Bonuses.

110 f. Dividends.

111 g. Severance pay.

112 h. Pension payments and retirement benefits actually
 113 received.

114 i. Royalties.

115 j. Rental income, which is gross receipts minus ordinary
 116 and necessary expenses required to produce the income.

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- 117 k. Interest.
- 118 l. Trust income and distributions which are regularly
- 119 received, relied upon, or readily available to the beneficiary.
- 120 m. Annuity payments.
- 121 n. Capital gains.
- 122 o. Any money drawn by a self-employed individual for
- 123 personal use that is deducted as a business expense, which
- 124 moneys must be considered income from self-employment.
- 125 p. Social security benefits, including social security
- 126 benefits actually received by a party as a result of the
- 127 disability of that party.
- 128 g. Workers' compensation benefits.
- 129 r. Unemployment insurance benefits.
- 130 s. Disability insurance benefits.
- 131 t. Funds payable from any health, accident, disability, or
- 132 casualty insurance to the extent that such insurance replaces
- 133 wages or provides income in lieu of wages.
- 134 u. Continuing monetary gifts.
- 135 v. Income from general partnerships, limited partnerships,
- 136 closely held corporations, or limited liability companies;
- 137 except that if a party is a passive investor, has a minority
- 138 interest in the company, and does not have any managerial duties
- 139 or input, the income to be recognized may be limited to actual
- 140 cash distributions received.
- 141 w. Expense reimbursements or in-kind payments or benefits
- 142 received by a party in the course of employment, self-
- 143 employment, or operation of a business which reduces personal
- 144 living expenses.
- 145 x. Overtime pay.

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- 146 y. Income from royalties, trusts, or estates.
- 147 z. Spousal support received from a previous marriage.
- 148 aa. Gains derived from dealings in property, unless the
- 149 gain is nonrecurring.
- 150 2. "Gross income" does not include:
- 151 a. Child support payments received.
- 152 b. Benefits received from public assistance programs.
- 153 c. Social security benefits received by a parent on behalf
- 154 of a minor child as a result of the death or disability of a
- 155 parent or stepparent.
- 156 d. Earnings or gains on retirement accounts, including
- 157 individual retirement accounts; except that such earnings or
- 158 gains shall be included as income if a party takes a
- 159 distribution from the account. If a party is able to take a
- 160 distribution from the account without being subject to a federal
- 161 tax penalty for early distribution and the party chooses not to
- 162 take such a distribution, the court may consider the
- 163 distribution that could have been taken in determining the
- 164 party's gross income.
- 165 3.a. For income from self-employment, rent, royalties,
- 166 proprietorship of a business, or joint ownership of a
- 167 partnership or closely held corporation, the term "gross income"
- 168 equals gross receipts minus ordinary and necessary expenses, as
- 169 defined in sub-subparagraph b., which are required to produce
- 170 such income.
- 171 b. "Ordinary and necessary expenses," as used in sub-
- 172 paragraph a., does not include amounts allowable by the
- 173 Internal Revenue Service for the accelerated component of
- 174 depreciation expenses or investment tax credits or any other

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175 business expenses determined by the court to be inappropriate
 176 for determining gross income for purposes of calculating
 177 alimony.

178 (b) "Potential income" means income which could be earned
 179 by a party using his or her best efforts and includes potential
 180 income from employment and potential income from the investment
 181 of assets or use of property. Potential income from employment
 182 is the income which a party could reasonably expect to earn by
 183 working at a locally available, full-time job commensurate with
 184 his or her education, training, and experience. Potential income
 185 from the investment of assets or use of property is the income
 186 which a party could reasonably expect to earn from the
 187 investment of his or her assets or the use of his or her
 188 property in a financially prudent manner.

189 (c)1. "Underemployed" means a party is not working full-
 190 time in a position which is appropriate, based upon his or her
 191 educational training and experience, and available in the
 192 geographical area of his or her residence.

193 2. A party is not considered "underemployed" if he or she
 194 is enrolled in an educational program that can be reasonably
 195 expected to result in a degree or certification within a
 196 reasonable period, so long as the educational program is:

197 a. Expected to result in higher income within the
 198 foreseeable future.

199 b. A good faith educational choice based upon the previous
 200 education, training, skills, and experience of the party and the
 201 availability of immediate employment based upon the educational
 202 program being pursued.

203 (d) "Years of marriage" means the number of whole years,

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204 beginning from the date of the parties' marriage until the date
 205 of the filing of the action for dissolution of marriage.

206 (2) INITIAL FINDINGS.—When a party has requested alimony in
 207 a dissolution of marriage proceeding, before granting or denying
 208 an award of alimony, the court shall make initial written
 209 findings as to:

210 (a) The amount of each party's monthly gross income,
 211 including, but not limited to, the actual or potential income,
 212 and also including actual or potential income from nonmarital or
 213 marital property distributed to each party.

214 (b) The years of marriage as determined from the date of
 215 marriage through the date of the filing of the action for
 216 dissolution of marriage.

217 (3) ALIMONY GUIDELINES.—After making the initial findings
 218 described in subsection (2), the court shall calculate the
 219 presumptive alimony amount range and the presumptive alimony
 220 duration range. The court shall make written findings as to the
 221 presumptive alimony amount range and presumptive alimony
 222 duration range.

223 (a) Presumptive alimony amount range.—The low end of the
 224 presumptive alimony amount range shall be calculated by using
 225 the following formula:

226 (0.015 x the years of marriage) x the difference between the
 227 monthly gross incomes of the parties

228 The high end of the presumptive alimony amount range shall be
 229 calculated by using the following formula:

230
 231
 232

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233 (0.020 x the years of marriage) x the difference between the
 234 monthly gross incomes of the parties
 235
 236 For purposes of calculating the presumptive alimony amount
 237 range, 20 years of marriage shall be used in calculating the low
 238 end and high end for marriages of 20 years or more. In
 239 calculating the difference between the parties' monthly gross
 240 income, the income of the party seeking alimony shall be
 241 subtracted from the income of the other party. If the
 242 application of the formulas to establish a guideline range
 243 results in a negative number, the presumptive alimony amount
 244 shall be \$0. If a court establishes the duration of the alimony
 245 award at 50 percent or less of the length of the marriage, the
 246 court shall use the actual years of the marriage, up to a
 247 maximum of 25 years, to calculate the high end of the
 248 presumptive alimony amount range.
 249 (b) Presumptive alimony duration range.—The low end of the
 250 presumptive alimony duration range shall be calculated by using
 251 the following formula:
 252
 253 0.25 x the years of marriage
 254
 255 The high end of the presumptive alimony duration range shall be
 256 calculated by using the following formula:
 257
 258 0.75 x the years of marriage.
 259
 260 (4) ALIMONY AWARD.—
 261 (a) Marriages of 2 years or less.—For marriages of 2 years

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262 or less, there is a rebuttable presumption that no alimony shall
 263 be awarded. The court may award alimony for a marriage with a
 264 duration of 2 years or less only if the court makes written
 265 findings that there is a clear and convincing need for alimony,
 266 there is an ability to pay alimony, and that the failure to
 267 award alimony would be inequitable. The court shall then
 268 establish the alimony award in accordance with paragraph (b).
 269 (b) Marriages of more than 2 years.—Absent an agreement of
 270 the parties, alimony shall presumptively be awarded in an amount
 271 within the alimony amount range calculated in paragraph (3) (a).
 272 Absent an agreement of the parties, alimony shall presumptively
 273 be awarded for a duration within the alimony duration range
 274 calculated in paragraph (3) (b). In determining the amount and
 275 duration of the alimony award, the court shall consider all of
 276 the following factors upon which evidence was presented:
 277 1. The financial resources of the recipient spouse,
 278 including the actual or potential income from nonmarital or
 279 marital property or any other source and the ability of the
 280 recipient spouse to meet his or her reasonable needs
 281 independently.
 282 2. The financial resources of the payor spouse, including
 283 the actual or potential income from nonmarital or marital
 284 property or any other source and the ability of the payor spouse
 285 to meet his or her reasonable needs while paying alimony.
 286 3. The standard of living of the parties during the
 287 marriage with consideration that there will be two households to
 288 maintain after the dissolution of the marriage and that neither
 289 party may be able to maintain the same standard of living after
 290 the dissolution of the marriage.

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291 4. The equitable distribution of marital property,
 292 including whether an unequal distribution of marital property
 293 was made to reduce or alleviate the need for alimony.
 294 5. Both parties' income, employment, and employability,
 295 obtainable through reasonable diligence and additional training
 296 or education, if necessary, and any necessary reduction in
 297 employment due to the needs of an unemancipated child of the
 298 marriage or the circumstances of the parties.
 299 6. Whether a party could become better able to support
 300 himself or herself and reduce the need for ongoing alimony by
 301 pursuing additional educational or vocational training along
 302 with all of the details of such educational or vocational plan,
 303 including, but not limited to, the length of time required and
 304 the anticipated costs of such educational or vocational
 305 training.
 306 7. Whether one party has historically earned higher or
 307 lower income than the income reflected at the time of trial and
 308 the duration and consistency of income from overtime or
 309 secondary employment.
 310 8. Whether either party has foregone or postponed economic,
 311 educational, or employment opportunities during the course of
 312 the marriage.
 313 9. Whether either party has caused the unreasonable
 314 depletion or dissipation of marital assets.
 315 10. The amount of temporary alimony and the number of
 316 months that temporary alimony was paid to the recipient spouse.
 317 11. The age, health, and physical and mental condition of
 318 the parties, including consideration of significant health care
 319 needs or uninsured or unreimbursed health care expenses.

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320 12. Significant economic or noneconomic contributions to
 321 the marriage or to the economic, educational, or occupational
 322 advancement of a party, including, but not limited to, services
 323 rendered in homemaking, child care, education, and career
 324 building of the other party, payment by one spouse of the other
 325 spouse's separate debts, or enhancement of the other spouse's
 326 personal or real property.
 327 13. The tax consequence of the alimony award.
 328 14. Any other factor necessary to do equity and justice
 329 between the parties.
 330 (c) Deviation from guidelines.—The court may establish an
 331 award of alimony that is outside the presumptive alimony amount
 332 or alimony duration ranges only if the court considers all of
 333 the factors in paragraph (b) and makes specific written findings
 334 concerning the relevant factors justifying that the application
 335 of the presumptive alimony amount or alimony duration ranges, as
 336 applicable, is inappropriate or inequitable.
 337 (d) Order establishing alimony award.—After consideration
 338 of the presumptive alimony amount and duration ranges in
 339 accordance with paragraphs (3) (a) and (b) and the factors upon
 340 which evidence was presented in accordance with paragraph (b),
 341 the court may establish an alimony award. An order establishing
 342 an alimony award must clearly set forth both the amount and the
 343 duration of the award. The court shall also make a written
 344 finding that the payor has the financial ability to pay the
 345 award.
 346 (5) IMPUTATION OF INCOME.—If a party is voluntarily
 347 unemployed or underemployed, alimony shall be calculated based
 348 on a determination of potential income unless the court makes

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349 specific written findings regarding the circumstances that make
 350 it inequitable to impute income.

351 (6) NOMINAL ALIMONY.—Notwithstanding subsections (1), (3),
 352 and (4), the court may make an award of nominal alimony in the
 353 amount of \$1 per year if, at the time of trial, a party who has
 354 traditionally provided the primary source of financial support
 355 to the family temporarily lacks the ability to pay support but
 356 is reasonably anticipated to have the ability to pay support in
 357 the future. The court may also award nominal alimony for an
 358 alimony recipient who is presently able to work but for whom a
 359 medical condition with a reasonable degree of medical certainty
 360 may inhibit or prevent his or her ability to work during the
 361 duration of the alimony period. The duration of the nominal
 362 alimony shall be established within the presumptive durational
 363 range based upon the length of the marriage subject to the
 364 alimony factors in paragraph (4) (b). Before the expiration of
 365 the durational period, nominal alimony may be modified in
 366 accordance with s. 61.14 as to amount to a full alimony award
 367 using the alimony guidelines and factors in accordance with s.
 368 61.08.

369 (7) TAXABILITY AND DEDUCTIBILITY OF ALIMONY.—

370 (a) Unless otherwise stated in the judgment or order for
 371 alimony or in an agreement incorporated thereby, alimony shall
 372 be deductible from income by the payor under s. 215 of the
 373 Internal Revenue Code and includable in the income of the payee
 374 under s. 71 of the Internal Revenue Code.

375 (b) When making a judgment or order for alimony, the court
 376 may, in its discretion after weighing the equities and tax
 377 efficiencies, order alimony be nondeductible from income by the

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378 payor and nonincludable in the income of the payee.

379 (c) The parties may, in a marital settlement agreement,
 380 separation agreement, or related agreement, specifically agree
 381 in writing that alimony be nondeductible from income by the
 382 payor and nonincludable in the income of the payee.

383 (8) MAXIMUM COMBINED AWARD.—In no event shall a combined
 384 award of alimony and child support constitute more than 55
 385 percent of the payor's net income, calculated without any
 386 consideration of alimony or child support obligations.

387 (9) SECURITY OF AWARD.—To the extent necessary to protect
 388 an award of alimony, the court may order any party who is
 389 ordered to pay alimony to purchase or maintain a decreasing term
 390 life insurance policy or a bond, or to otherwise secure such
 391 alimony award with any other assets that may be suitable for
 392 that purpose, in an amount adequate to secure the alimony award.
 393 Any such security may be awarded only upon a showing of special
 394 circumstances. If the court finds special circumstances and
 395 awards such security, the court must make specific evidentiary
 396 findings regarding the availability, cost, and financial impact
 397 on the obligated party. Any security may be modifiable in the
 398 event the underlying alimony award is modified and shall be
 399 reduced in an amount commensurate with any reduction in the
 400 alimony award.

401 (10) TERMINATION OF AWARD.—An alimony award shall terminate
 402 upon the death of either party or the remarriage of the obligee.

403 (11) MODIFICATION OF AWARD.—A court may subsequently modify
 404 or terminate the amount of an award of alimony initially
 405 established under this section in accordance with s. 61.14.
 406 However, a court may not modify the duration of an award of

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407 alimony initially established under this section.

408 (12) PAYMENT OF AWARD.—

409 (a) With respect to an order requiring the payment of
 410 alimony entered on or after January 1, 1985, unless paragraph
 411 (c) or paragraph (d) applies, the court shall direct in the
 412 order that the payments of alimony be made through the
 413 appropriate depository as provided in s. 61.181.

414 (b) With respect to an order requiring the payment of
 415 alimony entered before January 1, 1985, upon the subsequent
 416 appearance, on or after that date, of one or both parties before
 417 the court having jurisdiction for the purpose of modifying or
 418 enforcing the order or in any other proceeding related to the
 419 order, or upon the application of either party, unless paragraph
 420 (c) or paragraph (d) applies, the court shall modify the terms
 421 of the order as necessary to direct that payments of alimony be
 422 made through the appropriate depository as provided in s.
 423 61.181.

424 (c) If there is no minor child, alimony payments do not
 425 need to be directed through the depository.

426 (d)1. If there is a minor child of the parties and both
 427 parties so request, the court may order that alimony payments do
 428 not need to be directed through the depository. In this case,
 429 the order of support shall provide, or be deemed to provide,
 430 that either party may subsequently apply to the depository to
 431 require that payments be made through the depository. The court
 432 shall provide a copy of the order to the depository.

433 2. If subparagraph 1. applies, either party may
 434 subsequently file with the clerk of the court a verified motion
 435 alleging a default or arrearages in payment stating that the

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436 party wishes to initiate participation in the depository
 437 program. The moving party shall copy the other party with the
 438 motion. No later than 15 days after filing the motion, the court
 439 shall conduct an evidentiary hearing establishing the default
 440 and arrearages, if any, and issue an order directing the clerk
 441 of the circuit court to establish, or amend an existing, family
 442 law case history account, and further advising the parties that
 443 future payments must thereafter be directed through the
 444 depository.

445 3. In IV-D cases, the Title IV-D agency shall have the same
 446 rights as the obligee in requesting that payments be made
 447 through the depository.

448 Section 3. Subsection (3) of section 61.13, Florida
 449 Statutes, is amended to read:

450 61.13 Support of children; parenting and time-sharing;
 451 powers of court.—

452 (3) For purposes of establishing or modifying parental
 453 responsibility and creating, developing, approving, or modifying
 454 a parenting plan, including a time-sharing schedule, which
 455 governs each parent's relationship with his or her minor child
 456 and the relationship between each parent with regard to his or
 457 her minor child, the best interest of the child shall be the
 458 primary consideration.

459 (a) Approximately equal time-sharing with a minor child by
 460 both parents is presumed to be in the best interest of the
 461 child. In determining whether the presumption is overcome, the
 462 court shall evaluate the evidence based on ~~A determination of~~
 463 ~~parental responsibility, a parenting plan, or a time sharing~~
 464 ~~schedule may not be modified without a showing of a substantial,~~

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465 material, and unanticipated change in circumstances and a
 466 determination that the modification is in the best interests of
 467 the child. Determination of the best interests of the child
 468 shall be made by evaluating all of the factors affecting the
 469 welfare and interests of the particular minor child and the
 470 circumstances of that family, including, ~~but not limited to:~~

471 1.(a) The demonstrated capacity ~~or and~~ disposition of each
 472 parent to facilitate and encourage a close and continuing
 473 parent-child relationship, to honor the time-sharing schedule,
 474 and to be reasonable when changes are required.

475 2.(b) The anticipated division of parental responsibilities
 476 after the litigation, including the extent to which parental
 477 responsibilities will be delegated to third parties.

478 3.(c) The demonstrated capacity and disposition of each
 479 parent to determine, consider, and act upon the needs of the
 480 child as opposed to the needs or desires of the parent.

481 4.(d) The length of time the child has lived in a stable,
 482 satisfactory environment and the desirability of maintaining
 483 continuity.

484 5.(e) The geographic viability of the parenting plan, with
 485 special attention paid to the needs of school-age children and
 486 the amount of time to be spent traveling to carry out ~~effectuate~~
 487 the parenting plan. This factor does not create a presumption
 488 for or against relocation of either parent with a child.

489 6.(f) The moral fitness of the parents.

490 7.(g) The mental and physical health of the parents.

491 8.(h) The home, school, and community record of the child.

492 9.(i) The reasonable preference of the child, if the court
 493 deems the child to be of sufficient intelligence, understanding,

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494 and experience to express a preference.

495 10.(j) The demonstrated knowledge, capacity, ~~or and~~
 496 disposition of each parent to be informed of the circumstances
 497 of the minor child, including, but not limited to, the child's
 498 friends, teachers, medical care providers, daily activities, and
 499 favorite things.

500 11.(k) The demonstrated capacity ~~or and~~ disposition of each
 501 parent to provide a consistent routine for the child, such as
 502 discipline, and daily schedules for homework, meals, and
 503 bedtime.

504 12.(l) The demonstrated capacity of each parent to
 505 communicate with the other parent and keep the other parent
 506 informed of issues and activities regarding the minor child, and
 507 the willingness of each parent to adopt a unified front on all
 508 major issues when dealing with the child.

509 13.(m) Evidence of domestic violence, sexual violence,
 510 child abuse, child abandonment, or child neglect, regardless of
 511 whether a prior or pending action relating to those issues has
 512 been brought. If the court accepts evidence of prior or pending
 513 actions regarding domestic violence, sexual violence, child
 514 abuse, child abandonment, or child neglect, the court must
 515 specifically acknowledge in writing that such evidence was
 516 considered when evaluating the best interests of the child.

517 14.(n) Evidence that either parent has knowingly provided
 518 false information to the court regarding any prior or pending
 519 action regarding domestic violence, sexual violence, child
 520 abuse, child abandonment, or child neglect.

521 15.(o) The demonstrated capacity or disposition of each
 522 parent to perform or ensure the performance of particular

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523 parenting tasks customarily performed by the other ~~each~~ parent
 524 and the division of parental responsibilities before the
 525 institution of litigation and during the pending litigation,
 526 including the extent to which parenting responsibilities were
 527 undertaken by third parties.

528 ~~16.(p)~~ The demonstrated capacity and disposition of each
 529 parent to participate and be involved in the child's school and
 530 extracurricular activities.

531 ~~17.(q)~~ The demonstrated capacity and disposition of each
 532 parent to maintain an environment for the child which is free
 533 from substance abuse.

534 ~~18.(r)~~ The capacity and disposition of each parent to
 535 protect the child from the ongoing litigation as demonstrated by
 536 not discussing the litigation with the child, not sharing
 537 documents or electronic media related to the litigation with the
 538 child, and refraining from disparaging comments about the other
 539 parent to the child.

540 ~~19.(s)~~ The developmental stages and needs of the child and
 541 the demonstrated capacity and disposition of each parent to meet
 542 the child's developmental needs.

543 20. The amount of time-sharing requested by each parent.

544 21. The frequency that a parent would likely leave the
 545 child in the care of a nonrelative on evenings and weekends when
 546 the other parent would be available and willing to provide care.

547 ~~22.(t)~~ Any other factor that is relevant to the
 548 determination of a specific parenting plan, including the time-
 549 sharing schedule.

550 (b) A court order must be supported by written findings of
 551 fact if the order establishes an initial permanent time-sharing

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552 schedule that does not provide for approximately equal time-
 553 sharing.

554 (c) A determination of parental responsibility, a parenting
 555 plan, or a time-sharing schedule may not be modified without a
 556 determination that such modification is in the best interest of
 557 the child and upon a showing of a substantial, material, and
 558 unanticipated change in circumstances.

559 Section 4. Subsection (1) of section 61.14, Florida
 560 Statutes, is amended to read:

561 61.14 Enforcement and modification of support, maintenance,
 562 or alimony agreements or orders.—

563 (1) (a) When the parties enter into an agreement for
 564 payments for, or instead of, support, maintenance, or alimony,
 565 whether in connection with a proceeding for dissolution or
 566 separate maintenance or with any voluntary property settlement,
 567 or when a party is required by court order to make any payments,
 568 and the circumstances or the financial ability of either party
 569 changes or the child who is a beneficiary of an agreement or
 570 court order as described herein reaches majority after the
 571 execution of the agreement or the rendition of the order, either
 572 party may apply to the circuit court of the circuit in which the
 573 parties, or either of them, resided at the date of the execution
 574 of the agreement or reside at the date of the application, or in
 575 which the agreement was executed or in which the order was
 576 rendered, for an order decreasing or increasing the amount of
 577 support, maintenance, or alimony, and the court has jurisdiction
 578 to make orders as equity requires, with due regard to the
 579 changed circumstances or the financial ability of the parties or
 580 the child, decreasing, increasing, or confirming the amount of

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581 separate support, maintenance, or alimony provided for in the
 582 agreement or order. However, a court may not decrease or
 583 increase the duration of alimony provided for in the agreement
 584 or order. A party is entitled to pursue an immediate
 585 modification of alimony if the actual income earned by the other
 586 party exceeds by at least 10 percent the amount imputed to that
 587 party at the time the existing alimony award was determined and
 588 such circumstance shall constitute a substantial change in
 589 circumstances sufficient to support a modification of alimony.
 590 However, an increase in an alimony obligor's income alone does
 591 not constitute a basis for a modification to increase alimony
 592 unless at the time the alimony award was established it was
 593 determined that the obligor was underemployed or unemployed and
 594 the court did not impute income to that party at his or her
 595 maximum potential income. If an alimony obligor becomes
 596 involuntarily underemployed or unemployed for a period of 6
 597 months following the entry of the last order requiring the
 598 payment of alimony, the obligor is entitled to pursue an
 599 immediate modification of his or her existing alimony
 600 obligations and such circumstance shall constitute a substantial
 601 change in circumstance sufficient to support a modification of
 602 alimony. A finding that medical insurance is reasonably
 603 available or the child support guidelines schedule in s. 61.30
 604 may constitute changed circumstances. Except as otherwise
 605 provided in s. 61.30(11)(c), the court may modify an order of
 606 support, maintenance, or alimony by increasing or decreasing the
 607 support, maintenance, or alimony retroactively to the date of
 608 the filing of the action or supplemental action for modification
 609 as equity requires, giving due regard to the changed

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610 circumstances or the financial ability of the parties or the
 611 child.
 612 (b)1. The court may reduce or terminate an award of alimony
 613 upon specific written findings by the court that since the
 614 granting of a divorce and the award of alimony a supportive
 615 relationship exists or has existed within the previous year
 616 before the date of the filing of the petition for modification
 617 or termination between the obligee and another a person ~~with~~
 618 ~~whom the obligee resides. On the issue of whether alimony should~~
 619 ~~be reduced or terminated under this paragraph, the burden is on~~
 620 ~~the obligor to prove by a preponderance of the evidence that a~~
 621 ~~supportive relationship exists.~~
 622 2. In determining whether an existing award of alimony
 623 should be reduced or terminated because of an alleged supportive
 624 relationship between an obligee and a person who is not related
 625 by consanguinity or affinity ~~and with whom the obligee resides,~~
 626 the court shall elicit the nature and extent of the relationship
 627 in question. The court shall give consideration, without
 628 limitation, to circumstances, including, but not limited to, the
 629 following, in determining the relationship of an obligee to
 630 another person:
 631 a. The extent to which the obligee and the other person
 632 have held themselves out as a married couple by engaging in
 633 conduct such as using the same last name, using a common mailing
 634 address, referring to each other ~~in terms such as "my husband"~~
 635 ~~or "my wife,"~~ "my spouse" or otherwise conducting themselves in
 636 a manner that evidences a permanent supportive relationship.
 637 b. The period of time that the obligee has resided with the
 638 other person in a permanent place of abode.

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639 c. The extent to which the obligee and the other person
 640 have pooled their assets or income or otherwise exhibited
 641 financial interdependence.

642 d. The extent to which the obligee or the other person has
 643 supported the other, in whole or in part.

644 e. The extent to which the obligee or the other person has
 645 performed valuable services for the other.

646 f. The extent to which the obligee or the other person has
 647 performed valuable services for the other's company or employer.

648 g. Whether the obligee and the other person have worked
 649 together to create or enhance anything of value.

650 h. Whether the obligee and the other person have jointly
 651 contributed to the purchase of any real or personal property.

652 i. Evidence in support of a claim that the obligee and the
 653 other person have an express agreement regarding property
 654 sharing or support.

655 j. Evidence in support of a claim that the obligee and the
 656 other person have an implied agreement regarding property
 657 sharing or support.

658 k. Whether the obligee and the other person have provided
 659 support to the children of one another, regardless of any legal
 660 duty to do so.

661 1. Whether the obligor's failure, in whole or in part, to
 662 comply with all court-ordered financial obligations to the
 663 obligee constituted a significant factor in the establishment of
 664 the supportive relationship.

665 3. In any proceeding to modify an alimony award based upon
 666 a supportive relationship, the obligor has the burden of proof
 667 to establish, by a preponderance of the evidence, that a

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668 supportive relationship exists or has existed within the
 669 previous year before the date of the filing of the petition for
 670 modification or termination. The obligor is not required to
 671 prove cohabitation of the obligee and the third party.

672 4. Notwithstanding paragraph (f), if a reduction or
 673 termination is granted under this paragraph, the reduction or
 674 termination is retroactive to the date of filing of the petition
 675 for reduction or termination.

676 ~~5.3-~~ This paragraph does not abrogate the requirement that
 677 every marriage in this state be solemnized under a license, does
 678 not recognize a common law marriage as valid, and does not
 679 recognize a de facto marriage. This paragraph recognizes only
 680 that relationships do exist that provide economic support
 681 equivalent to a marriage and that alimony terminable on
 682 remarriage may be reduced or terminated upon the establishment
 683 of equivalent equitable circumstances as described in this
 684 paragraph. The existence of a conjugal relationship, though it
 685 may be relevant to the nature and extent of the relationship, is
 686 not necessary for the application of the provisions of this
 687 paragraph.

688 (c)1. For purposes of this section, the remarriage of an
 689 alimony obligor does not constitute a substantial change in
 690 circumstance or a basis for a modification of alimony.

691 2. The financial information, including, but not limited
 692 to, information related to assets and income, of a subsequent
 693 spouse of a party paying or receiving alimony is inadmissible
 694 and may not be considered as a part of any modification action
 695 unless a party is claiming that his or her income has decreased
 696 since the marriage. If a party makes such a claim, the financial

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697 information of the subsequent spouse is discoverable and
 698 admissible only to the extent necessary to establish whether the
 699 party claiming that his or her income has decreased is diverting
 700 income or assets to the subsequent spouse that might otherwise
 701 be available for the payment of alimony. However, this
 702 subparagraph may not be used to prevent the discovery of or
 703 admissibility in evidence of the income or assets of a party
 704 when those assets are held jointly with a subsequent spouse.
 705 This subparagraph is not intended to prohibit the discovery or
 706 admissibility of a joint tax return filed by a party and his or
 707 her subsequent spouse in connection with a modification of
 708 alimony.

709 (d)1. An obligor may file a petition for modification or
 710 termination of an alimony award based upon his or her actual
 711 retirement.

712 a. A substantial change in circumstance is deemed to exist
 713 if:

714 (I) The obligor has reached the age for eligibility to
 715 receive full retirement benefits under s. 216 of the Social
 716 Security Act, 42 U.S.C. s. 416, and has retired; or

717 (II) The obligor has reached the customary retirement age
 718 for his or her occupation and has retired from that occupation.
 719 An obligor may file an action within 1 year of his or her
 720 anticipated retirement date and the court shall determine the
 721 customary retirement date for the obligor's profession. However,
 722 a determination of the customary retirement age is not an
 723 adjudication of a petition for a modification of an alimony
 724 award.

725 b. If an obligor voluntarily retires before reaching any of

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726 the ages described in sub-subparagraph a., the court shall
 727 determine whether the obligor's retirement is reasonable upon
 728 consideration of the obligor's age, health, and motivation for
 729 retirement and the financial impact on the obligee. A finding of
 730 reasonableness by the court shall constitute a substantial
 731 change in circumstance.

732 2. Upon a finding of a substantial change in circumstance,
 733 there is a rebuttable presumption that an obligor's existing
 734 alimony obligation shall be modified or terminated. The court
 735 shall modify or terminate the alimony obligation, or make a
 736 determination regarding whether the rebuttable presumption has
 737 been overcome, based upon the following factors applied to the
 738 current circumstances of the obligor and obligee:

739 a. The age of the parties.

740 b. The health of the parties.

741 c. The assets and liabilities of the parties.

742 d. The earned or imputed income of the parties as provided
 743 in s. 61.08(1)(a) and (5).

744 e. The ability of the parties to maintain part-time or
 745 full-time employment.

746 f. Any other factor deemed relevant by the court.

747 3. The court may temporarily reduce or suspend the
 748 obligor's payment of alimony while his or her petition for
 749 modification or termination under this paragraph is pending.

750 (e) A party who unreasonably pursues or defends an action
 751 for modification of alimony shall be required to pay the
 752 reasonable attorney fees and costs of the prevailing party.
 753 Further, a party obligated to pay prevailing party attorney fees
 754 and costs in connection with unreasonably pursuing or defending

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755 an action for modification is not entitled to an award of
 756 attorney fees and cost in accordance with s. 61.16.

757 (f) There is a rebuttable presumption that a modification
 758 or termination of an alimony award is retroactive to the date of
 759 the filing of the petition, unless the obligee demonstrates that
 760 the result is inequitable.

761 (g)(e) For each support order reviewed by the department as
 762 required by s. 409.2564(11), if the amount of the child support
 763 award under the order differs by at least 10 percent but not
 764 less than \$25 from the amount that would be awarded under s.
 765 61.30, the department shall seek to have the order modified and
 766 any modification shall be made without a requirement for proof
 767 or showing of a change in circumstances.

768 (h)(d) The department may ~~shall~~ have authority to adopt
 769 rules to implement this section.

770 Section 5. Paragraph (d) is added to subsection (11) of
 771 section 61.30, Florida Statutes, to read:

772 61.30 Child support guidelines; retroactive child support.-
 773 (11)

774 (d) Whenever a combined alimony and child support award
 775 constitutes more than 55 percent of the payor's net income,
 776 calculated without any consideration of alimony or child support
 777 obligations, the court shall adjust the award of child support
 778 to ensure that the 55 percent cap is not exceeded.

779 Section 6. Section 61.192, Florida Statutes, is created to
 780 read:

781 61.192 Advancing trial.-In an action brought pursuant to
 782 this chapter, if more than 2 years have passed since the initial
 783 petition was served on the respondent, either party may move the

590-02844-15

20151248c1

784 court to advance the trial of their action on the docket. This
 785 motion may be made at any time after 2 years have passed since
 786 the petition was served, and once made the court must give the
 787 case priority on the court's calendar.

788 Section 7. The amendments made by this act to chapter 61,
 789 Florida Statutes, apply to all initial determinations of alimony
 790 and all alimony modification actions that are pending as of the
 791 effective date of this act, and to all initial determinations of
 792 alimony and all alimony modification actions brought on or after
 793 the effective date of this act. The enacting of this act may not
 794 serve as the sole basis for a party to seek a modification of an
 795 alimony award existing before the effective date of this act.

796 Section 8. This act shall take effect October 1, 2015.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Higher Education, *Chair*
Appropriations Subcommittee on Education
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic
Security
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL

15th District

March 27, 2015

The Honorable Joe Negron
Senate Appropriations Subcommittee on Criminal and Civil Justice, Chair
412 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Negron:

I am respectfully requesting that SB 1248, related to *Family Law*, be placed on the next committee agenda.

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

Sincerely,

A handwritten signature in cursive script that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 15

Cc: Tim Sadberry/ Staff Director
Michelle Sanders/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

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)

04/08/15
Meeting Date

SB 1248
Bill Number (if applicable)

Topic Alimony Reform

Amendment Barcode (if applicable)

Name Cynthia Mayer

Job Title Full Time mother of 3 children

Address 31 Tina Maria Circle

Phone 386-214-6181

Street

Ponce Inlet, FL 32127

City

State

Zip

Email Cindys31@aol.com

Speaking: For Against Information

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

Representing Stay at Home Mothers and Children

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)

4-8-15
Meeting Date

1248
Bill Number (if applicable)

Topic Alimony

Amendment Barcode (if applicable)

Name Barbara DeVane

Job Title Ms

Address 625 E. Brevard St

Phone 850-222-3969

Street

Tallahassee FL 32308

City

State

Zip

Email barbadevane1@yahoo.com

Speaking: For Against Information

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

Representing FL NOW

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

APPEARANCE RECORD

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

4-8-15

Meeting Date

SB 1248

Bill Number (if applicable)

Topic Alimony Reform

Amendment Barcode (if applicable)

Name Weisa Athey

Job Title Scheduler

Address 567 Waterscape Way

Phone 407-758-4905

Street

Orlando, FL 32828

City

State

Zip

Email 1zathey@gmail.com

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

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

Representing Senior Women for Alimony

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)

APPEARANCE RECORD

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

4-8-2015

Meeting Date

SB 1248

Bill Number (if applicable)

Topic Alimony Reform

Amendment Barcode (if applicable)

Name Cathy Jones

Job Title

Address 608 Finney Street

Phone 863-712-6497

Street

Lakeland, FL 33803

City

State

Zip

Email cathyjonesfl@yahoo.com

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

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

Representing First Wives Advocacy Group of Florida

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)

APPEARANCE RECORD

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

4-8-15 Meeting Date

368 Bill Number (if applicable)

Topic Grandparents Rights

Amendment Barcode (if applicable)

Name Barbara DeVane

Job Title Ms

Address 625 E. Brevard St

Phone 850-222-3969

Tallahassee FL 32308

Email barbadevane1@yahoo.com

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

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

Representing FL Alliance for Retired Americans

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

Lobbyist registered with Legislature: [X] Yes [] No but not for FLRA-volunteer

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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APPEARANCE RECORD

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

4-8-15 Meeting Date

SB 1248 Bill Number (if applicable)

Topic Alimony Reform

Amendment Barcode (if applicable)

Name Tarie (as in Terry :) Mac Millan

Job Title

Address 15822 Aurora Lake

Phone 813-545-3342

Wimauma FL 33598

Email tariemac@verizon.net

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

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

Representing Family Law Reform

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

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/15
Meeting Date

SB1248
Bill Number (if applicable)

Topic FAMILY LAW - ALIMONY REFORM

Amendment Barcode (if applicable)

Name TERRANCE POWER

Job Title

Address 1612 SWADY CATES DR

Phone 813-781-3266

Street
City OLDSMAR State FL Zip 34677

Email

Speaking: For Against Information

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

Representing FAMILY LAW REFORM

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)

Meeting Date

1248
Bill Number (if applicable)

Topic ALIMONY

Amendment Barcode (if applicable)

Name NELSON DIAZ

Job Title ATTORNEY

Address

Phone

Street
City State Zip

Email

Speaking: For Against Information

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

Representing Family Law Section FL Bar

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)

4/8/15

Meeting Date

1248

Bill Number (if applicable)

Topic Alimony

Amendment Barcode (if applicable)

Name Paul Lowell

Job Title Public Affairs Director

Address 106 E College Ave, Suite 900

Phone 850-513-3380

Street

Tallahassee

City

FL

State

32301

Zip

Email plowell@foley.com

Speaking: For Against Information

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

Representing Family Law Reform

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/SB 1270 (554152)

INTRODUCER: Appropriations Subcommittee Criminal and Civil Justice; and Senator Soto

SUBJECT: Sexual Offenses

DATE: April 10, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	_____	_____	<u>FP</u>	_____

I. Summary:

PCS/SB 1270 amends s. 775.15, F.S., by extending the current statute of limitation time periods of three or four years to 10 years for a first or second degree felony sexual battery prosecution when the victim is 16 years of age or older and does not report the crime within 72 hours. (If a 16 year old or older victim of *second* degree felony sexual battery or an 18 year old or older victim of *first* degree felony sexual battery report the crime within 72 hours, current law is applicable and there is no time limitation for bringing a prosecution.)

The bill creates an insignificant fiscal impact to the General Revenue Fund not to exceed \$450,000 annually. See Section V.

The bill takes effect on July 1, 2015.

II. Present Situation:

Statutes of Limitation in Criminal Cases

Historical Perspective

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

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

The only purpose of a Statute limiting the time within which a criminal charge may be prosecuted is to protect every person from being interminably under the threat or cloud of possible criminal prosecution,

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

which otherwise might be indefinitely delayed until the time when defense witnesses might die, disappear or otherwise become unavailable, judges would change office, or innumerable other time hazards might develop, which could conceivably defeat, or at least hamper, an otherwise good defense.²

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

- (1) Generally, the statute of limitation that was in effect when a crime was committed controls.³
- (2) Statutes of limitation in criminal cases should be construed liberally in favor of the defendant.⁴
- (3) The Legislature may extend the limitations period without violating the ex post facto clause of the State Constitution⁵ if the Legislature makes the change before the prosecution is barred under the old statute and clearly demonstrates that the new statute applies to cases pending when the extension takes effect.⁶

Existing Provisions

Section 775.15, F.S., sets forth time limitations, or statutes of limitation, after which criminal prosecutions are barred.

The statute of limitation for prosecuting a criminal case begins to run on the day after the offense is committed.⁷ An offense is deemed to have been committed when either every element of the offense has occurred or if it plainly appears that the legislative purpose is to prohibit a continuing course of conduct, at the time when the course of conduct or the defendant's complicity therein is terminated.⁸

Section 775.15, F.S., provides the following time limitations for initiating a criminal prosecution for a felony offense:

- There is no time limitation for prosecuting a capital felony, a life felony, a felony resulting in death,⁹ any sexual battery on a victim younger than 16,¹⁰ a first degree felony sexual battery on a victim younger than 18,¹¹ or a first or second degree felony sexual battery and the victim reports the crime to law enforcement within 72 hours.¹²
- A 10-year limitation applies to prosecutions for any felony that results in injury to a person when the felony arises from the use of a destructive device.¹³
- A four-year time limitation applies to prosecutions for a first degree felony.¹⁴

² *Id.*

³ *Beyer v. State*, 76 So. 3d 1132, 1135 (Fla. 4th DCA 2012).

⁴ *Id.*

⁵ FLA. CONST. art. I, s.10.

⁶ *Andrews v. State*, 392 So. 2d 270, 271 (Fla. 2d DCA 1980).

⁷ Section 775.15(3), F.S.

⁸ *Id.*

⁹ Section 775.15(1), F.S.

¹⁰ Section 775.15(13)(c), F.S.

¹¹ Section 775.15(13)(b), F.S.

¹² Section 775.15(13) and (14), F.S.

¹³ Section 775.15(7), F.S.

¹⁴ Section 775.15(2)(a), F.S.

- A three-year time limitation applies to prosecutions for any other felony.¹⁵

In addition to these enumerated time periods, the offenses of sexual battery, lewd or lascivious acts, and certain other felony offenses¹⁶ may be prosecuted at any time after the date on which the offender's identity is established, or should have been established through the exercise of due diligence, through the analysis of Deoxyribonucleic acid (DNA) evidence. However, the DNA sample for these prosecutions must be available for testing by the accused.¹⁷

There is also an extension of time if a victim of sexual battery, lewd or lascivious behavior, incest, "statutory rape" under former s. 794.05, F.S., or computer pornography is under the age of 18. In these cases, the applicable period of limitation does not begin to run until the victim reaches the age of 18 or the violation is reported to a law enforcement or governmental agency, whichever occurs first.¹⁸

If a victim 18 years or older reports a first or second degree felony sexual battery within 72 hours of the crime, there is no statute of limitation. If the victim does not report the crime within this time period, the statute of limitation is four years for a first degree felony sexual battery¹⁹ and three years for a second degree felony sexual battery.²⁰

Similarly, if a 16 or 17 year old who is a victim of a second degree felony sexual battery does not report the crime within 72 hours, the applicable time period to bring a prosecution is three years.²¹ (There is no limitation period if they are a victim of a first degree felony sexual battery, regardless of whether they report the crime.²² There is also no limitation period if they report within 72 hours of being a victim of second degree felony sexual battery.²³)

III. Effect of Proposed Changes:

The bill amends s. 775.15, F.S., by extending the current statute of limitation time periods of three or four years to 10 years for a first or second degree felony sexual battery prosecution when the victim is 16 years of age or older and does not report the crime within 72 hours. (If a 16 year old or older victim of *second* degree felony sexual battery or an 18 year old or older victim of *first* degree felony sexual battery report the crime within 72 hours, current law is applicable and there is no time limitation for bringing a prosecution.)

¹⁵ Section 775.15(2)(b), F.S.

¹⁶ These other felony offenses include aggravated battery or any felony battery offense under ch. 784, F.S., kidnapping or false imprisonment, sexual battery, lewd or lascivious offense, burglary, robbery, carjacking, and aggravated child abuse.

¹⁷ Section 775.15(16)(a)4., F.S.

¹⁸ Section 775.15(13)(a), F.S.

¹⁹ Section 775.15(14), F.S. First degree felony sexual battery is defined as non-consensual sexual battery under certain enumerated circumstances, including in part, the victim is physically helpless to resist, the victim is threatened, the victim is physically or mentally incapacitated, or the offender is law enforcement. Section 794.011(4), F.S.

²⁰ Section 775.15(14), F.S. Second degree felony sexual battery is defined as non-consensual sexual battery without the use of physical force or violence likely to cause serious personal injury. Section 794.011(5)(b), F.S.

²¹ The three year limitation does not commence until the earlier of the date that the victim turns 18 or the crime is reported. Section 775.15(13)(a), F.S.

²² Section 775.15(13)(b), F.S.

²³ Section 775.15(13)(a), F.S.

The bill makes this change apply to any such offense except one already time-barred on or before July 1, 2015 (meaning it applies retroactively to previously committed offenses as long as the statute of limitation has not run on these offenses prior to July 1, 2015).

The bill also provides that this act may be cited as the “43 Days Initiative Act.”

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:

The Criminal Justice Impact Conference (CJIC) met February 27, 2015, and determined that SB 1270 would have a positive moderate impact on state prison beds (meaning CJIC estimates that it may increase the prison population by more than 10 but less than 25 inmates annually). Accordingly, the projected prison bed impact would create an insignificant fiscal impact to the General Revenue Fund not to exceed \$450,000, which the Department of Corrections could absorb within existing resources. No additional fixed capital outlay costs are anticipated for these additional prison beds because the prison population is below the capacity of the correctional system.

The committee substitute proposed by the Appropriations Subcommittee on Criminal and Civil Justice on April 7, 2015, reduced the statute of limitations in the bill from 10 years to six years, which “would likely lower the effect and bring the moderate [prison bed]

effect closer to insignificant”.²⁴ While the committee substitute reduces the prison bed impact, it does not further reduce the bill’s already insignificant fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 775.15 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on April 8, 2015:

The committee substitute changes the statute of limitations from 10 years to six years.

B. Amendments:

None.

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

²⁴ Email from Matthew Hasbrouck, Office of Economic and Demographic Research, The Florida Legislature (April 6, 2015) (on file with the Senate Appropriations Subcommittee on Civil and Criminal Justice).



118986

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice (Soto)
recommended the following:

Senate Amendment

Delete line 36
and insert:
older at the time of the offense, must be commenced within 6

By Senator Soto

14-00557B-15

20151270__

1 A bill to be entitled
 2 An act relating to sexual offenses; providing a short
 3 title; amending s. 775.15, F.S.; revising time
 4 limitations for the criminal prosecution of specified
 5 sexual battery offenses if the victim is 16 years of
 6 age or older; providing applicability; providing an
 7 effective date.
 8
 9 Be It Enacted by the Legislature of the State of Florida:
 10
 11 Section 1. This act may be cited as the "43 Days Initiative
 12 Act."
 13 Section 2. Paragraph (b) of subsection (13) of section
 14 775.15, Florida Statutes, is republished, and subsection (14) of
 15 that section is amended, to read:
 16 775.15 Time limitations; general time limitations;
 17 exceptions.—
 18 (13)
 19 (b) If the offense is a first degree felony violation of s.
 20 794.011 and the victim was under 18 years of age at the time the
 21 offense was committed, a prosecution of the offense may be
 22 commenced at any time. This paragraph applies to any such
 23 offense except an offense the prosecution of which would have
 24 been barred by subsection (2) on or before October 1, 2003.
 25 (14) (a) A prosecution for a first or second degree felony
 26 violation of s. 794.011, if the victim is 16 ~~18~~ years of age or
 27 older at the time of the offense and the offense is reported to
 28 a law enforcement agency within 72 hours after commission of the
 29 offense, may be commenced at any time. ~~If the offense is not~~

Page 1 of 2

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

14-00557B-15

20151270__

30 ~~reported within 72 hours after the commission of the offense,~~
 31 ~~the prosecution must be commenced within the time periods~~
 32 ~~prescribed in subsection (2).~~
 33 (b) Except as provided in paragraph (a) or paragraph
 34 (13) (b), a prosecution for a first or second degree felony
 35 violation of s. 794.011, if the victim is 16 years of age or
 36 older at the time of the offense, must be commenced within 10
 37 years after the violation is committed. This paragraph applies
 38 to any such offense except an offense the prosecution of which
 39 would have been barred by subsection (2) on or before July 1,
 40 2015.
 41 Section 3. This act shall take effect July 1, 2015.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/8/15
Meeting Date

1270
Bill Number (if applicable)
118986
Amendment Barcode (if applicable)

Topic Sexual Offenses

Name Jennifer Drith

Job Title Executive Director

Address 1820 E. Park Ave Suite 100

Phone 850-897-3000

Tallahassee FL 32301
City State Zip

Email jdrith@fcasv.org

Speaking: 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 No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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4/8/15
Meeting Date

1270
Bill Number (if applicable)
118986
Amendment Barcode (if applicable)

Topic 43 Days Initiative

Name Danielle Sullivan

Job Title Founder - 43 Days Initiative

Address 687 Mourning Dove Circle

Phone 407-340-5104

Lake Mary FL 32746
City State Zip

Email info@43daysinitiative.org

Speaking: For Against Information

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

Representing 43 Days Initiative

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)

8 Apr 15
Meeting Date

SB 1270
Bill Number (if applicable)

Amendment
Amendment Barcode (if applicable)

Topic Sexual Offenses

Name Barney Bishop III

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone 577-3032

Tall FL 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

8 Apr 15
Meeting Date

SB 1270
Bill Number (if applicable)

Topic Sexual Offenses

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title Pres & CEO

Address 204 S. Monroe St
Street

Phone 577-3032

Tall FL 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

4/8/2015

Meeting Date

1270

Bill Number (if applicable)

Topic Sexual Offenses

Amendment Barcode (if applicable)

Name Bernadette Howard

Job Title Professional Development Assistant

Address 924 N. Gadsden Street

Phone 219-3631

Street

Tallahassee

FL

32303

City

State

Zip

Email bhoward@fpca.com

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)

4/8/15

Meeting Date

1270

Bill Number (if applicable)

Topic 43 Days Initiative

Amendment Barcode (if applicable)

Name Danielle Sullivan

Job Title Founder - 43 Days Initiative

Address 687 Mourning Dove Circle

Phone 407-340-5104

Street

Lake Mary

FL

32746

City

State

Zip

Email info@43daysinitiative.org

Speaking: For Against Information

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

Representing 43 Days Initiative

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)

4/18/15
Meeting Date

1270
Bill Number (if applicable)

Topic Sexual Offenses

Amendment Barcode (if applicable)

Name Jennifer Dritt

Job Title Executive Director

Address 1820 E. Park Ave Suite 100

Phone 850 297 2000

Street

Tallahassee

FL

32301

City

State

Zip

Email jdritt@fcasv.org

Speaking: 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 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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/SB 1414 (299824)

INTRODUCER: Appropriations Subcommittee Criminal and Civil Justice; and Senator Bradley

SUBJECT: Juvenile Detention Costs

DATE: April 10, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Sadberry	ACJ	Recommend: Fav/CS
2.			AP	
3.			RC	

I. Summary:

PCS/SB 1414 creates a new cost sharing methodology to calculate the shared county and state financial obligations for juvenile detention. The bill requires counties that are not fiscally constrained to pay 57%, and the state to pay 43%, of the actual cost of providing detention care in the county. The bill continues current law requiring the state to pay all costs for providing detention care for fiscally constrained counties and juveniles residing out of state.

The bill eliminates “final court disposition” as the demarcation between county and state financial obligations for juvenile detention, replacing it with a cost sharing relationship based on actual costs and county utilization.

The bill would increase the state’s share of juvenile detention costs in counties that are not fiscally constrained by approximately \$950,000 relative to the 58% county/42% state split of costs in the Senate proposed budget for Fiscal Year 2015-2016. The share of costs for counties that are not fiscally constrained would decrease by an equal amount.

The bill also requires the Department of Revenue (DOR) to review county detention cost share payments to ensure that each county is meeting its financial obligations. If not, DOR is required to deduct any unpaid cost share amount from the distribution of s. 218.23, F.S., revenue sharing funds to that county. However, a provision is included to prevent withholding of revenue sharing fund distributions in an amount that would affect the county’s ability to meet current bond obligations.

The bill has an effective date of July 1, 2015.

II. Present Situation:

The Department of Juvenile Justice (department) operates a statewide secure detention system for youth who are charged with committing delinquent acts. The detention care process begins when the department receives custody of a child from a law enforcement agency which has taken the child into custody:

- Upon assuming custody, the department decides whether to place the child in detention care as provided in s. 985.25, F.S., based upon an assessment of risk as provided in s. 985.245, F.S.
- If the department places the child in detention care, a court hearing must be held within 24 hours of the time that the child was taken into custody. At the hearing, the court considers a number of factors to determine whether the child should be kept in continued detention. Section 985.255, F.S., provides these factors, which include current offenses, prior history, legal status, and aggravating or mitigating factors.
- If the court orders the child to be held in secure detention, the detention cannot extend beyond 48 hours unless the court holds another hearing and finds in writing that continued detention is necessary to protect the victim from injury.
- The child may be held in detention until a disposition hearing is held to determine whether the child committed a delinquent act and, if necessary, until the child is sentenced.¹
- A child who is adjudicated delinquent may be kept in detention for a limited time while awaiting placement in a residential commitment program.²

The detention program provides 24-hour care and supervision to juveniles in physically secure facilities, with educational programming provided by individual school districts. The department detention staff transports detained youth to and from court and residential commitment facilities.

Currently, the department operates secure detention facilities in 21 counties with a total of more than 1,300 beds. During Fiscal Year 2013-2014, the department detained 26,743 individual youth in these facilities.³ Marion County, Polk County, and Seminole County operate their own detention centers.

In 2004, the Legislature enacted s. 985.686, F.S., requiring joint financial participation by the state and counties in the provision of juvenile detention. The statute made counties responsible for pre-dispositional detention costs and the department responsible for post-dispositional detention costs, costs for detention care in fiscally constrained counties,⁴ and costs for out-of-state youth. Historically, the counties were held responsible for 74% of detention costs and the

¹ Section 985.26, F.S., provides that pre-hearing detention care is limited to 21 days unless the court has commenced an adjudicatory hearing in good faith. For certain serious offenses, the time may be extended to 30 days before an adjudicatory hearing is commenced. There are also provisions for continued detention beyond these limits to account for continuances granted by the court. In such cases, the court must hold a hearing at the end of every 72 hour period to determine whether continued detention is appropriate and whether further continuance of the hearing is needed.

² Sections 985.26 and 985.27, F.S., govern the length of time that a child may be held in detention care after an adjudication of delinquency.

³ 2015 Legislative Bill Analysis of Senate Bill 1414, Department of Juvenile Justice (March 13, 2015).

⁴ The term “fiscally constrained county” is defined to mean “a county within a rural area of critical economic concern as designated by the Governor pursuant to s. 288.0656, F.S., or each county for which the value of a mill will raise no more than \$5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., F.S., from the previous July 1. Currently, 29 counties are considered fiscally constrained.

state was responsible for 26%. The department's apportionment of costs has been a source of administrative litigation by counties.

In June 2013, the First District Court of Appeal (DCA) affirmed an administrative law judge's order invalidating rules that the department had promulgated in 2010 relating to costs of detention. According to the order, the rules at issue shifted a greater responsibility for costs to the counties than was required by the relevant statute. The opinion had the effect of significantly decreasing the counties' fiscal responsibility and increasing the state's obligation.⁵

Administrative petitions have been filed to contest reconciliations for fiscal years since 2008-2009. The department initially entered into stipulations relating to Fiscal Years 2009-2010, 2010-2011, and 2011-2012. However, the department subsequently determined that the stipulations were not consistent with the cost-sharing statute and entered Final Orders that are now under appeal to the First DCA. A petition filed in relation to Fiscal Year 2012-2013 is still pending at Division of Administrative Hearings.

In May 2014, the department promulgated new rules to implement the sharing of costs in accordance with the statute. The Florida Association of Counties and a number of individual counties filed an administrative challenge to the new rule and a hearing was held in November 2014. The parties submitted proposed final orders to the Administrative Law Judge on February 2, 2015.

III. Effect of Proposed Changes:

Section 1 amends s. 985.686, F.S., relating to shared county and state responsibility for juvenile detention. The bill defines "actual cost" to mean "funds that the department expends for providing detention care less any funds that it receives from the Grants and Donations Trust Fund and the Federal Grants Trust Fund."

The bill requires counties that are not fiscally constrained to pay a share of the actual cost of providing detention care. The department is tasked with:

- Determining the total actual cost of detention care for all counties that are not fiscally constrained after the certified forward period has ended, including any additional legislative appropriations for detention not included in the certified forward amount;
- Determining each county's percentage of detention use at the end of each fiscal year by dividing the total number of detention days for juveniles residing in the county during the most recent twelve month period by the total number of detention days for all juveniles residing in all counties that are not fiscally constrained during the same period; and
- Calculating the share of actual costs each county must pay by multiplying the county's percentage of detention use by 57 percent of the total actual cost of detention care.

Each county must pay the department one-twelfth of its share of actual costs for the most recently completed state fiscal year by the first day of each month, beginning on July 1 of the year after receiving notice of its share from the department.

⁵*Dep't of Juvenile Justice v. Okaloosa County*, 113 So.3d 1074 (Fla. 1st DCA 2013).

The bill requires the Department of Revenue (DOR) to review county detention cost share payments to ensure that each county is meeting its financial obligations. If not, DOR is required to deduct any unpaid cost share amount from the distribution of s. 218.23, F.S., revenue sharing funds to that county. However, there is a provision to prevent withholding of distributions in an amount that would affect the county's ability to meet obligations for bonds issued prior to July 1, 2015, or for bonds issued to refund such bonds that mature no later than the original bonds.

The bill requires the state to pay:

- Forty-three percent of the total actual cost of providing detention care in counties that are not fiscally constrained;
- The actual cost of detention care for fiscally constrained counties; and
- The actual cost of providing detention care for juveniles residing out of state.

Section 2 amends s. 985.6015, F.S., to remove references to "predisposition juvenile detention" in order to conform with the bill's removal of predisposition and postdisposition as the basis for allocating juvenile detention costs between the state and counties that are not fiscally constrained.

Section 3 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

PCS/SB 1414 would increase the state's share of juvenile detention costs in counties that are not fiscally constrained by approximately \$950,000 relative to the 58% county/42% state split of costs in the Senate and House proposed budgets for Fiscal Year 2015-2016.

The share of costs for counties that are not fiscally constrained would increase by an equal amount.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 985.686 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.)

Recommend CS by Appropriations Subcommittee on Criminal and Civil Justice on April 7, 2015:

The committee substitute:

- Changes the split of juvenile detention care costs from 40% state/60% county to 43% state/57% county.
- Includes any additional legislative appropriations for detention not included in the certified forward amount in the calculation of total actual costs.
- Requires the Department of Revenue (DOR) to review county detention cost share payments to ensure that each county is meeting its financial obligations. If not, DOR is required to deduct any unpaid cost share amount from the distribution of s. 218.23, F.S., revenue sharing funds to that county.
- Includes a provision to prevent withholding of revenue sharing fund distributions in an amount that would affect the county's ability to meet current bond obligations.

B. Amendments:

None.



626950

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2015	.	
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Appropriations Subcommittee on Criminal and Civil Justice
(Bradley) recommended the following:

Senate Amendment

Delete lines 49 - 118
and insert:

(b) The state shall pay:

1. Forty-three percent of the actual costs of providing
detention care as determined by the department pursuant to
subsection (5);

2. The actual costs of detention care for fiscally



626950

10 constrained counties in the manner described in subsection (4);
11 and

12 3. The actual costs of providing detention care for
13 juveniles residing out of state.

14 ~~(4) Notwithstanding subsection (3), the state shall pay all~~
15 ~~costs of detention care for juveniles for which a fiscally~~
16 ~~constrained county would otherwise be billed.~~

17 ~~(a) By October 1, 2004, the department shall develop a~~
18 ~~methodology for determining the amount of each fiscally~~
19 ~~constrained county's costs of detention care for juveniles, for~~
20 ~~the period of time prior to final court disposition, which must~~
21 ~~be paid by the state. At a minimum, this methodology must~~
22 ~~consider the difference between the amount appropriated to the~~
23 ~~department for offsetting the costs associated with the~~
24 ~~assignment of juvenile pretrial detention expenses to the~~
25 ~~fiscally constrained county and the total estimated costs to the~~
26 ~~fiscally constrained county, for the fiscal year, of detention~~
27 ~~care for juveniles for the period of time prior to final court~~
28 ~~disposition.~~

29 ~~(b) Subject to legislative appropriation and based on the~~
30 ~~methodology developed under paragraph (a), the department shall~~
31 ~~provide funding to offset the costs to fiscally constrained~~
32 ~~counties of detention care for juveniles for the period of time~~
33 ~~prior to final court disposition. If county matching funds are~~
34 ~~required by the department to eliminate the difference~~
35 ~~calculated under paragraph (a) or the difference between the~~
36 ~~actual costs of the fiscally constrained counties and the amount~~
37 ~~appropriated in small county grants for use in mitigating such~~
38 ~~costs, that match amount must be allocated proportionately among~~



626950

39 all fiscally constrained counties.

40 (5) Each county that is not a fiscally constrained county
41 shall incorporate into its annual county budget sufficient funds
42 to pay its share of the actual costs of detention care for
43 juveniles who ~~reside~~ resided in that county for the most
44 recently completed fiscal year ~~the period of time prior to final~~
45 ~~court disposition. This amount shall be based upon the prior use~~
46 ~~of secure detention for juveniles who are residents of that~~
47 ~~county, as calculated by the department. Each county shall pay~~
48 ~~the estimated costs at the beginning of each month. Any~~
49 ~~difference between the estimated costs and actual costs shall be~~
50 ~~reconciled at the end of the state fiscal year.~~

51 (a) Each county that is not a fiscally constrained county
52 shall pay fifty-seven percent of the actual costs of providing
53 detention care as determined by the department pursuant to this
54 statute.

55 (b) The department shall determine the actual costs of
56 detention care based on the cost of detention care through the
57 certified forward period, plus any additional legislative
58 appropriation for detention not included in the certified
59 forward amount. The number of detention days shall be based on
60 the most recent twelve month period.

61 (c) The department shall calculate the percentage of
62 detention use for each county that is not a fiscally constrained
63 county by dividing the total number of detention days for
64 juveniles residing in the county during the most recent twelve
65 month period by the total number of detention days for all
66 juveniles residing in counties that are not a fiscally
67 constrained county for the most recent twelve month period.



626950

68 (d) The department shall calculate the share of actual
69 costs for each county that is not a fiscally constrained county
70 by multiplying the county's percentage of detention usage by
71 fifty-seven percent of the total actual cost of detention care
72 for all counties that are not a fiscally constrained county.

73 (e) The department shall inform each county that is not a
74 fiscally constrained county of the county's percentage of
75 detention use and of the amount of the county's share of the
76 actual costs of detention care. Each county that is not a
77 fiscally constrained county shall pay the department one-twelfth
78 of its share of actual costs by the first day of each month,
79 beginning on July 1 of the year following receipt of the
80 information.



851326

LEGISLATIVE ACTION

Senate

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House

Appropriations Subcommittee on Criminal and Civil Justice
(Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 139 - 140

and insert:

(9) (a) The Department of Revenue shall review county juvenile detention payments to the Department of Juvenile Justice for the purpose of ensuring that counties fulfill their financial responsibilities required in this section. The Department of Revenue shall determine whether the counties have reimbursed the



851326

10 Department of Juvenile Justice for the county's share of
11 detention costs as provided in this section. If the Department
12 of Revenue determines that a county has not met its obligations,
13 it must deduct the amount owed to the Department of Juvenile
14 Justice from funds provided to the county under s. 218.23.

15 (b) As an assurance to holders of bonds issued by counties
16 before July 1, 2015, for which distributions made pursuant to s.
17 218.23 are pledged, or bonds issued to refund such bonds which
18 mature no later than the bonds they refunded and which result in
19 a reduction of debt service payable in each fiscal year, the
20 amount available for distribution to a county shall remain as
21 provided by law and continue to be subject to any lien or claim
22 on behalf of the bondholders. The Department of Revenue must
23 ensure, based on information provided by an affected county,
24 that any reduction in amounts distributed pursuant to paragraph
25 (a) does not reduce the amount of distribution to a county below
26 the amount necessary for the timely payment of principal and
27 interest when due on the bonds and the amount necessary to
28 comply with any covenant under the bond resolution or other
29 documents relating to the issuance of the bonds. If a reduction
30 to a county's monthly distribution must be decreased in order to
31 comply with this paragraph, the Department of Revenue must
32 notify the Department of Juvenile Justice of the amount of the
33 decrease, and the Department of Juvenile Justice must send a
34 bill for payment of such amount to the affected county.

35 (10) The department may adopt rules to administer this
36 section.

37 Section 2. Subsection (2) of section 985.6015, Florida
38 Statutes, is amended to read:



851326

39 985.6015 Shared County/State Juvenile Detention Trust
40 Fund.—

41 (2) The fund is established for use as a depository for
42 funds to be used for the costs of ~~predisposition~~ juvenile
43 detention. Moneys credited to the trust fund shall consist of
44 funds from the counties' share of the costs for ~~predisposition~~
45 juvenile detention.

46
47 ===== T I T L E A M E N D M E N T =====

48 And the title is amended as follows:

49 Delete line 13

50 and insert:

51 deleting obsolete provisions; providing for review of
52 county payments; providing penalties; providing
53 certain assurances to holders of bonds issued by
54 counties; amending s. 985.6014, F.S.; deleting
55 "predisposition"; providing an effective



952616

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2015	.	
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	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Bradley) recommended the following:

1 **Senate Substitute for Amendment (851326) (with title**
2 **amendment)**

3
4 Delete lines 139 - 140
5 and insert:

6 (9) (a) The Department of Revenue shall review county
7 juvenile detention payments to the Department of Juvenile
8 Justice for the purpose of ensuring that counties fulfill their



952616

9 financial responsibilities required in this section. The
10 Department of Revenue shall determine whether the counties have
11 reimbursed the Department of Juvenile Justice for the county's
12 share of detention costs as provided in this section. If the
13 Department of Revenue determines that a county has not met its
14 obligations, it must deduct the amount owed to the Department of
15 Juvenile Justice from funds provided to the county under s.
16 218.23.

17 (b) As an assurance to holders of bonds issued by counties
18 before July 1, 2015, for which distributions made pursuant to s.
19 218.23 are pledged, or bonds issued to refund such bonds which
20 mature no later than the bonds they refunded and which result in
21 a reduction of debt service payable in each fiscal year, the
22 amount available for distribution to a county shall remain as
23 provided by law and continue to be subject to any lien or claim
24 on behalf of the bondholders. The Department of Revenue must
25 ensure, based on information provided by an affected county,
26 that any reduction in amounts distributed pursuant to paragraph
27 (a) does not reduce the amount of distribution to a county below
28 the amount necessary for the timely payment of principal and
29 interest when due on the bonds and the amount necessary to
30 comply with any covenant under the bond resolution or other
31 documents relating to the issuance of the bonds. If a reduction
32 to a county's monthly distribution must be decreased in order to
33 comply with this paragraph, the Department of Revenue must
34 notify the Department of Juvenile Justice of the amount of the
35 decrease, and the Department of Juvenile Justice must send a
36 bill for payment of such amount to the affected county.

37 (10)-(11) The department may adopt rules to administer this



952616

38 section.

39 Section 2. Subsection (2) of section 985.6015, Florida
40 Statutes, is amended to read:

41 985.6015 Shared County/State Juvenile Detention Trust
42 Fund.—

43 (2) The fund is established for use as a depository for
44 funds to be used for the costs of ~~pre~~disposition juvenile
45 detention. Moneys credited to the trust fund shall consist of
46 funds from the counties' share of the costs for ~~pre~~disposition
47 juvenile detention.

48

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

50 And the title is amended as follows:

51 Delete line 13

52 and insert:

53 deleting obsolete provisions; providing for review of
54 county payments; providing penalties; providing
55 certain assurances to holders of bonds issued by
56 counties; amending s. 985.6014, F.S.; deleting
57 "predisposition"; providing an effective

By Senator Bradley

7-01269B-15

20151414__

A bill to be entitled

An act relating to juvenile detention costs; amending s. 985.686, F.S.; defining "actual cost"; revising the responsibilities of specified counties and the state relating to paying for juvenile detention care; requiring the Department of Juvenile Justice to make certain determinations and then provide usage and cost information to certain counties; deleting a provision requiring a county to make a certain payment to the department; deleting a provision requiring the Department of Revenue and a county to provide certain assistance to the Department of Juvenile Justice; deleting obsolete provisions; providing an effective date.

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

Section 1. Section 985.686, Florida Statutes, is amended to read:

985.686 Shared county and state responsibility for juvenile detention.—

(1) It is the policy of this state that the state and the counties have a joint obligation, as provided in this section, to contribute to the financial support of the detention care provided for juveniles.

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

(a) "Actual cost" means the funds that the department expends for providing detention care less any funds that it receives from the Grants and Donations Trust Fund and the

Page 1 of 5

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

7-01269B-15

20151414__

Federal Grants Trust Fund.

~~(b)(a)~~ "Detention care" means secure detention and respite beds for juveniles charged with a domestic violence crime.

~~(c)(b)~~ "Fiscally constrained county" means a county within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656 or each county for which the value of a mill will raise no more than \$5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., from the previous July 1.

(3) (a) Each county that is not a fiscally constrained county shall pay its share of the total actual costs of providing detention care as determined by the department pursuant to subsection (5), ~~exclusive of the costs of any preadjudicatory nonmedical educational or therapeutic services and \$2.5 million provided for additional medical and mental health care at the detention centers, for juveniles for the period of time prior to final court disposition. The department shall develop an accounts payable system to allocate costs that are payable by the counties.~~

(b) The state shall pay:

1. Forty percent of the actual costs of providing detention care as determined by the department pursuant to subsection (5);

2. The actual costs of detention care for fiscally constrained counties in the manner described in subsection (4);
and

3. The actual costs of providing detention care for juveniles residing out of state.

~~(4) Notwithstanding subsection (3), the state shall pay all costs of detention care for juveniles for which a fiscally~~

Page 2 of 5

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

7-01269B-15

20151414__

59 ~~constrained county would otherwise be billed.~~

60 ~~(a) By October 1, 2004, the department shall develop a~~
 61 ~~methodology for determining the amount of each fiscally~~
 62 ~~constrained county's costs of detention care for juveniles, for~~
 63 ~~the period of time prior to final court disposition, which must~~
 64 ~~be paid by the state. At a minimum, this methodology must~~
 65 ~~consider the difference between the amount appropriated to the~~
 66 ~~department for offsetting the costs associated with the~~
 67 ~~assignment of juvenile pretrial detention expenses to the~~
 68 ~~fiscally constrained county and the total estimated costs to the~~
 69 ~~fiscally constrained county, for the fiscal year, of detention~~
 70 ~~care for juveniles for the period of time prior to final court~~
 71 ~~disposition.~~

72 ~~(b) Subject to legislative appropriation and based on the~~
 73 ~~methodology developed under paragraph (a), the department shall~~
 74 ~~provide funding to offset the costs to fiscally constrained~~
 75 ~~counties of detention care for juveniles for the period of time~~
 76 ~~prior to final court disposition. If county matching funds are~~
 77 ~~required by the department to eliminate the difference~~
 78 ~~calculated under paragraph (a) or the difference between the~~
 79 ~~actual costs of the fiscally constrained counties and the amount~~
 80 ~~appropriated in small county grants for use in mitigating such~~
 81 ~~costs, that match amount must be allocated proportionately among~~
 82 ~~all fiscally constrained counties.~~

83 (5) Each county that is a nonfiscally constrained county
 84 shall incorporate into its annual county budget sufficient funds
 85 to pay its share of the actual costs of detention care for
 86 juveniles who reside resided in that county for the most
 87 recently completed fiscal year the period of time prior to final

7-01269B-15

20151414__

88 ~~court disposition. This amount shall be based upon the prior use~~
 89 ~~of secure detention for juveniles who are residents of that~~
 90 ~~county, as calculated by the department. Each county shall pay~~
 91 ~~the estimated costs at the beginning of each month. Any~~
 92 ~~difference between the estimated costs and actual costs shall be~~
 93 ~~reconciled at the end of the state fiscal year.~~

94 (a) The department shall determine the actual costs of
 95 detention care after the certified forward period has ended and
 96 the number of detention days used by each county at the end of
 97 each fiscal year.

98 (b) The department shall inform each nonfiscally
 99 constrained county of the county's percentage of detention use
 100 and of the amount of the county's share of the actual costs of
 101 detention care for the most recently completed state fiscal
 102 year. Each nonfiscally constrained county shall pay the
 103 department one-twelfth of its share of actual costs for the most
 104 recently completed state fiscal year by the first day of each
 105 month, beginning on July 1 of the year following receipt of the
 106 information.

107 (c) The department shall calculate a nonfiscally
 108 constrained county's percentage of detention use by dividing the
 109 total number of detention days for juveniles residing in the
 110 county during the most recently completed state fiscal year by
 111 the total number of detention days for all juveniles residing in
 112 nonfiscally constrained counties for the most recently completed
 113 state fiscal year.

114 (d) The department shall calculate each nonfiscally
 115 constrained county's share of actual costs by multiplying the
 116 county's percentage of detention usage by 60 percent of the

7-01269B-15

20151414__

117 total actual cost of detention care for all nonfiscally
118 constrained counties.

119 ~~(6) Each county shall pay to the department for deposit~~
120 ~~into the Shared County/State Juvenile Detention Trust Fund its~~
121 ~~share of the county's total costs for juvenile detention, based~~
122 ~~upon calculations published by the department with input from~~
123 ~~the counties.~~

124 (6)(7) The department ~~Department of Juvenile Justice~~ shall
125 determine each quarter whether the counties of this state are
126 remitting to the department their share of the costs of
127 detention as required by this section.

128 ~~(8) The Department of Revenue and the counties shall~~
129 ~~provide technical assistance as necessary to the Department of~~
130 ~~Juvenile Justice in order to develop the most cost-effective~~
131 ~~means of collection.~~

132 (7)(9) Funds received from counties pursuant to this
133 section are not subject to the service charges provided in s.
134 215.20.

135 (8)(10) This section does not apply to any county that
136 provides detention care for preadjudicated juveniles or that
137 contracts with another county to provide detention care for
138 preadjudicated juveniles.

139 (9)(11) The department may adopt rules to administer this
140 section.

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



The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Appropriations Subcommittee on Criminal and Civil Justice

Subject: Committee Agenda Request

Date: March 6, 2015

I respectfully request that **Senate Bill # 1414**, relating to Juvenile Detention Costs, be placed on the:

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

A handwritten signature in black ink, appearing to read "Rob Bradley".

Senator Rob Bradley
Florida Senate, District 7

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/15

Meeting Date

1414

Bill Number (if applicable)

Topic Juvenile Detention Costs

Amendment Barcode (if applicable)

Name Lisa Hurley

Job Title 100 S. Monroe St.

Address Tallahassee

Phone 902 4300

City

State

Zip

Email

Speaking: For Against Information

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

Representing Florida Assoc Counties

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/15

Meeting Date

1414

Bill Number (if applicable)

Topic Juvenile Detention Cost

Amendment Barcode (if applicable)

Name Grover Robinson

Job Title Commissioner Escambia

Address 100 S. Monroe

Phone 902 4200

Street

City

State

Zip

Email

Speaking: For Against Information

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

Representing Florida Assoc. 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.

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

S-001 (10/14/14)

APPEARANCE RECORD

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

4-8-15

Meeting Date

14-14

Bill Number (if applicable)

Topic DJJ

Amendment Barcode (if applicable)

Name Mark Sexton

Job Title Alachua County Legislative Affairs

Address 12 SE 1st St.

Phone 352-283-2317

Street Gainesville FL 32601

Email msexton@alachua.com

Speaking: For Against Information

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

Representing Alachua County

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/SB 1534 (333636)

INTRODUCER: Senator Brandes

SUBJECT: Disposition of Liens and Forfeited Property

DATE: April 10, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.	Clodfelter	Sadberry	ACJ	Recommend: Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1534 amends the Florida Contraband Forfeiture Act (ss. 932.701 – 932.706, F.S.) (the act) by adding a number of new requirements for law enforcement agencies that seize property, including:

- Annual or more frequent review of the agency’s seizures, settlements, and forfeitures and prompt correction of any deficiencies;
- Use of written policies, procedures, and training to ensure compliance with applicable legal requirements regarding seizing, maintaining, and forfeiting property;
- A prohibition against making employment, salary, or other compensation of a law enforcement officer dependent upon seizure quotas.
- Prompt review of the probable cause for all seizures by supervisory personnel and prompt notification to the agency’s legal counsel for determination of legal sufficiency to proceed with a forfeiture action;
- Use of written policies and procedures to promote the prompt release of seized property when there is no legitimate basis for holding it, and for prompt review of the validity of all asserted claims of interest to the seized property;
- Maintenance of training records to show that every law enforcement officer has completed basic and continuing education forfeiture training required by the act; and
- Completion of a detailed annual report indicating whether the agency has received or forfeited property, to be kept on file and accessible to the public.

The bill revises requirements for the seizure and forfeiture process, the authorized use of forfeited property, and distribution of contraband forfeiture funds. These revisions include:

- Prohibiting the seizing agency from retaining forfeited property for the agency's use.
- Requiring that any revenues received from federal sources that are derived from forfeitures must be deposited in the same manner as forfeiture proceeds received pursuant to the act;
- Requiring a state agency to deposit any forfeiture proceeds remaining after all liens and debts have been paid into the Department of Legal Affairs' Crimes Compensation Trust Fund (rather than into the General Revenue Fund)
- Restricting use of any forfeiture proceeds retained by a local law enforcement agency to providing for school resource officers, crime prevention, safe neighborhood, or drug abuse education and prevention programs, or portable defibrillators.
- Requiring any forfeiture proceeds that are not retained by a local law enforcement agency to be deposited in the Crimes Compensation Trust Fund. Requiring any local law enforcement agency that acquires any forfeiture proceeds under the act within a fiscal year to expend or donate 50 percent of the proceeds for these designated programs (currently a minimum of 15 percent is required).
- Providing procedures for other agencies or organizations to request appropriations of forfeiture proceeds from the seizing agency.
- Requiring the seizing agency to submit a detailed quarterly report of its seizure and forfeiture activities to the Florida Department of Law Enforcement.
- Deleting a provision relating to repayment of funds that were advanced from a municipality's general fund prior to October 1, 2001.

The bill's limitations on the use of forfeiture proceeds will eliminate a source of funds for the activities that are no longer authorized. This may have a significant fiscal impact on local law enforcement agencies to the extent that an agency continues activities currently funded with forfeiture proceeds. Forfeiture proceeds that are currently deposited into agency trust funds by designated state agencies with major law enforcement functions will be redirected into the Crimes Compensation Trust Fund. This will have a fiscal impact on the state to the extent that these state agencies seek appropriations to continue activities currently funded by forfeiture proceeds.

This bill has an effective date of July 1, 2015.

II. Present Situation:

The Contraband Forfeiture Act (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

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).

Section 932.704, F.S., requires the Department of Law Enforcement (FDLE), in consultation with the Florida Sheriffs Association and the Florida Police Chiefs Association, to 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

An agency or organization, other than the seizing agency, that wishes to receive such funds must 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

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.

⁷ Section 932.7055(5)(c), F.S.

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 of the Department of Business and Professional Regulation;
- 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 the Florida Contraband Forfeiture Act (ss. 932.701 – 932.706, F.S.) (the act) in a number of ways relating to the process of seizing property, forfeiting property, and disposing of the proceeds obtained from forfeiture actions.

Section 932.704, F.S., is amended to add the following requirements for law enforcement agencies that seize and forfeit contraband property:

- Annual or more frequent review of the agency's seizures, settlements, and forfeitures and prompt correction of any deficiencies;
- Use of written policies, procedures, and training to ensure compliance with applicable legal requirements regarding seizing, maintaining, and forfeiting property;
- A prohibition against making employment, salary, or other compensation of a law enforcement officer dependent upon seizure quotas.

⁸ Section 932.7055(5), F.S.

⁹ Section 932.7055(6), F.S.

- Prompt review of the probable cause for all seizures by supervisory personnel and prompt notification to the agency's legal counsel for determination of legal sufficiency to proceed with a forfeiture action;
- Use of written policies and procedures to promote the prompt release of seized property when there is no legitimate basis for holding it, and for prompt review of the validity of all asserted claims of interest to the seized property; and
- Maintenance of training records to show that every law enforcement officer has completed basic and continuing education forfeiture training required by the act.

Section 932.7055, F.S., is amended to revise the authorized distribution and use of forfeited property and contraband forfeiture funds under the act. This includes:

- Prohibiting the seizing agency from retaining the forfeited property for the agency's use.
- For state agencies, requiring any forfeiture proceeds remaining after all liens and debts are paid to be deposited into the Department of Legal Affairs' Crimes Compensation Trust Fund. Currently, designated state agencies (which are listed in the Present Situation section of this analysis and include most agencies that have significant law enforcement responsibilities) keep all forfeited funds. Other agencies must deposit the funds in the General Revenue Fund.
- For local law enforcement agencies, permitting the agency to deposit all remaining proceeds into a local special law enforcement trust fund to be used for school resource officers, crime prevention, safe neighborhood, or drug abuse education and prevention programs, or portable defibrillators. Current law provides for all remaining funds to be deposited into the local special law enforcement trust fund, and permits additional uses for other law enforcement purposes, including defraying the cost of protracted or complex investigations, providing additional equipment or expertise, or providing matching funds for federal grants.
- Requiring any local law enforcement agency that acquires any property or assets under the act within the fiscal year to expend or donate at least 50 percent of the proceeds for these designated programs (currently a minimum of 15 percent is required).
- Requiring any agency or organization other than the seizing agency 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.
- Deleting current provisions establishing forfeiture trust funds for numerous specified state agencies.
- Providing that revenues received from federal sources that are derived from forfeitures are considered to be proceeds obtained pursuant to the act, and that such revenues must be deposited in accordance with the act.
- Requiring the seizing agency to submit a detailed quarterly report of its seizure and forfeiture activities to the Florida Department of Law Enforcement.
- Deleting s. 932.7055(4)(d), F.S., which permits expenditure of funds in a municipality's special law enforcement trust fund to be expended to reimburse the municipality's general fund for moneys advanced from the general fund to the special law enforcement trust fund before October 1, 2001. The paragraph is applicable only for Fiscal Year 2014-2015 and expires July 1, 2015. It was originally enacted as part of the implementing bill for the 2002-2003 General Appropriations Act and was applicable to Fiscal Year 2002-2003, but has been updated in the General Appropriations Act implementing bill each year since that time.

The bill also makes conforming changes and reenacts a statute to incorporate changes made by the bill.

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:

As a result of PCS/SB 1534, persons who receive funding from the Crimes Compensation Trust Fund may be positively impacted as a result of the bill's mandate that seizing local law enforcement agencies deposit half of the forfeiture funds into that trust fund. Conversely, the reduction of funds kept by local law enforcement agencies could have a negative impact on organizations that receive grants from local law enforcement agencies.

C. Government Sector Impact:

The bill removes authorization for local law enforcement agencies to use forfeiture proceeds to pay for certain law enforcement equipment and activities. If the local law enforcement agency desires to continue these activities, these funds may need to be replaced from other sources.

The bill prohibits state agencies from retaining any funds from forfeitures. Currently, designated state agencies (which are listed in the Present Situation section of this analysis and include most agencies that have significant law enforcement responsibilities) keep all forfeited funds. The bill directs that these funds be deposited in the Crimes Compensation Trust Fund. Any forfeiture funds acquired by other state agencies are currently deposited into the General Revenue Fund, but the bill also directs that these funds be deposited in the Crimes Compensation Trust Fund.

The FDLE indicates that it deposits approximately \$2 million of forfeiture funds into its Forfeiture and Investigative Support Trust Fund (FIST) each year. FIST funds are appropriated to the FDLE by the Legislature. Redirection of the funds would require appropriation from another source in order to continue current practices. The FDLE is also concerned that the bill will disqualify state agencies from receiving any federal shared forfeitures because deposit of funds into the Crimes Compensation Trust Fund does not meet federal forfeiture sharing guidelines. FDLE receives approximately \$1.2 million annually from federal shared forfeitures.¹⁰

The Department of Financial Services reports that its Division of Insurance Fraud has deposited approximately \$1.6 million in forfeiture proceeds into agency trust funds from Fiscal Year 2008-2009 to the present. These proceeds were derived from either direct seizures by the agency or joint seizures with federal, state, or local law enforcement agencies. These proceeds have been used to purchase such items as software, new technologies, specialized equipment, and training. The department has a legislative budget request submitted for Fiscal Year 2015-2016 to use more than \$500,000 of these proceeds for purchases including investigative software, maintenance and upgrade or replacement of law enforcement equipment, and training.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 932.704 and 932.7055 of the Florida Statutes.

This bill creates section 32.7061 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 27.3451, 381.0081, 874.08, 895.09, and 932.703.

This bill makes conforming amendments to cross references in the following sections of the Florida Statutes: 322.34, 323.001328.07, and 817.625.

¹⁰ 2015 FDLE Legislative Bill Analysis, SB 1534, March 3, 2015.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on April 8, 2015:

The committee substitute:

- Incorporates the contents of CS/SB 440 (2015), which adds a number of new requirements to the Florida Contraband Forfeiture Act (the act) relating to the seizure and forfeiture process, training of officers, reporting, and documentation. These changes are detailed in the description of amendments to s. 932.704, F.S., in the “Effects of Proposed Changes” section of this analysis.
- Permits a local law enforcement agency to retain all forfeiture proceeds for designated uses, and requires any non-retained proceeds to be deposited into the Crimes Compensation Trust Fund. The bill required 50 percent of forfeiture proceed to be retained by the agency and 50 percent to be deposited into the Crimes Compensation Trust Fund.
- Requires any local law enforcement agency that acquires property or assets pursuant to the act to expend or donate at least 50 percent of proceeds for designated purposes. The bill limits expenses or donations to 50 percent of proceeds and applies this requirement only to agencies that acquire at least \$15,000 pursuant to the act.
- Restores authorization for local law enforcement agencies to purchase portable defibrillators with forfeiture proceeds.
- Provides that revenues received from federal sources that are derived from forfeitures are considered to be proceeds obtained pursuant to the act, and that such revenues must be deposited in accordance with the act.
- Requiring a seizing agency to submit a detailed quarterly report of its seizure and forfeiture activities to the Florida Department of Law Enforcement.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Evers) recommended the following:

Senate Amendment (with title amendment)

Delete lines 33 - 240

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



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11 Statutes, is amended to read:

12 932.704 Forfeiture proceedings.—

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

28 (b) The determination of whether an agency will file a
29 civil forfeiture action must be the sole responsibility of the
30 head of the agency or his or her designee.

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

34 (d) The employment, salary, promotion, or other
35 compensation of any law enforcement officer may not depend on
36 attaining a quota of seizures.

37 (e) A seizing agency must ensure, through the use of
38 written policies, procedures, and training, compliance with all
39 applicable legal requirements regarding seizing, maintaining,



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40 and forfeiting property under this act.

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

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

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

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

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

68 932.7055 Disposition of liens and forfeited property.-



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

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

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

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

79 (2) Notwithstanding subsection (1), a seizing agency must
80 destroy any image and the medium on which the image is recorded,
81 including, but not limited to, a photograph, video tape,
82 diskette, compact disc, or fixed disk made in violation of s.
83 810.145 when the image and the medium on which it is recorded is
84 no longer needed for an official purpose. The agency may not
85 sell or retain any image.

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

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

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

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

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

97 (b) Payment of the cost incurred by the seizing agency in



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98 connection with the storage, maintenance, security, and
99 forfeiture of such property.

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

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

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

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



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

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

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

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

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



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

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

184 (6) If the seizing agency is a state agency, all remaining



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185 proceeds shall be deposited into the Crimes Compensation Trust
186 Fund ~~General Revenue Fund. However, if the seizing agency is:~~

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

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

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

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

211 ~~(e) A state attorney's office acting within its judicial~~
212 ~~circuit, the proceeds accrued pursuant to the provisions of the~~
213 ~~Florida Contraband Forfeiture Act shall be deposited into the~~



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214 ~~State Attorney's Forfeiture and Investigative Support Trust Fund~~
215 ~~to be used for the investigation of crime and prosecution of~~
216 ~~criminals within the judicial circuit.~~

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

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

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

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

239 ~~(j) The Medicaid Fraud Control Unit of the Department of~~
240 ~~Legal Affairs, the proceeds accrued pursuant to the provisions~~
241 ~~of the Florida Contraband Forfeiture Act shall be deposited into~~
242 ~~the Department of Legal Affairs Grants and Donations Trust Fund~~



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243 ~~to be used for investigation and prosecution of Medicaid fraud,~~
244 ~~abuse, neglect, and other related cases by the Medicaid Fraud~~
245 ~~Control Unit.~~

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

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

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

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

271 (9) A ~~Neither the law enforcement agency, or nor~~ the entity



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272 having budgetary control over the law enforcement agency, may
273 not shall anticipate future forfeitures or the proceeds from
274 those forfeitures therefrom in the adoption and approval of the
275 agency's budget for the law enforcement agency.

276 (10) A law enforcement agency participating in forfeiture
277 proceedings pursuant to this act shall submit a report to the
278 Department of Law Enforcement every 3 months detailing the items
279 seized through the forfeiture process and, if a final judgment
280 of forfeiture was issued for any seized property or assets, a
281 description of how the property or assets were disposed of.

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

284 932.7061 Each state or local law enforcement agency that
285 seizes property for the purpose of forfeiture must complete an
286 annual report indicating whether that agency has received or
287 forfeited property under this act. The report, to be submitted
288 on a form designed by the law enforcement agency, must, at a
289 minimum, specify the type of property, its approximate value,
290 the court case number, the type of offense for which the
291 property was seized, disposition of the property, and the dollar
292 amount of the proceeds received or expended in seizing the
293 property. This report must be kept on file with the seizing
294 agency for public access.

295 Section 5. Paragraph (a) of subsection (9) of section
296 322.34, Florida Statutes, is amended to read:

297 322.34 Driving while license suspended, revoked, canceled,
298 or disqualified.—

299 (9) (a) A motor vehicle that is driven by a person under the
300 influence of alcohol or drugs in violation of s. 316.193 is



907400

301 subject to seizure and forfeiture under ss. 932.701-932.7061
302 ~~932.706~~ and is subject to liens for recovering, towing, or
303 storing vehicles under s. 713.78 if, at the time of the offense,
304 the person's driver license is suspended, revoked, or canceled
305 as a result of a prior conviction for driving under the
306 influence.

307 Section 6. Subsection (4) of section 323.001, Florida
308 Statutes, is amended to read:

309 323.001 Wrecker operator storage facilities; vehicle
310 holds.—

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

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

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

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

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

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

329 (f) The vehicle is impounded or immobilized pursuant to s.



907400

330 316.193 or s. 322.34; or

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

332 Section 7. Paragraph (b) of subsection (3) of section
333 328.07, Florida Statutes, is amended to read:

334 328.07 Hull identification number required.—

335 (3)

336 (b) If any of the hull identification numbers required by
337 the United States Coast Guard for a vessel manufactured after
338 October 31, 1972, do not exist or have been altered, removed,
339 destroyed, covered, or defaced or the real identity of the
340 vessel cannot be determined, the vessel may be seized as
341 contraband property by a law enforcement agency or the division,
342 and shall be subject to forfeiture pursuant to ss. 932.701-
343 932.7061 ~~932.706~~. Such vessel may not be sold or operated on the
344 waters of the state unless the division receives a request from
345 a law enforcement agency providing adequate documentation or is
346 directed by written order of a court of competent jurisdiction
347 to issue to the vessel a replacement hull identification number
348 which shall thereafter be used for identification purposes. No
349 vessel shall be forfeited under the Florida Contraband
350 Forfeiture Act when the owner unknowingly, inadvertently, or
351 neglectfully altered, removed, destroyed, covered, or defaced
352 the vessel hull identification number.

353 Section 8. Paragraph (c) of subsection (2) of section
354 817.625, Florida Statutes, is amended to read:

355 817.625 Use of scanning device or reencoder to defraud;
356 penalties.—

357 (2)

358 (c) Any person who violates subparagraph (a)1. or



907400

359 subparagraph (a)2. shall also be subject to the provisions of
360 ss. ~~932.701-932.7061~~ 932.706.

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

365 27.3451 State Attorney's Forfeiture and Investigative
366 Support Trust Fund.—There is created for each of the several
367 state attorneys a trust fund to be known as the State Attorney's
368 Forfeiture and Investigative Support Trust Fund. Revenues
369 received by a state attorney as a result of forfeiture
370 proceedings, as provided under s. 932.704, shall be deposited in
371 such trust fund and shall be used, when authorized by
372 appropriation or action of the Executive Office of the Governor
373 pursuant to s. 216.181(11), for the investigation of crime,
374 prosecution of criminals, or other law enforcement purposes.

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

379 874.08 Criminal gang activity and recruitment; forfeiture.—
380 All profits, proceeds, and instrumentalities of criminal gang
381 activity and all property used or intended or attempted to be
382 used to facilitate the criminal activity of any criminal gang or
383 of any criminal gang member; and all profits, proceeds, and
384 instrumentalities of criminal gang recruitment and all property
385 used or intended or attempted to be used to facilitate criminal
386 gang recruitment are subject to seizure and forfeiture under the
387 Florida Contraband Forfeiture Act, s. 932.704.



907400

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

And the title is amended as follows:

Delete lines 2 - 21

and insert:

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 and address deficiencies to ensure compliance with this act; 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 to 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.; deleting a provision



907400

417 authorizing a seizing agency to retain seized property
418 for its use; deleting an obsolete provision; revising
419 the distribution and the use of proceeds from the
420 sales of forfeited property seized by a county or
421 municipal agency; authorizing an agency or
422 organization, other than a seizing agency, to apply
423 for funds from specified proceeds; requiring that
424 funding requests be made in writing and include a
425 certification that the expenditure meets certain
426 requirements; specifying that such requests are public
427 records; deleting a provision relating to certain
428 expenditure or donation of forfeiture proceeds;
429 requiring certain proceeds to be deposited into the
430 Crimes Compensation Trust Fund, rather than the
431 General Revenue Fund; deleting provisions that exempt
432 certain state agencies from depositing proceeds from
433 seizures into the General Revenue Fund; requiring a
434 law enforcement agency participating in certain
435 forfeiture proceedings to submit a report to the
436 Department of Law Enforcement on a periodic basis
437 detailing specified information; making technical
438 changes; creating s. 932.7061, F.S.; requiring each
439 state or local law enforcement agency that seizes
440 property for the purpose of forfeiture to complete an
441 annual report; requiring certain information to be
442 included in the annual report; requiring the report to
443 be kept on file with the seizing agency for public
444 access; amending ss. 322.34, 323.001, 328.07, and
445 817.625, F.S.; conforming cross-references; reenacting



907400

446 ss. 27.3451 and 874.08, F.S., relating to the State
447 Attorney's Forfeiture and Investigative Support Trust
448 Fund, and criminal gang activity, recruitment, and
449 forfeiture, respectively, to incorporate the amendment
450 made to s. 932.704, F.S., in references thereto;
451 reenacting ss. 381.0081(5)(b),



322218

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Evers) recommended the following:

1 **Senate Amendment to Amendment (907400) (with title**
2 **amendment)**

3
4 Between lines 258 and 259
5 insert:

6 (7) Notwithstanding any other provision of law, any
7 revenues received from federal sources that are derived from
8 forfeitures are considered to be proceeds from the sale of
9 forfeited property acquired pursuant to the Florida Contraband



322218

10 Forfeiture Act and shall be deposited as required by section (5)
11 if received by a county or municipal agency or as required by
12 section (6) if received by a state agency.

13

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

15 And the title is amended as follows:

16 Delete line 433

17 and insert:

18 seizures into the General Revenue Fund; providing for
19 the distribution and use of certain revenues received
20 from federal sources; requiring a



270994

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Evers) recommended the following:

Senate Amendment to Amendment (907400)

Delete line 116

and insert:

prevention programs or purchase of portable defibrillators. Any
remaining proceeds shall be deposited



175258

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Evers) recommended the following:

Senate Amendment to Amendment (907400)

Delete line 146

and insert:

drug prevention programs or purchase of portable defibrillators
~~such other law enforcement purposes~~

By Senator Brandes

22-00308D-15

20151534__

1 A bill to be entitled
 2 An act relating to the disposition of liens and
 3 forfeited property; amending s. 932.7055, F.S.;
 4 deleting a provision authorizing a seizing agency to
 5 retain seized property for its use; deleting an
 6 obsolete provision; revising the distribution and the
 7 use of proceeds from the sales of forfeited property
 8 seized by a county or municipal agency; authorizing an
 9 agency or organization, other than a seizing agency,
 10 to apply for funds from specified proceeds; requiring
 11 that funding requests be made in writing and include a
 12 certification that the expenditure meets certain
 13 requirements; specifying that such requests are public
 14 records; deleting a provision relating to certain
 15 expenditure or donation of forfeiture proceeds;
 16 requiring certain proceeds to be deposited into the
 17 Crimes Compensation Trust Fund, rather than the
 18 General Revenue Fund; deleting provisions that exempt
 19 certain agencies of the state from depositing proceeds
 20 from seizures into the General Revenue Fund; making
 21 technical changes; reenacting ss. 381.0081(5)(b),
 22 895.09(2)(c), and 932.703(6)(b), F.S., relating to the
 23 allocations of proceeds from the sales of property in
 24 a migrant labor camp or residential migrant housing,
 25 the disposition of funds obtained through forfeiture
 26 proceedings, and the forfeiture of contraband
 27 articles, respectively, to incorporate the amendment
 28 made to s. 932.7055, F.S., in references thereto;
 29 providing an effective date.

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

22-00308D-15

20151534__

30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. Section 932.7055, Florida Statutes, is amended
 34 to read:
 35 932.7055 Disposition of liens and forfeited property.—
 36 (1) When a seizing agency obtains a final judgment granting
 37 forfeiture of real property or personal property, it may elect
 38 to:
 39 ~~(a) Retain the property for the agency's use;~~
 40 (a)(b) Sell the property at public auction or by sealed bid
 41 to the highest bidder, except for real property, which must
 42 ~~should~~ be sold in a commercially reasonable manner after
 43 appraisal by listing on the market; or
 44 (b)(e) Salvage, trade, or transfer the property to any
 45 public or nonprofit organization.
 46 (2) Notwithstanding subsection (1), a seizing agency must
 47 destroy any image and the medium on which the image is recorded,
 48 including, but not limited to, a photograph, video tape,
 49 diskette, compact disc, or fixed disk made in violation of s.
 50 810.145 when the image and the medium on which it is recorded is
 51 no longer needed for an official purpose. The agency may not
 52 sell or retain any image.
 53 (3) If the forfeited property is subject to a lien
 54 preserved by the court as provided in s. 932.703(6)(b), the
 55 agency shall:
 56 (a) Sell the property with the proceeds being used towards
 57 satisfaction of any liens; or
 58 (b) Have the lien satisfied prior to taking any action

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59 authorized by subsection (1).

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

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

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

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

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

76 (5) (a) If the seizing agency is a county or municipal
77 agency, 50 percent of the remaining proceeds shall be deposited
78 into ~~in~~ a special law enforcement trust fund established by the
79 board of county commissioners or the governing body of the
80 municipality. Such proceeds and interest earned therefrom shall
81 be used for school resource officer, crime prevention, safe
82 neighborhood, or drug abuse education and prevention programs.
83 The remaining 50 percent of the proceeds shall be deposited into
84 the Crimes Compensation Trust Fund, or for other law enforcement
85 purposes, which include defraying the cost of protracted or
86 complex investigations, providing additional equipment or
87 expertise, purchasing automated external defibrillators for use

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88 ~~in law enforcement vehicles, and providing matching funds to
89 obtain federal grants. The proceeds and interest may not be used
90 to meet normal operating expenses of the law enforcement agency.~~

91 (b) These funds may be expended upon request by the sheriff
92 to the board of county commissioners or by the chief of police
93 to the governing body of the municipality, accompanied by a
94 written certification that the request complies with the
95 provisions of this subsection, and only upon appropriation to
96 the sheriff's office or police department by the board of county
97 commissioners or the governing body of the municipality.

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

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

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

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117 ~~(d)3. After July 1, 1992, and During each every~~ fiscal year
 118 thereafter, any local law enforcement agency that acquires at
 119 least \$15,000 pursuant to the Florida Contraband Forfeiture Act
 120 within a fiscal year must expend or donate 50 ~~no less than 15~~
 121 percent of such proceeds in excess of \$15,000 pursuant to the
 122 Florida Contraband Forfeiture Act for the support or operation
 123 of ~~any~~ drug treatment, drug abuse education, drug prevention,
 124 crime prevention, safe neighborhood, or school resource officer
 125 programs program(s). An agency or organization, other than the
 126 seizing agency, which wishes to receive such funds must apply to
 127 the seizing local law enforcement agency for an appropriation.
 128 Funding requests by such agencies or organizations must be
 129 accompanied by a written certification stating that the moneys
 130 will be used for an authorized purpose, detailing how the funds
 131 will be used, and affirming that the expenditure will be used
 132 for only the support of drug treatment, drug abuse education,
 133 drug prevention, crime prevention, safe neighborhood, or school
 134 resource officer programs. Such requests are public records as
 135 defined in chapter 119. The local law enforcement agency has the
 136 discretion to determine which programs program(s) will receive
 137 the designated proceeds.

138 (e) Notwithstanding the drug abuse education, drug
 139 treatment, drug prevention, crime prevention, safe neighborhood,
 140 or school resource officer programs minimum expenditures or
 141 donations, the sheriff and the board of county commissioners or
 142 the chief of police and the governing body of the municipality
 143 may agree to expend or donate such funds over a period of years
 144 if the expenditure or donation of the such minimum amount in any
 145 given fiscal year would exceed the needs of the county or

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146 municipality for such programs program(s). Nothing in this
 147 section precludes the expenditure or donation of forfeiture
 148 proceeds in excess of the minimum amounts established herein.

149 (6) If the seizing agency is a state agency, all remaining
 150 proceeds shall be deposited into the Crimes Compensation Trust
 151 Fund General Revenue Fund. However, if the seizing agency is:

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

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

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

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

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

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~~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(c)(1)(A) and (3), 18 U.S.C. s. 981(c)(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.~~

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~~(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

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233 elects to retain titled property after forfeiture, the
 234 appropriate state agency shall issue a title certificate for
 235 such property to said law enforcement agency.

236 (9) ~~A Neither the law enforcement agency, or nor~~ the entity
 237 having budgetary control over the law enforcement agency, may
 238 not shall anticipate future forfeitures or the proceeds from
 239 those forfeitures therefrom in the adoption and approval of the
 240 agency's budget for the law enforcement agency.

241 Section 2. For the purpose of incorporating the amendment
 242 made by this act to section 932.7055, Florida Statutes, in a
 243 reference thereto, paragraph (b) of subsection (5) of section
 244 381.0081, Florida Statutes, is reenacted to read:

245 381.0081 Permit required to operate a migrant labor camp or
 246 residential migrant housing; penalties for unlawful
 247 establishment or operation; allocation of proceeds.—

248 (5) SEIZURE.—

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

254 1. One-third of the proceeds shall be allocated to the law
 255 enforcement agency involved in the seizure, to be used as
 256 provided in s. 932.7055.

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

260 3. One-third of the proceeds shall be deposited in the
 261 State Apartment Incentive Loan Fund, to be used for the purpose

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262 of providing funds to sponsors who provide housing for
 263 farmworkers.

264 Section 3. For the purpose of incorporating the amendment
 265 made by this act to section 932.7055, Florida Statutes, in a
 266 reference thereto, paragraph (c) of subsection (2) of section
 267 895.09, Florida Statutes, is reenacted to read:

268 895.09 Disposition of funds obtained through forfeiture
 269 proceedings.—

270 (2)

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

285 Section 4. For the purpose of incorporating the amendment
 286 made by this act to section 932.7055, Florida Statutes, in a
 287 reference thereto, paragraph (b) of subsection (6) of section
 288 932.703, Florida Statutes, is reenacted to read:

289 932.703 Forfeiture of contraband article; exceptions.—

290 (6)

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291 (b) A bona fide lienholder's interest that has been
292 perfected in the manner prescribed by law prior to the seizure
293 may not be forfeited under the Florida Contraband Forfeiture Act
294 unless the seizing agency establishes by a preponderance of the
295 evidence that the lienholder had actual knowledge, at the time
296 the lien was made, that the property was being employed or was
297 likely to be employed in criminal activity. If a lienholder's
298 interest is not subject to forfeiture under the requirements of
299 this section, such interest shall be preserved by the court by
300 ordering the lienholder's interest to be paid as provided in s.
301 932.7055.

302 Section 5. This act shall take effect July 1, 2015.



The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Appropriations Subcommittee on Criminal and Civil Justice

Subject: Committee Agenda Request

Date: March 31, 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.

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

Senator Jeff Brandes
Florida Senate, District 22

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 7, 2015

Meeting Date

1534

Bill Number (if applicable)

322218

Amendment Barcode (if applicable)

Topic Forfeiture

Name Electra Buste

Job Title Lobbyist

Address 123 S. Adams St.
Street

Phone

City

State

Zip

Email bustle@sostrategy.com

Speaking: For Against Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 7, 2015

Meeting Date

1534

Bill Number (if applicable)

907400

Amendment Barcode (if applicable)

Topic Forfeiture

Name Electra Buste

Job Title Lobbyist

Address 123 S. Adams St.
Street

Phone

City

State

Zip

Email bustle@sostrategy.com

Speaking: For Against Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

THE FLORIDA SENATE
APPEARANCE RECORD

April 8, 2015
Meeting Date

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

1534
Bill Number (if applicable)

Topic Civil Forfeiture

Amendment Barcode (if applicable)

Name Justin Pearson

Job Title Managing Attorney for Institute for Justice (Fla. office)

Address 999 Brickell Ave., Suite 720

Phone (305) 721-1600

Miami
City

FL
State

33131
Zip

Email JPearson@IJ.org

Speaking: For Against Information

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

Representing The 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

4-8-15
Meeting Date

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

SB 1534
Bill Number (if applicable)

Topic Lens & Forfeited Property

Amendment Barcode (if applicable)

Name Travis Keels

Job Title Director of Public Affairs

Address 100 North Duval St

Phone 904-571-1490

Tallahassee
City

FL
State

32301
Zip

Email tkeels@jamesmadison.org

Speaking: 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 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)

4/8/15

Meeting Date

SB 1534
Bill Number (if applicable)

Topic Civil Asset Forfeiture - SB 1534 Amendment Barcode (if applicable)

Name Michelle Richardson

Job Title Director of Public Policy

Address 4500 Biscayne Street

Phone 786-343-2700

Miami City FL State 33137 Zip

Email mrichardson@acluf.org

Speaking: For Against Information

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

Representing ACLU of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

1534
Bill Number (if applicable)

Topic Forfeiture

Amendment Barcode (if applicable)

Name Dan Peterson

Job Title Director

Address 2878 S Osceola Ave Street

Phone 407-758-2491

Orlando City FL State 32806 Zip

Email dpeterson@jamesmadison.org

Speaking: For Against Information

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

Representing James Madison Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

CourtSmart Tag Report

Room: LL 37
Case: Senate Criminal and Civil Justice Appropriations Committee

Type:
Judge:

Started: 4/8/2015 10:06:51 AM
Ends: 4/8/2015 12:00:28 PM
Length: 01:53:38

10:06:53 AM Roll call
10:07:39 AM Human Trafficking-Senator Flores (SB 1106)
10:08:18 AM Amendment 328998-Matches up to House bill
10:08:35 AM Eric Stearn waives in support
10:09:21 AM Justin Day, Bernie Bishop, Ingrid Delgado waives in support
10:09:52 AM SB 1106 favorable
10:10:06 AM Recognition of Senator Hutson
10:10:27 AM Family Law-Senator Stargel (SB 1248)
10:11:54 AM Senator Joyner with a series of questions
10:15:36 AM Senator Soto with a series of questions
10:17:55 AM Senator Negron answers legal question posed by Senator Joyner
10:19:07 AM Senator Joyner with additional questions
10:20:51 AM Questions continue regarding Alimony
10:21:05 AM Senator Negron discusses family law
10:21:21 AM Senator Negron asks about the 50/50 issue to Senator Joyner
10:21:47 AM Senator Joyner feels it should not be in this bill. She feels it should be separate bills.
10:22:57 AM Senator Stargel responds to 50/50 rationale for being in this bill
10:24:16 AM Senator Flores with a series of question
10:27:42 AM Cynthia Mayer-Full time mother of 3 children
10:30:23 AM Barbara Devane-FL NOW
10:30:37 AM Barbara Devane-FL NOW
10:33:14 AM Leisa Athey-Senior Women for Alimony
10:35:50 AM Cathy Jones-First Wives Advocacy Group of Florida
10:40:10 AM Terrance Power, Terry MacMillan and Nelson Diaz support the bill
10:42:10 AM Paul Lowell for the bill
10:43:03 AM Bill Temporarily Postponed
10:43:18 AM SB 164-Crime Stoppers - Senator Evers
10:43:57 AM Nicole Wagner from the public
10:44:33 AM Bernadette Howard and Laura Youmans waives in support
10:44:51 AM SB 164 favorable
10:45:15 AM SB 282-Senator Hukill
10:45:46 AM Amendment 557242
10:46:16 AM Amendment favorable
10:47:10 AM Rick Kolodgy against the bill. Burt Hodge against the bill
10:49:33 AM Senator Negron with questions to Burt Hodge
10:50:27 AM Senator Hukill with answers to Senator Negron's questions
10:51:55 AM Senator Negron with a series of questions
10:52:24 AM Senator Negron wants an amendment for a possible enforcement idea. Senator Negron wants Sen. Bradley to work with
10:53:06 AM Senator Hukill on language.
10:53:25 AM SB 282 Temporarily Postponed
10:53:47 AM SB 368 Senator Abruzzo-Rights of Grandparents and Great-Grandparents
10:54:19 AM Senator Negron with a series of questions
10:55:10 AM one amendment barcode 699868 conforms to House bill-favorable
10:56:03 AM Barbara DeVane, Eric Stearn, Sterling, Griffin, Smith, Yvonne Stewart support
10:57:20 AM SB 368-favorable
10:57:49 AM SB 390-Fraud-Becky Kokkinos
10:58:29 AM Zayne Smith waives in support
10:58:37 AM SB 390-favorable
10:58:57 AM SB 464-Senator Joyner-Controlled Substances
11:00:05 AM Senator Soto with a series of questions
11:01:33 AM There are 3 amendments barcode 529112-favorable, 459042-favorable, 750164-favorable

11:02:54 AM Bob Dillinger waives in support
11:03:15 AM SB 464-Favorable
11:04:11 AM Motion by Senator Evers
11:04:21 AM Motion by Senator Flores
11:04:28 AM SB 922-Appt. of an Ad Litem-Ms. Johnson
11:04:47 AM Martha Edenfiled waives in support
11:05:06 AM SB 922-favorable
11:05:24 AM SB 1082-Senator Altman Juvenile Justice
11:06:03 AM Eric Stern, Natalie Kato, and Carlos Martinez
11:06:25 AM Rev. Rick Branch, Ingrid Delgado, Samantha Sexton, Travis Keels, Catherine Craig-Myers support bill
11:10:57 AM Phil Archer - Florida Prosecuting Attorneys Association - against the bill
11:15:04 AM Senator Soto with questions to Phil Archer
11:16:07 AM Senator Bradley in debate on the bill
11:16:58 AM Senator Soto in debate
11:17:38 AM SB 1082 Temporarily Postponed
11:18:05 AM SB 1098 - Senator Bradley - Controlled Substances
11:18:47 AM Lisa Hurley, Jill Gran, Barney Bishop waive in support
11:19:11 AM SB 1098 - favorable
11:19:32 AM SB 1170-Problem-Solving Courts - Senator Bradley
11:21:11 AM Steven Leifman, Lisa Hurley, Barney Bishop, Jill Gran, Sally Heyman, Dan Hendrickson, Bob Dillinger
waive in support
11:22:19 AM SB 1170-favorable
11:23:26 AM SB 1270-Sexual Offenses-Senator Soto
11:24:09 AM One amendment by Senator Soto-Jennifer Dritt waives in opposition to amendment
11:25:07 AM Danielle Sullivan against the amendment
11:25:30 AM Barney Bishop against the amendment
11:26:40 AM Amendment is adopted
11:27:21 AM Danielle Sullivan Barney Bishop, Bernadette Howard, Jennifer Pritt waives in support
11:27:52 AM SB 1270-favorable
11:28:28 AM Roll call vote on SB 1082 - favorable
11:29:29 AM SB 282 - Senator Hukill - Hand-written amendment by Senator Bradley
11:30:26 AM amendment adopted
11:30:33 AM SB 282 - favorable
11:30:51 AM SB 1414 - Juvenile Detention Costs - Senator Bradley
11:32:11 AM 3 amendment barcodes 626950, 851326, 95266 all adopted
11:33:55 AM Lisa Hurley-Florida Assoc. Counties - against bill
11:34:54 AM Senator Negron with questions to Lisa Hurley
11:36:33 AM Senator Joyner with a question
11:39:42 AM Grover Robinson-Florida Association of Counties-couple of issues at this time - against
11:41:53 AM Senator Evers with a question
11:42:21 AM Mark Sexton - Alachua County - supports bill
11:42:47 AM Leader Joyner in debate regarding back pay issue
11:43:25 AM SB 1414-favorable
11:43:42 AM SB 1534 - Disposition of Liens - Senator Brandes
11:45:59 AM Senator Joyner with questions on the amendment
11:47:46 AM 4 amendments two hand written and two barcoded - adopted
11:49:55 AM Electra Bustle-Florida Sheriffs Assoc-against bill
11:53:01 AM Dan Peterson, Justin Pearson, Travis Keels, Michelle Richardson - support
11:54:01 AM Senator Soto with questions
11:55:04 AM Senator Flores in debate
11:56:28 AM SB 1534-favorable
11:57:39 AM Senator Stargel
11:59:07 AM SB 1248-favorable
12:00:09 PM Rise