

Tab 1 CS/SB 260 by CJ, Steube; (Similar to CS/H 00575) Threats to Kill or Do Bodily Injury							
909318	A	S	RCS	ACJ, Steube	Delete L.33 - 38:	04/14	03:20 PM
Tab 2 CS/SB 302 by TR, Brandes (CO-INTRODUCERS) Rouson, Young, Steube, Clemens; (Similar to CS/H 01017) Penalties and Fees							
701486	A	S	RCS	ACJ, Brandes	Delete L.247 - 271:	04/14	03:20 PM
298474	A	S	RCS	ACJ, Brandes	Delete L.529 - 556:	04/14	03:20 PM
Tab 3 CS/SB 446 by EP, Passidomo; (Identical to 1ST ENG/H 00379) Underground Facilities							
Tab 4 CS/SB 448 by CJ, Brandes (CO-INTRODUCERS) Clemens; (Similar to CS/H 00367) Prearrest Diversion Programs							
333852	A	S	RCS	ACJ, Brandes	Delete L.81 - 104:	04/14	03:20 PM
Tab 5 CS/SB 748 by JU, Steube; (Similar to CS/CS/H 00175) Florida Court Educational Council							
Tab 6 CS/CS/SB 776 by CU, CJ, Baxley; (Similar to H 00879) Unlawful Acquisition of Utility Services							
Tab 7 CS/SB 844 by CJ, Simmons (CO-INTRODUCERS) Baxley; (Similar to CS/CS/CS/H 00107) Criminal Offenses Involving Tombs and Memorials							
869370	A	S	RCS	ACJ, Simmons	Delete L.75:	04/14	03:20 PM
Tab 8 CS/SB 1068 by CJ, Brandes (CO-INTRODUCERS) Clemens; (Compare to CS/H 00157) Sentencing							
833352	A	S	WD	ACJ, Brandes	btw L.305 - 306:	04/13	03:43 PM
109356	A	S	RCS	ACJ, Brandes	Delete L.339 - 342:	04/14	03:20 PM
389028	A	S	RCS	ACJ, Brandes	btw L.380 - 381:	04/14	03:20 PM
Tab 9 SB 1102 by Rouson; (Similar to H 00693) Criminal Offenses							
865206	A	S	RCS	ACJ, Rouson	Delete L.118:	04/14	03:20 PM
574046	A	S	RCS	ACJ, Rouson	Delete L.184:	04/14	03:20 PM
Tab 10 CS/SB 1626 by CJ, Bradley; (Similar to CS/H 01379) Department of Legal Affairs							
Tab 11 SB 1670 by Latvala; (Similar to CS/H 07059) Juvenile Justice							
347468	D	S	RCS	ACJ, Latvala	Delete everything after	04/14	03:20 PM

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

MEETING DATE: Thursday, April 13, 2017
TIME: 1:00—2:00 p.m.
PLACE: Mallory Horne Committee Room, 37 Senate Office Building

MEMBERS: Senator Bean, Chair; Senator Bracy, Vice Chair; Senators Baxley, Clemens, and Perry

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 260 Criminal Justice / Steube (Similar CS/H 575)	Threats to Kill or Do Bodily Injury; Prohibiting a person from making a threat to kill or do bodily injury in a writing or other record, or by posting or transmitting the threat in a specified manner; deleting requirements that a threat be sent to a specific recipient to be prohibited, etc. CJ 03/27/2017 Fav/CS ACJ 04/13/2017 Fav/CS AP RC	Fav/CS Yeas 5 Nays 0
2	CS/SB 302 Transportation / Brandes (Similar CS/H 1017, Compare CS/H 1391, CS/S 608, S 1556)	Penalties and Fees; Revising requirements relating to the payment of court-related fines or other monetary penalties, fees, charges, and costs; prohibiting the suspension of a person's driver license solely for failure to pay a penalty if the person demonstrates to the court, when specified, that he or she is unable to pay such penalty; revising penalties relating to suspending, revoking, or withholding issuance of driver licenses or driving privileges for minors under a specified age who possess firearms under certain circumstances, etc. TR 02/07/2017 Fav/CS ACJ 04/13/2017 Fav/CS AP	Fav/CS Yeas 5 Nays 0
3	CS/SB 446 Environmental Preservation and Conservation / Passidomo (Identical H 379)	Underground Facilities; Revising the information that must be submitted to the Legislature annually by the board of directors of Sunshine State One-Call of Florida, Inc.; requiring excavators to call the 911 emergency telephone number under certain circumstances; specifying how certain civil penalties issued by state law enforcement officers shall be distributed, etc. EP 03/14/2017 Fav/CS CU 03/28/2017 Favorable ACJ 04/13/2017 Favorable AP	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDAAppropriations Subcommittee on Criminal and Civil Justice
Thursday, April 13, 2017, 1:00—2:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 448 Criminal Justice / Brandes (Similar CS/H 367, Compare CS/H 369, Linked CS/CS/S 450)	Prearrest Diversion Programs; Encouraging local communities and public or private educational institutions to implement prearrest diversion programs for certain offenders; authorizing law enforcement officers, at their sole discretion, to issue a civil citation or similar prearrest diversion program notice to adults under specified circumstances; requiring an adult who is issued a civil citation or similar prearrest diversion program notice by a participating law enforcement agency to report for intake as required by the prearrest diversion program, etc. CJ 03/06/2017 Temporarily Postponed CJ 03/13/2017 Fav/CS ACJ 04/13/2017 Fav/CS AP	Fav/CS Yeas 5 Nays 0
5	CS/SB 748 Judiciary / Steube (Similar CS/CS/H 175)	Florida Court Educational Council; Specifying that the Court Education Trust Fund shall be administered by the Florida Court Educational Council; specifying the membership, voting procedures, and duties of the council; requiring the council to submit an annual report concerning educational and training programs for judges and other personnel, etc. JU 03/28/2017 Fav/CS ACJ 04/13/2017 Favorable AP	Favorable Yeas 3 Nays 2
6	CS/CS/SB 776 Communications, Energy, and Public Utilities / Criminal Justice / Baxley (Similar H 879)	Unlawful Acquisition of Utility Services; Revising the elements that constitute theft of utilities; clarifying that the presence of certain devices and alterations on the property of, and the actual possession by, a person constitutes prima facie evidence of a violation; clarifying that specified circumstances create prima facie evidence of theft of utility services for the purpose of facilitating the manufacture of a controlled substance, etc. CJ 03/21/2017 Fav/CS CU 03/28/2017 Fav/CS ACJ 04/13/2017 Favorable AP	Favorable Yeas 5 Nays 0
7	CS/SB 844 Criminal Justice / Simmons (Similar CS/CS/CS/H 107)	Criminal Offenses Involving Tombs and Memorials; Providing that a person who willfully and knowingly excavates, exposes, moves, or removes the contents of a grave or tomb commits a felony; authorizing an owner, officer, employee, or agent of specified cemeteries to relocate the contents of a grave or tomb, subject to certain conditions, etc. CJ 03/13/2017 Fav/CS ACJ 04/13/2017 Fav/CS AP	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDAAppropriations Subcommittee on Criminal and Civil Justice
Thursday, April 13, 2017, 1:00—2:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	CS/SB 1068 Criminal Justice / Brandes (Compare CS/H 157, S 1194)	Sentencing; Specifying requirements for sentencing and appeals of sentences for offenses committed on or after a certain date; specifying requirements for imposing an upward departure sentence; authorizing a defendant to appeal a sentence outside a specified range; authorizing a court to sentence certain offenders to a term in county jail for up to 24 months if the offender meets specified criteria and if the county has a contract with the Department of Corrections, etc. CJ 03/27/2017 Fav/CS ACJ 04/13/2017 Fav/CS AP	Fav/CS Yeas 5 Nays 0
9	SB 1102 Rouson (Similar H 693, Compare CS/S 608)	Criminal Offenses; Revising threshold amounts for failure to remit taxes offenses, retail theft, dealing in stolen property by use of the Internet offenses, stopping payment offenses, offenses involving giving worthless checks, drafts, and debit card orders, and offenses involving payments to the Department of Revenue, etc. CJ 03/27/2017 Favorable ACJ 04/13/2017 Fav/CS AP	Fav/CS Yeas 5 Nays 0
10	CS/SB 1626 Criminal Justice / Bradley (Similar CS/H 1379, Compare CS/CS/H 481, CS/S 1554)	Department of Legal Affairs; Authorizing the Statewide Council on Human Trafficking to apply for and accept funds, grants, gifts, and services from various governmental entities or any other public or private source for a specified purpose; providing that the Attorney General has standing to assert the rights of certain qualified beneficiaries in judicial proceedings; revising the conditions under which a trustee may amend the governing instrument of a specified charitable trust to comply with specified provisions of ch. 736, F.S., etc. CJ 03/27/2017 Fav/CS ACJ 04/13/2017 Favorable AP	Favorable Yeas 5 Nays 0
11	SB 1670 Latvala (Similar CS/H 7059)	Juvenile Justice; Revising requirements for placement of a child in detention care; providing that a child who is designated a prolific juvenile offender does not require a risk assessment to be placed in detention care; providing that a child meeting specified criteria shall be placed in secure detention care until the child's detention hearing, etc. CJ 03/27/2017 Favorable ACJ 04/13/2017 Fav/CS AP	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations Subcommittee on Criminal and Civil Justice
Thursday, April 13, 2017, 1:00—2:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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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: PCS/CS/SB 260 (887240)

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

SUBJECT: Threats to Kill or Do Bodily Injury

DATE: April 14, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>McAuliffe</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 260 amends s. 836.10, F.S., to delete the current statutory requirements that a specific person be directly threatened by a person making a threat through means of a letter, inscribed communication, or electronic communication, and that the specific person actually receive the threat.

The bill:

- Reorganizes the elements of the offense so that s. 836.10(1), F.S., provides for a violation of the statute if a threat to kill or do bodily injury to another is sent, posted, or transmitted in a manner that would allow another person to view the threat. This clarifies that a more general threat is included within the acts that violate s. 836.10, F.S.
- Creates a definition for the term “electronic record.”
- Provides that a juvenile who violates s. 836.10, F.S., commits a first degree misdemeanor (rather than the existing second degree felony).
- Adds a new exception, for a violation of s. 836.10, F.S., to the general rule that a misdemeanor must be committed in a law enforcement officer’s presence in order for a warrantless arrest to occur.

This bill makes s. 836.10, F.S., applicable to circumstances where a person transmits a threat to kill or do bodily injury to another in a more public forum than the current law contemplates.

On March 2, 2017, the Criminal Justice Impact Conference considered HB 575, the substantive provisions of which were identical to SB 260 in its original form. The Conference adopted a “positive indeterminate” estimate of the fiscal impact of the bill on prison beds, meaning that although there may be additional inmates incarcerated in state prison resulting from this bill the number is unquantifiable.

The bill is effective October 1, 2017.

II. Present Situation:

When s. 836.10, F.S., was enacted in 1913, social media was limited to the “pen and paper” written word, the newspaper, and possibly the radio.

Having been amended in 2010¹ to add “electronic communication,” s. 836.10, F.S., currently prohibits a person from:

- Writing or composing and sending to any person:
 - A letter,
 - Inscribed communication, or
 - Electronic communication,
- Containing a threat to kill or do bodily injury to:
 - The person to whom the letter or communication was sent, or
 - Any member of the person’s family.²

The act of “sending” under the statute requires two events – sending the communication to a particular person *and* receipt of the communication by the person being threatened.³

When the target of the threat is not necessarily a particular individual, but more random in nature, it is then that the application of the statute breaks down, particularly as related to social media.

Social Media

Studies indicate that social media sites and other apps are widely used to communicate with other people and to find information. For example, recent publications by the Pew Research Center report that:

- 86 percent of Americans use the internet;⁴
- Of the surveyed 1,520 adults in one study, 79 percent use Facebook, 32 percent use Instagram, 31 percent use Pinterest, 29 percent use LinkedIn, and 24 percent use Twitter;⁵ and

¹ Chapter 2010-51, Laws of Florida.

² A violation of s. 836.10, F.S., is a second degree felony, punishable by up to 15 years in prison and a fine of up to \$10,000. ss. 775.082, 775.083, and 775.084, F.S.

³ *J.A.W. v. State*, 41 Fla.L.Weekly D 2227 (Fla. 2nd DCA, 2016) citing *State v. Wise*, 664 So.2d 1028, 1030 (Fla. 2nd DCA 1995).

⁴ Pew Research Center, November 2016, “Social Media Update,” pages 1-2.

⁵ Pew Research Center, November 2016, “Social Media Update,” pages 1-2.

- In a survey of 1,060 teens ages 13-17 and their parent or guardian, when asked about the use of specific sites, 89 percent of all teens reported the use of at least one of the sites and 71 percent used 2 or more of the sites.⁶

Examples of Random School Threats Using E-Mail

In late 2015, there was a rash of e-mailed hoax threats against schools across the country that began in New York City and Los Angeles.⁷ The New York and Los Angeles threats were nearly identically worded, threatening the use of bombs, nerve gas, and rifles, and routed through a server in Frankfurt, Germany, apparently by the same person.⁸ A few days later, similar threats were directed at schools in Florida.⁹ Social media and other electronic forms of communication were used in at least 35 percent of the violent threats to schools in one recent study covering half the 2013-14 school year in 43 states.¹⁰

Case Law Applying Current Statute

In a 2016 court decision, a juvenile's disposition under s. 836.10, F.S., for posting written threats to kill or do bodily injury on Twitter¹¹ was reversed.¹² The juvenile made a series of public posts on Twitter over the span of several days threatening to "shoot up" his school.¹³ The tweets were discovered by an out-of-state watchdog group who reported the threats to local police. Local police later contacted the juvenile's school officials informing them of the threats.

The Second District Court of Appeals found that because the juvenile publicly posted the tweets, rather than directly sending them to any student or school official, the receipt of the threats by school officials through local police was too far removed to support a conviction under s. 836.10, F.S.

⁶ Pew Research Center, April 2015, "Teen, Social Media and Technology Overview 2015," pages 7 and 25.

⁷ "Los Angeles and New York Differ in Their Responses to a Terrorism Threat," The New York Times, December 15, 2015, available at <https://www.nytimes.com/2015/12/16/us/los-angeles-schools-bomb-threat.html> (last visited March 13, 2017).

⁸ Id.

⁹ "Miami-Dade, Broward Schools Receive Threats: Officials," Krista Deans, NBC News 6, December 17, 2015, <http://www.nbcmiami.com/news/local/Miami-Dade-School-System-Receives-Threat-Officials-362740851.html> (last visited March 20, 2016). See also, "Frustration over 5 school bomb threats in 2 days, False calls frustrate law enforcement, but must be taken seriously, police say," Crystal Moyer, WJXT News 4 Jacksonville, December 9, 2015, available at <http://www.news4jax.com/news/bomb-scare-forces-evacuation-of-southside-business> (last visited March 20, 2016).

¹⁰ "Schools face new wave of violent threats sent by social media and other electronic means," National School Safety and Security Services, February 25, 2014, (reporting on 315 documented school bomb threats, shooting threats, hoaxes, and acts of violence between August 2013 and January 2014), available at <http://www.schoolsecurity.org/2014/02/schools-face-new-wave-violent-threats-sent-social-media-electronic-means-study-says/> (last visited March 13, 2017).

¹¹ "Twitter allows users to send 'updates' (or 'tweets': text based posts, up to 140 characters long) to [the] Twitter website via short message service (e.g. on a cell phone), instant messaging, from their computer at home or work, or through a third-party application." GNOTED, "What Is Twitter and How Does It Work- Beginner's Guide," February 9, 2009, available at <http://gnoted.com/what-is-twitter-and-how-does-it-work-beginners-guide/> (last visited March 13, 2017).

¹² *J.A.W. v. State*, 41 Fla.L.Weekly D 2227 (Fla. 2nd DCA, 2016).

¹³ The following tweets were posted: "can't WAIT to shoot up my school," "it's time," "My mom and dad think I'm serious about shooting up my school I'm dying"; "school getting shot up on a Tuesday," "night f[***]king sucked can't wait to shoot up my school soon"; and "I sincerely apologize to anyone who took me seriously. I love my high school and honestly own no weapons to want to harm anyone in any way." *J.A.W. v. State*, 41 Fla.L.Weekly D 2227 (Fla. 2nd DCA, 2016).

The court specifically discussed the difficulty of applying the current statute to modern forms of communication, recognizing that many threats made on social media fall outside the narrow scope of the law, which requires the threatening communication to be sent directly to a specific person who receives the threat.¹⁴

Warrantless Arrest

Section 901.15, F.S., provides that a law enforcement officer may arrest a person without a warrant when:

- The person has committed a felony or misdemeanor or violated a municipal or county ordinance in the presence of the officer. An arrest for the commission of a misdemeanor or the violation of a municipal or county ordinance shall be made immediately or in fresh pursuit.
- A felony has been committed and he or she reasonably believes that the person committed it.
- He or she reasonably believes that a felony has been or is being committed and that the person to be arrested has committed or is committing it.
- A warrant for the arrest has been issued and is held by another officer for execution.

The principal components of a determination of reasonable suspicion or probable cause are the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause.¹⁵

The general rule is that an officer must witness a misdemeanor occurring in order to make a warrantless arrest; however, currently there are statutory exemptions from this requirement in s. 901.15, F.S.¹⁶

III. Effect of Proposed Changes:

Section 1 amends s. 836.10, F.S., to delete the current statutory requirements that a specific person be directly threatened by a person making a threat through means of a letter, inscribed communication, or electronic communication, and that the specific person actually receive the threat.

This section prohibits more modern communication circumstances in the context of threats to kill or do bodily injury to another than the statute as currently written.

The bill amends the statute to prohibit a person from making a threat to kill or injure another:

- In a writing or other record, including an electronic record,
- By sending, posting, or transmitting the threat, or procuring the sending, posting, or transmission of the threat, in a manner that would allow another person to view the threat.

¹⁴ *J.A.W. v. State*, 41 Fla.L. Weekly D 2227 (Fla. 2nd DCA, 2016).

¹⁵ *State v. Cuomo*, 43 So. 3d 838 (Fla.1st DCA, 2010); see also *Ornelas v. United States*, 517 U.S. 690, 696-97 (1996).

¹⁶ For example, s. 901.15(9), F.S., provides that the officer may make an arrest without a warrant when there is probable cause to believe that the person has committed: Any battery upon another person, as defined in s. 784.03, F.S.; an act of criminal mischief or a graffiti-related offense as described in s. 806.13, F.S.; or a violation of a safety zone, security zone, regulated navigation area, or naval vessel protection zone as described in s. 327.461, F.S.

The term “electronic record” is defined as “relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.”

Section 2 amends s. 901.15, F.S., to include a violation of s. 836.10, F.S., as the basis for a lawful arrest by an officer without a warrant, if the officer has probable cause to believe a person has committed the offense.

The current second degree felony penalties remain in the statute for adult offenders. Section 1 amends s. 836.10, F.S., to create a first degree misdemeanor applicable to juvenile offenders.

Sections 3, 4, and 5 reenacts ss. 794.056, 921.0022, and 938.085, F.S., respectively, to incorporate the changes made by the bill to s. 836.10, F.S.

The bill is effective October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Justice Administrative Commission has indicated that there is no expected fiscal impact to the agency related to the bill.¹⁷

On March 2, 2017, the Criminal Justice Impact Conference considered HB 575, the substantive provisions of which were identical to SB 260 in its original form. The

¹⁷ Memorandum No. 002-17, Exec., Justice Administrative Commission.

Conference adopted a “positive indeterminate” estimate of the fiscal impact of the bill on prison beds, meaning that although there may be additional inmates incarcerated in state prison resulting from this bill the number is unquantifiable.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 836.10 and 901.15.

This bill reenacts the following sections of the Florida Statutes: 794.056, 921.0022, and 938.085.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

Recommend CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on April 13, 2017:

The committee substitute:

- Changes the structure of subsection (1) of s. 836.10, F.S.
- Clarifies that the elements of the offense are:
 - Making a threat to kill or do bodily injury to another in a writing or other record, including an electronic record,
 - By sending, posting, or transmitting the threat (or procuring the sending, posting, or transmission of the threat) in a manner that would allow another person to view the threat.

CS by Criminal Justice on March 27, 2017:

The committee substitute:

- Reorganizes the elements of the offense so that s. 836.10(1)(b), F.S., clearly provides for a violation of the statute if a threat is posted or transmitted in a manner that would allow *any* person to view the threat (emphasis added). This clarifies that a more general threat is included within the acts that would violate s. 836.10, F.S.
- Creates a definition for the term “electronic record.”
- Provides that a juvenile who violates s. 836.10, F.S., commits a first degree misdemeanor (rather than the existing second degree felony).
- Adds a new exception, for a violation of s. 836.10, F.S., to the general rule that a misdemeanor must be committed in a law enforcement officer’s presence in order for a warrantless arrest to occur.

B. Amendments:

None.

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



909318

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/14/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 33 - 38
and insert:
another ~~the~~ person in a writing or other record, including an
electronic record, by sending, posting, or transmitting, or
procuring the sending, posting, or transmission of, the threat
in a manner that would allow another person to view the threat.

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



11 And the title is amended as follows:
12 Delete line 5
13 and insert:
14 writing or other record by posting or transmitting

By the Committee on Criminal Justice; and Senator Steube

591-02913-17

2017260c1

1 A bill to be entitled
 2 An act relating to threats to kill or do bodily
 3 injury; amending s. 836.10, F.S.; prohibiting a person
 4 from making a threat to kill or do bodily injury in a
 5 writing or other record, or by posting or transmitting
 6 the threat in a specified manner; deleting
 7 requirements that a threat be sent to a specific
 8 recipient to be prohibited; providing separate
 9 penalties for juveniles and adults; amending s.
 10 901.15; F.S.; authorizing a law enforcement officer to
 11 arrest a person without a warrant for a criminal act
 12 of threat to kill or do bodily injury, as shown in a
 13 posting or as transmitted in a specified manner;
 14 reenacting ss. 794.056(1), 921.0022(3)(f), and
 15 938.085, F.S., relating to the Rape Crisis Program
 16 Trust Fund, to the offense severity ranking chart of
 17 the Criminal Punishment Code, and to additional cost
 18 to fund rape crisis centers, respectively, to
 19 incorporate the amendment made to s. 836.10, F.S., in
 20 references thereto; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Section 836.10, Florida Statutes, is amended to
 25 read:

26 836.10 Written threats to kill or do bodily injury;
 27 punishment.—

28 (1) It is unlawful for a Any person to make who writes or
 29 composes and also sends or procures the sending of any letter,

Page 1 of 12

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

591-02913-17

2017260c1

30 ~~inscribed communication, or electronic communication, whether~~
 31 ~~such letter or communication be signed or anonymous, to any~~
 32 ~~person, containing a threat to kill or to do bodily injury to~~
 33 ~~another the person:~~
 34 (a) In a writing or other record, including an electronic
 35 record; or
 36 (b) By posting or transmitting, or procuring the posting or
 37 transmission, in a manner that would allow any person to view
 38 the threat.
 39 (2) A person who is 18 years of age or older and who
 40 violates this section to whom such letter or communication is
 41 sent, or a threat to kill or do bodily injury to any member of
 42 the family of the person to whom such letter or communication is
 43 sent commits a felony of the second degree, punishable as
 44 provided in s. 775.082, s. 775.083, or s. 775.084.
 45 (3) A person who is under the age of 18 and who violates
 46 this section commits a misdemeanor of the first degree,
 47 punishable as provided in s. 775.082 or s. 775.083.
 48 (4) For purposes of this section, the term "electronic
 49 record" means relating to technology having electrical, digital,
 50 magnetic, wireless, optical, electromagnetic, or similar
 51 capabilities.
 52 Section 2. Subsection (17) is added to section 901.15,
 53 Florida Statutes, to read:
 54 901.15 When arrest by officer without warrant is lawful.—A
 55 law enforcement officer may arrest a person without a warrant
 56 when:
 57 (17) There is probable cause to believe that the person has
 58 committed a criminal act of threat to kill or do bodily injury

Page 2 of 12

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

591-02913-17 2017260c1

59 as described in s. 836.10.
 60 Section 3. For the purpose of incorporating the amendment
 61 made by this act to section 836.10, Florida Statutes, in a
 62 reference thereto, subsection (1) of section 794.056, Florida
 63 Statutes, is reenacted to read:
 64 794.056 Rape Crisis Program Trust Fund.—
 65 (1) The Rape Crisis Program Trust Fund is created within
 66 the Department of Health for the purpose of providing funds for
 67 rape crisis centers in this state. Trust fund moneys shall be
 68 used exclusively for the purpose of providing services for
 69 victims of sexual assault. Funds credited to the trust fund
 70 consist of those funds collected as an additional court
 71 assessment in each case in which a defendant pleads guilty or
 72 nolo contendere to, or is found guilty of, regardless of
 73 adjudication, an offense provided in s. 775.21(6) and (10) (a),
 74 (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s.
 75 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s.
 76 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); s.
 77 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08;
 78 former s. 796.03; former s. 796.035; s. 796.04; s. 796.05; s.
 79 796.06; s. 796.07(2) (a)-(d) and (i); s. 800.03; s. 800.04; s.
 80 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s.
 81 825.1025; s. 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s.
 82 847.0137; s. 847.0145; s. 943.0435(4) (c), (7), (8), (9) (a),
 83 (13), and (14) (c); or s. 985.701(1). Funds credited to the trust
 84 fund also shall include revenues provided by law, moneys
 85 appropriated by the Legislature, and grants from public or
 86 private entities.
 87 Section 4. For the purpose of incorporating the amendment

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88 made by this act to section 836.10, Florida Statutes, in a
 89 reference thereto, paragraph (f) of subsection (3) of section
 90 921.0022, Florida Statutes, is reenacted to read:
 91 921.0022 Criminal Punishment Code; offense severity ranking
 92 chart.—
 93 (3) OFFENSE SEVERITY RANKING CHART
 94 (f) LEVEL 6
 95
 96

Florida Statute	Felony Degree	Description
316.027(2) (b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2) (b)	3rd	Felony DUI, 4th or subsequent conviction.
400.9935(4) (c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
499.0051(3)	2nd	Knowing purchase or receipt of

	591-02913-17		2017260c1	
			prescription drug from unauthorized person.	
102	499.0051 (4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.	
103	775.0875 (1)	3rd	Taking firearm from law enforcement officer.	
104	784.021 (1) (a)	3rd	Aggravated assault; deadly weapon without intent to kill.	
105	784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.	
106	784.041	3rd	Felony battery; domestic battery by strangulation.	
107	784.048 (3)	3rd	Aggravated stalking; credible threat.	
108	784.048 (5)	3rd	Aggravated stalking of person under 16.	
109	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.	
110	784.074 (1) (b)	2nd	Aggravated assault on sexually	

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	591-02913-17		2017260c1	
			violent predators facility staff.	
111	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.	
112	784.081 (2)	2nd	Aggravated assault on specified official or employee.	
113	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.	
114	784.083 (2)	2nd	Aggravated assault on code inspector.	
115	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.	
116	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.	
117	790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.	
118	790.164 (1)	2nd	False report concerning bomb,	

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	591-02913-17		2017260c1	
				explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
119	790.19	2nd		Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
120	794.011(8) (a)	3rd		Solicitation of minor to participate in sexual activity by custodial adult.
121	794.05(1)	2nd		Unlawful sexual activity with specified minor.
122	800.04(5) (d)	3rd		Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
123	800.04(6) (b)	2nd		Lewd or lascivious conduct; offender 18 years of age or older.
124	806.031(2)	2nd		Arson resulting in great bodily harm to firefighter or any other person.

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125	810.02(3) (c)	2nd		Burglary of occupied structure; unarmed; no assault or battery.
126	810.145(8) (b)	2nd		Video voyeurism; certain minor victims; 2nd or subsequent offense.
127	812.014(2) (b)1.	2nd		Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
128	812.014(6)	2nd		Theft; property stolen \$3,000 or more; coordination of others.
129	812.015(9) (a)	2nd		Retail theft; property stolen \$300 or more; second or subsequent conviction.
130	812.015(9) (b)	2nd		Retail theft; property stolen \$3,000 or more; coordination of others.
131	812.13(2) (c)	2nd		Robbery, no firearm or other weapon (strong-arm robbery).
132	817.4821(5)	2nd		Possess cloning paraphernalia with intent to create cloned

	591-02913-17		2017260c1	
			cellular telephones.	
133	825.102(1)	3rd	Abuse of an elderly person or disabled adult.	
134	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.	
135	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.	
136	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.	
137	827.03(2)(c)	3rd	Abuse of a child.	
138	827.03(2)(d)	3rd	Neglect of a child.	
139	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.	
140	836.05	2nd	Threats; extortion.	
141	836.10	2nd	Written threats to kill or do bodily injury.	
142				

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	843.12	3rd	Aids or assists person to escape.	
143	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.	
144	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.	
145	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.	
146	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.	
147	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.	
148	944.40	2nd	Escapes.	
149				

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944.46 3rd Harboring, concealing, aiding
escaped prisoners.

150 944.47(1)(a)5. 2nd Introduction of contraband
(firearm, weapon, or explosive)
into correctional facility.

151 951.22(1) 3rd Intoxicating drug, firearm, or
weapon introduced into county
facility.

152

153

154

155 Section 5. For the purpose of incorporating the amendment

156 made by this act to section 836.10, Florida Statutes, in a

157 reference thereto, section 938.085, Florida Statutes, is

158 reenacted to read:

159 938.085 Additional cost to fund rape crisis centers.—In

160 addition to any sanction imposed when a person pleads guilty or

161 nolo contendere to, or is found guilty of, regardless of

162 adjudication, a violation of s. 775.21(6) and (10)(a), (b), and

163 (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045;

164 s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s.

165 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); 787.025; s.

166 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; former s.

167 796.03; former s. 796.035; s. 796.04; s. 796.05; s. 796.06; s.

168 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s. 810.14; s.

169 810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; s.

170 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s. 847.0137; s.

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591-02913-17 2017260c1

171 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a), (13), and

172 (14)(c); or s. 985.701(1), the court shall impose a surcharge of

173 \$151. Payment of the surcharge shall be a condition of

174 probation, community control, or any other court-ordered

175 supervision. The sum of \$150 of the surcharge shall be deposited

176 into the Rape Crisis Program Trust Fund established within the

177 Department of Health by chapter 2003-140, Laws of Florida. The

178 clerk of the court shall retain \$1 of each surcharge that the

179 clerk of the court collects as a service charge of the clerk's

180 office.

181 Section 6. This act shall take effect October 1, 2017.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE

23rd District

March 27, 2017

The Honorable Aaron Bean
Florida Senate
306 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Bean,

I am writing this letter because my bill, SB 260 Threats to Kill or Do Bodily Injury, has been referred to the Senate Appropriations Subcommittee for Criminal and Civil Justice. This bill passed the Senate Criminal Justice Committee on March 27. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

Thank you for your consideration. Please contact me if you have any questions.

Very respectfully yours,

A handwritten signature in blue ink, appearing to read "W. Gregory Steube".

W. Gregory Steube, District 23

REPLY TO:

- 722 Apex Road, Unit A, Sarasota, Florida 34240 (941)342-9162
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

13 Apr 17

Meeting Date

260

Bill Number (if applicable)

Topic Threats to Kill

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe

Phone 850.510.9922

Street

Tall

City

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/13/17
Meeting Date

34260
Bill Number (if applicable)

Topic THREATS Bill

Amendment Barcode (if applicable)

Name Dennis Strange

Job Title Captain

Address 2500 West Colonial Dr

Phone 907 254-7000

Deland FL 32804
City State Zip

Email dennis.strange@ocpl.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.

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 302 (792080)

INTRODUCER: Transportation Committee and Senator Brandes and others

SUBJECT: Penalties and Fees

DATE: April 14, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Miller	TR	Fav/CS
2.	Harkness	Sadberry	ACJ	Recommend Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 302 makes numerous changes to law relating to driver license (DL) suspensions and revocations, and the penalties and fees associated with them. Specifically, the bill:

- Removes suspension and revocation penalties for a number of specified non-driving-related offenses;
- Reduces the length of mandatory DL suspension for drug convictions from one year to six months;
- Allows individuals whose licenses are suspended for failure to comply with a court order or failure to pay court financial obligations, under ss. 318.15 or 322.245, F.S., to apply for a hardship license issued by the Department of Highway Safety and Motor Vehicles;
- Requires the court to inquire about a person's financial ability to pay a fine at the time a civil penalty is ordered in court;
- Prohibits a DL from being suspended solely for inability to pay a financial penalty or court obligation if the individual requests a hearing and demonstrates to the court that he or she cannot pay;
- Prohibits court-approved payment plans from exceeding two percent of an applicant's income, unless approved by the applicant;
- Requires clerks of the circuit court (clerks) to competitively bid for collection agents or private attorneys taking over unpaid accounts, and:
 - Prohibits the clerk from adding collection fees to the unpaid accounts for transferring the account to an agent or attorney; and

- Prohibits the collections agent or attorney to add additional fees to the account other than the contractually agreed upon surcharge;
- Requires uniform traffic citations include information regarding the option of a payment plan and community service;
- Requires, in criminal cases, that the public defender request forms include the option to elect or refuse community service, if it is offered by the court; and
- Allows the court to use the information provided on the public defender request form to determine the person's inability to pay court financial obligations for the purpose of converting financial obligations into court-ordered community service.

The bill has an indeterminate negative fiscal impact on state and local government. *See* Section V. Fiscal Impact Statement for details.

The bill has an effective date of October 1, 2017.

II. Present Situation:

Driver license (DL) revocations and suspensions, respectively, terminate or temporarily withdraw one's driving privilege.¹ Although initially used to address poor driving behavior, DL sanctions are now commonly used to punish individuals engaged in behavior unrelated to the operation of a motor vehicle. Consequently, a substantial amount of time and resources are expended by state and local entities to deal with and process non-driving-related suspensions and revocations.

According to the American Association of Motor Vehicle Administrators (AAMVA), "[s]ome studies have shown that suspending driving privileges for non-highway safety-related reasons is not effective."² Enforcing non-driving-related suspensions is costly and detracts from highway safety priorities. Licenses being suspended for non-driving-related reasons have caused the seriousness of DL suspensions to become lessened in the minds of law enforcement, the courts, and the public, even though data shows drivers with suspensions for traffic-safety-related reasons are three times more likely to be involved in a crash than drivers suspended for other reasons.³

It is estimated that as many as three-fourths of drivers with suspended or revoked licenses continue to drive, indicating DL suspensions may not effectively force compliance.⁴ According to the Transportation Research Board of the National Academies, one out of five traffic fatalities nationally involves a driver who is operating a vehicle without a valid license.⁵

DL suspension and revocation penalties are used to punish individuals who do not pay certain financial penalties and obligations, sometimes whether or not the individual can afford to do so. Furthermore, penalties for driving with a DL that is suspended or revoked increase per offense, causing individuals suffering from financial hardship to become stuck in a self-perpetuating

¹ Sections 322.01(36) and (40), F.S.

² AAMVA, *Best Practices Guide to Reducing Suspended Drivers*, (Feb. 2013), available at <http://www.aamva.org/WorkArea/DownloadAsset.aspx?id=3723> at p. 2 (last visited Jan. 30, 2017).

³ *Id.*

⁴ *Id.*

⁵ See *Id.* at p. 6.

cycle. Drivers who were unable to pay their original fine or court fees may lose their ability to legally travel to and from work. If they are caught driving while the DL is suspended or revoked, they will incur additional court costs and penalties. Additionally, these drivers are not allowed to obtain a hardship license, restricted to business or employment purposes only⁶, even though this option is available for numerous driving-related suspensions, including DUIs.⁷ A driver whose DL is suspended for inability to pay penalties or court financial obligations needs to pay reinstatement fees in addition to outstanding obligations to legally drive.

Clerks of the Court (clerks) use DL sanctions as a means to improve collections of fines and fees and have indicated that DL sanctions are their most effective tool to increase collections.⁸ However, a 2007 report by the Office of Program Policy Analysis and Government Accountability (OPPAGA) indicated, of the 67 clerks they surveyed, there was no meaningful difference between the average revenue collected overall and clerks' use of any particular collection method.⁹ According to a 2004 OPPAGA *Information Brief*, some clerks and judges both indicated that imposing sanctions against a DL for non-traffic-related offenses would not be appropriate since the punishment did not fit the crime; licenses were already overburdened with penalties; and sanctions would result in more unlicensed drivers on Florida's roadways as well as potentially more court cases.¹⁰

Non-Driving-Related DL Suspensions and Revocations

Generally, the threat of losing one's driving privilege has been used to combat truancy, theft, vandalism, illegal possession of drugs, alcohol, tobacco, and firearms, and a number of other non-driving-related offenses. Relevant non-driving offenses are detailed below.

School Attendance Requirements

A minor is not eligible for driving privileges unless that minor:

- Is enrolled in a public school, nonpublic school, home education program, or other educational activities and satisfies relevant attendance requirements;
- Has received a high school diploma, a high school equivalency diploma, a special diploma, or a certificate of high school completion;
- Is enrolled in a study course in preparation for the high school equivalency examination and satisfies relevant attendance requirements;
- Has been issued a certificate of exemption¹¹ from the district school superintendent; or

⁶ Section 322.271(1)(c), F.S., defines a "business purposes only" restricted driving privilege as limited to driving necessary to maintain livelihood, including driving to and from work, necessary on-the-job driving, driving for educational purposes, and driving for church and medical purposes. An "employment purposes only" restricted driving privilege is limited to driving to and from work and necessary on-the-job driving.

⁷ DHSMV, *Hardship Reinstatement Eligibility Requirements*, (Revised May 12, 2014) (on file with the Senate Committee on Transportation).

⁸ OPPAGA, *Options Exist to Modify Use of Driver License Suspension for Non-Driving-Related Reasons*, Report No. 14-07, (Feb. 2014), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1407rpt.pdf> (last visited Jan. 31, 2017).

⁹ OPPAGA, *Clerks of Court Generally Are Meeting the System's Collections Performance Standards*, Report No. 07-21, (Mar. 2007), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0721rpt.pdf> at p. 4 (last visited Jan. 31, 2017).

¹⁰ OPPAGA, *Information Brief: Court Fine and Fee Collections Can Increase*, Report No. 04-07, (Jan. 2004), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0407rpt.pdf> at p. 5 (last visited Jan. 31, 2017).

¹¹ See s. 1003.21(3), F.S.

- Has been issued a hardship waiver.¹²

In Fiscal Year 2015-2016, the Department of Highway Safety and Motor Vehicles (DHSMV) issued approximately 4,050 DL sanctions for non-compliance with school attendance requirements.¹³ Approximately 60 percent of DL suspensions for non-compliance with school attendance requirements are reinstated in less than one year; however, the majority of the reinstatements are for individuals who reached their eighteenth birthday and were thus, no longer subject to the requirements.¹⁴ As of 2013, 29 states linked minors' driving privileges to school enrollment, attendance, academic performance, or behavior.¹⁵

Worthless Check - Failure to Appear

The court may order the suspension or revocation of a DL if the licensee is being prosecuted for giving worthless checks, drafts, or debit card orders under s. 832.05, F.S., and fails to appear before the court after having been previously adjudicated guilty under the same section.¹⁶ The DHSMV issued 66 DL sanctions in Fiscal Year 2015-2016 for failing to appear on a worthless check charge.¹⁷ The driving privilege is suspended until full payment of any court financial obligations incurred as a result of the warrant or capias issued is received, the cancellation of the warrant or capias from the Department of Law Enforcement is recorded, and a payment of a \$10 fee in addition to the suspension or revocation fee is paid to the DHSMV.¹⁸

Misdemeanor Theft

The court has the option to suspend the DL of a person adjudicated guilty of any misdemeanor violation of theft regardless of the value of the property stolen.¹⁹ The first suspension following an adjudication of guilt for theft is for a period of six months, and a second or subsequent suspension is for a period of one year.²⁰ The DHSMV issued 508 DL sanctions in 2014 for theft.²¹

The court may also suspend, revoke, or withhold issuance of a DL of a minor found guilty of a violation of theft²² as an alternative to sentencing the minor to probation, commitment to the Department of Juvenile Justice, community control, or incarceration if the minor has never previously been convicted of or adjudicated delinquent for any criminal offense.²³

¹² Section 322.091, F.S.

¹³ DHSMV, *Sanctions Created/Effective for FY 15/16* (January 9, 2017) (on file with the Senate Committee on Transportation).

¹⁴ OPPAGA 2014 Report *supra* note 8.

¹⁵ National Conference of State Legislatures (NCSL), *State Statutes Linking Driver's Licenses to School Enrollment, Attendance, Academic Performance, or Behavior* (2013), <http://www.ncsl.org/documents/transportation/DLsgradesattend.pdf> (last visited Jan. 30, 2017).

¹⁶ Section 832.09, F.S., provides the individual is also issued a warrant or capias for failure to appear by the court.

¹⁷ *Supra* note 13.

¹⁸ See s. 322.251(7)(a), F.S., and DHSMV website, *Fee Schedule*, <http://www.flhsmv.gov/fees/> (last visited Jan. 30, 2017).

¹⁹ Section 812.0155, F.S., allows the suspension for a misdemeanor violation under ss. 812.014 or 812.015, F.S.

²⁰ *Id.*

²¹ DHSMV, PowerPoint Presentation to the Florida Senate Committee on Transportation (Sept. 16, 2015). *available at* http://www.flsenate.gov/PublishedContent/Committees/2014-2016/TR/MeetingRecords/MeetingPacket_3156_2.pdf at p. 35 (last visited Jan. 30, 2017).

²² Violation of ss. 812.014 or 812.015, F.S.

²³ Section 812.0155(2), F.S.

Providing Alcohol to Persons Under 21

The court has discretion to order the DHSMV to withhold the issuance of, or suspend or revoke the DL of a person found guilty of violating s. 562.11(1), F.S., which prohibits a person from selling, giving, serving, or permitting service of alcoholic beverages to a person under the age of 21 or permitting a person under the age of 21 to consume an alcoholic beverage on a licensed premise.²⁴ Additionally, a person found guilty of violating this prohibition commits a second-degree misdemeanor, and a person who violates this prohibition a second or subsequent time within one year after a prior conviction commits a first-degree misdemeanor.

Minor Guilty of Certain Alcohol, Drug, or Tobacco Offenses

Section 322.056, F.S., requires a mandatory suspension, revocation, or withholding of a DL for persons under age 18 found guilty of certain alcohol, drug, or tobacco offenses. This penalty is in addition to any other penalty imposed by law.

Alcohol and Drug Offenses

The court must direct the DHSMV to revoke or withhold the issuance of driving privileges if a minor, who is eligible by reason of age for driving privileges, is guilty of:

- A violation of s. 562.11(2), F.S., misrepresenting his or her age or the age of another for the purpose of obtaining alcoholic beverages;
- A violation of s. 562.111, F.S., possession of alcoholic beverages by a person under age 21; or
- A violation of the Florida Comprehensive Drug Abuse Prevention and Control Act.²⁵

The DL or driving privilege is revoked or withheld for not less than six months or more than one year for a first violation, and two years for a second or subsequent violation. However, the court may direct the DHSMV to issue a hardship license if the person is otherwise qualified for such a license.²⁶

Tobacco and Nicotine Offenses

Section 569.11, F.S., prohibits a minor from knowingly possessing any tobacco product or misrepresenting his or her age to obtain a tobacco product. Additionally, a minor is prohibited from possessing nicotine products, possessing nicotine-dispensing devices, or misrepresenting age to obtain these products or devices.²⁷ A violation of these sections is a noncriminal violation punishable by:

- For a first violation or subsequent violation not within 12 weeks of the first: 16 hours of community service or a \$25 fine, and the minor must attend a school-approved anti-tobacco and nicotine program, if locally available;
- For a second violation within 12 weeks of the first: A \$25 fine, and
- For a third or subsequent violation within 12 weeks of the first violation: Suspension or withholding issuance of a DL or driving privilege for 60 consecutive days.

²⁴ Section 322.057, F.S.

²⁵ Chapter 893, F.S.

²⁶ Section 322.056(1), F.S.

²⁷ Sections 877.112(6) and (7), F.S.

If a minor, eligible by reason of age for driving privileges, fails to comply with the penalty, the court must revoke or withhold issuance of the driving privilege of the minor for a period of:²⁸

- 30 days for the first violation or a subsequent violation not within 12 weeks of the first;
- 45 days for a second violation within 12 weeks of the first; or
- 60 consecutive days for a third violation within 12 weeks of the first.

A Minor Guilty of Unlawful Possession of Firearms

Section 790.22, F.S., prohibits a minor from possessing certain weapons and firearms. A person under the age of 18 may not possess a loaded firearm, unless the minor is at least 16 years of age or being supervised by an adult, and engaged in lawful hunting, marksmanship competitions or practice, or other lawful recreational shooting activities. A minor who violates this prohibition commits a first degree misdemeanor for the first offense and may serve a detention period of up to three days, shall be required to perform community service, and have his or her DL or privilege to drive revoked or withheld for up to one year. A second or subsequent offense is a third degree felony, and up to a 15-day detention period, community service, and DL or privilege to drive is revoked or withheld for up to two years.

A minor who commits any other offense involving the use or possession of a firearm, in addition to the penalties provided by that offense and the penalties in s. 790.22(9), F.S., will also have his or her DL or privilege to drive revoked or withheld for up to one year for a first offense and up to two years for a second or subsequent offense.²⁹

Graffiti

A minor found to have illegally placed graffiti on any public or private property, in addition to any other penalty provided by law, will have his or her DL or privilege to drive revoked or withheld for a period of not more than one year.³⁰

Drug Convictions

Federal Law requires the state to enact and enforce “[A] law that requires in all circumstances, or requires in the absence of compelling circumstances warranting an exception...” the driver license of any individual convicted of any drug offense be suspended for at least six months.³¹ A percentage of federal highway funding given to the state is contingent upon this law. A state may opt-out of the law if the State Governor submits both written certification stating he is opposed to the enforcement of this law and certification from the State Legislature that it has adopted a resolution expressing opposition to the law. As of December 2016, 38 states either have eliminated automatic driver license suspensions for drug convictions or have passed a resolution to opt-out of this law.³²

²⁸ Sections 322.056(2) and (3), F.S.

²⁹ Section 790.22(10), F.S.

³⁰ Section 806.13(7), F.S.

³¹ 23 U.S.C. s. 159 (2011).

³² Prison Policy Initiative, *Reinstating Common Sense: How driver’s license suspensions for drug offenses unrelated to driving are falling out of favor* (Dec. 2016) available at https://www.prisonpolicy.org/driving/national.html#recent_reforms (last visited Jan. 31, 2017).

Under Florida Law, the court is required to direct the DHSMV to suspend, revoke, or withhold the issuance of the DL of a person 18 years or older who is convicted of a drug offense.³³ The privilege to drive is unavailable for one year or until the person is evaluated for and, if deemed necessary, completes a drug treatment and rehabilitation program approved or regulated by the Department of Children and Families. The court has the discretion to direct the DHSMV to issue a hardship license, which is available after six months of suspension of the driving privilege, or a driver may petition the DHSMV for restoration of restricted or unrestricted driving privileges after six months.

In 2014, the Legislature passed a bill, which was signed into law, reducing the length of suspension of a DL from two years to one year for individuals convicted of drug offenses.³⁴

The DHSMV issued approximately 17,809 DL sanctions for violation of a controlled substance in Fiscal Year 2015-2016.³⁵

Suspensions Initiated by the Clerk of Court

The majority, over 1.5 million in 2014 and 1.35 million in Fiscal Year 2015-2016, of notices of suspension issued by the DHSMV are a result of requests initiated by a clerk of the court.³⁶ Most originate from “failure to comply” or “failure to pay” offenses, actions that are not necessarily indicative of the violator’s ability to operate a motor vehicle safely.

Suspension for Failure to Comply with Civil Penalties or to Appear

An individual who is issued a noncriminal traffic citation, who is not required to appear before the court, has 30 days to comply with the penalty (i.e., pay the fine), enter into a penalty payment plan with the clerk of court, or request a hearing before the court.³⁷

If an individual does not comply with the civil penalty, enter into a payment plan, attend driver improvement school (if ordered), or appear at a scheduled hearing, the clerk of court must issue notice of failure to the DHSMV within 10 days.³⁸ Upon receiving the notice of failure, the DHSMV immediately issues an order suspending the driving privilege of the individual effective 20 days after the order of suspension is mailed to the individual.³⁹ The DL and driving privilege are suspended until the driver meets the court requirements for reinstatement, and pays a \$60 reinstatement fee.⁴⁰

Section 322.245, F.S., provides that the clerk of court shall mail a notice of failure, within five days after the failure, to a person charged with a violation of any criminal offense enumerated in

³³ Section 322.055, F.S.

³⁴ See ch. 2014-216, s. 28, Laws of Fla.

³⁵ DHSMV, *Sanctions Created/Effective for FY 15/16* (January 9, 2017) (on file with the Senate Committee on Transportation).

³⁶ See *Id.* and DHSMV PowerPoint Presentation, *supra* note 21 at p. 33.

³⁷ Section 318.14, F.S.

³⁸ Section 318.15, F.S.

³⁹ Notice of cancellation, suspension, revocation, or disqualification of a driver license must be mailed in accordance with s. 322.251, F.S.

⁴⁰ DHSMV PowerPoint, *supra* note 21 at p. 30.

s. 318.17, F.S., or a misdemeanor offense under chs. 320 or 322, F.S., who fails to comply with all directives of the court within the time allotted. The notice indicates the individual has 30 days from the date of the notice to comply with the court directives and pay a delinquency fee up to \$25, or his or her DL will be suspended. Upon failure to comply with the court directives within the 30-day period, the clerk of court must notify the DHSMV of such failure within 10 days. Upon receiving the notice of failure, the DHSMV immediately issues an order suspending the driving privilege of the individual effective 20 days after the order of suspension is mailed to the individual.

In Fiscal Year 2015-2016, 750,772 DL sanctions were issued for “failure to comply”. As of January 1, 2017, 421,070 of these were reinstated.⁴¹

Suspension for Failure to Pay Court Financial Obligations

When a clerk of court provides notification to the DHSMV that a person has failed to pay financial obligations for *any* criminal offense, in full or in part under a payment plan with the clerk of court, the DHSMV will suspend the DL of the person until:⁴²

- The person has satisfied the financial obligation in full or made all payments currently due under a payment plan;
- The person has entered into a written agreement for payment of the financial obligation if not presently enrolled in a payment plan; or
- A court has entered an order granting relief to the person ordering reinstatement of the DL.

OPPAGA reported that a large percentage of licenses suspended for failure to pay court obligations are not reinstated for at least two years, and some are not reinstated in over five years.⁴³ In Fiscal Year 2015-2016, approximately 91,834 DL sanctions were issued for financial obligations.

Payment Plans

The clerk of court is required to accept partial payment of court-related fees, service charges, costs, or fines in accordance with the terms of an established payment plan.⁴⁴ The court may review the reasonableness of the payment plan. A monthly payment amount is “presumed to correspond to the person’s ability to pay if the amount does not exceed two percent of the person’s annual net income,” divided by 12.⁴⁵ The Brennan Center for Justice has indicated this presumption is often ignored and payment levels are set at fixed amounts.⁴⁶ Payment plan fees are \$5 per transaction or a \$25 one-time set-up fee.⁴⁷

⁴¹ DHSMV, *Sanctions Created/Effective for FY 15/16* (January 9, 2017) (on file with the Senate Committee on Transportation).

⁴² Section 322.245(5), F.S.

⁴³ OPPAGA 2014 report, *supra* note 8 at p. 8.

⁴⁴ Section 28.246(4), F.S.

⁴⁵ *Id.*

⁴⁶ Brennan Center for Justice, *Criminal Justice Debt: A Barrier to Reentry*, (2010), available at <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf> at p. 14 (last visited Jan. 30, 2017).

⁴⁷ Section 28.24(26), F.S.

Collection of Fees, Service Charges, Fines, Courts Costs, and Liens

Section 28.246(6), F.S., provides a clerk of court must pursue the collection of any unpaid financial obligations to the court which remain unpaid after 90 days by referring the account to a private attorney or collection agent.⁴⁸ The clerk of court must have attempted to collect the unpaid obligation through a collection court, collections docket, or any other collections process established by the court prior to referring the account to a private attorney or collections agent, find the referral to be cost-effective, and follow any applicable procurement processes. A collection fee may be added to the balance owed of up to 40 percent of the amount owed at the time the account is referred to the attorney or agent for collection.

Penalties and Fees

Driving While License is Suspended or Revoked (DWLSR) Penalties

Section 322.34, F.S., provides penalties for individuals driving while their DL is suspended, revoked, canceled, or disqualified. A person, excluding a habitual traffic offender⁴⁹, whose DL has been canceled, suspended, or revoked is guilty of a moving violation if driving a motor vehicle while *unaware* of the DL sanction. A person, excluding a “habitual traffic offender,” who *knowingly* drives a motor vehicle while his or her DL is invalid is guilty of:

- A second degree misdemeanor for the first conviction;
- A first degree misdemeanor for a second conviction; and
- A third degree felony for a third or subsequent conviction.

However, if a person does not have a prior forcible felony⁵⁰ conviction, and knowingly drives with a DL that is canceled, suspended, or revoked for failing to:

- Pay child support or certain financial obligations;
- Comply with a civil penalty required in s. 318.15, F.S.;
- Maintain adequate automobile insurance as required in ch. 324, F.S.; or
- Comply with attendance requirements;

then the person may be penalized with a second-degree misdemeanor, which is increased to a first-degree misdemeanor for a second or subsequent conviction.

Driver License Reinstatement Fees

Section 322.21(8), F.S., requires a person who applies for reinstatement following a DL suspension or revocation to pay a service fee of \$45 following a suspension and \$75 following a revocation, in addition to the \$25 fee to replace their license if necessary. “Failure to comply”

⁴⁸ A private attorney must be a member in good standing with The Florida Bar, and the collection agent must be registered and in good standing pursuant to ch. 559, F.S.

⁴⁹ Section 322.264, F.S., defines a “habitual traffic offender” as having at least three convictions arising out of separate acts of: manslaughter resulting from the operation of a motor vehicle; driving under the influence; any felony offense using a motor vehicle; driving while license is suspended or revoked; failing to stop and render aid as required; or driving a commercial motor vehicle while privilege is disqualified; or has accumulated 15 convictions of moving traffic offenses for which points may be assessed within a five-year period.

⁵⁰ Section 776.08, F.S., defines “forcible felony” as “treason; murder; manslaughter; sexual battery; carjacking; home invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.”

suspensions require a \$60 reinstatement fee. Additionally, the county tax collectors are required to charge a service fee of \$6.25, when providing services in ch. 322, F.S., including DL reinstatements.⁵¹

Community Service Option in Lieu of Payment

A person ordered to pay a civil penalty for a noncriminal traffic infraction who is unable to comply with the court's order due to demonstrable financial hardship must be allowed, by the court, to satisfy the civil penalty by participating in community service.⁵² The penalty is reduced based on the hourly rate of community service performed. The specified hourly credit rate is the federal minimum wage⁵³, currently \$7.25, or the average prevailing wage rate for a trade or profession that the community service agency needs.⁵⁴

Similarly, the court may require a person liable for payment of a financial obligation in a criminal case to appear before the court and be examined under oath concerning the person's ability to pay the obligation. The court may convert statutory financial obligations into community service after determining the person's inability to pay.⁵⁵

The Florida Court Clerks and Comptrollers reported in Fiscal Year 2015-2016, that \$5,473,066 of the \$828,941,077 court-related fines, fees, penalties, charges, or costs assessed by the courts statewide had been converted to community service.⁵⁶

III. Effect of Proposed Changes:

The bill makes changes to the Florida Statutes in order to reduce the amount of driver license (DL) suspensions and revocations for non-driving-related offenses, reduce the financial burden of DL suspensions, and reduce the severity of suspension-related penalties.

Non-Driving-Related DL Suspensions and Revocations

The bill removes suspension or revocation of a DL from the potential penalties that may be applied for the following offenses:

- A minor who does not meet school attendance requirements;
- A person who fails to appear in a worthless check case;
- A person found guilty of misdemeanor theft;
- A person who provides alcohol to anyone under 21 years of age;
- A minor possessing alcohol, tobacco, tobacco products, or nicotine products, or misrepresenting age to obtain them;

⁵¹ Section 322.135(1)(c), F.S.

⁵² Section 318.18(8)(b), F.S.

⁵³ As specified in 29 U.S.C. s. 206(a)(1) under the Federal Fair Labor Standards Act of 1938.

⁵⁴ Section 318.18(8)(b)2., F.S.

⁵⁵ Section 938.30(2), F.S.

⁵⁶ Florida Court Clerks and Comptrollers, *2016 Annual Assessments and Collections Report*, available at http://www.flclerks.com/resource/resmgr/publicationsanddocuments/2016_Fl_Court_Clerks_and_Com.zip at p. 8 (last visited Jan. 31, 2017).

- A minor illegally possessing a firearm; and
- A minor found guilty of graffiti.

The bill retains the 30-day and 45-day DL suspension for minors who do not comply with the penalties for tobacco and nicotine offenses, however, this penalty is at the court's discretion rather than mandatory.

Drug Convictions

The bill reduces the length of the suspension period for a drug conviction from one year to six months for persons over the age of 18, and reduces the suspension period to six months for minors convicted of drug offenses.

The bill deletes provisions allowing individuals to petition the DHSMV for a hardship license after six months of their suspension because the bill reduces the suspension period to six months.

Failure to Comply and Failure to Pay Court Financial Obligations Suspensions

Sections 318.15 and 322.245, F.S., are amended to provide that a person's DL may not be suspended solely for failure to pay a penalty or court financial obligation if the person demonstrates to the court that he or she is unable to pay. After notice of the penalty but before the suspension takes place, the person must request a court hearing and provide evidence he or she is unable to pay after receiving the penalty.

The bill excludes failure to pay child support in non-IV-D cases from this change because a similar process already exists for individuals involved in such cases to prove inability to pay using the criteria bulleted above.⁵⁷

The bill also allows a person whose DL or privilege to drive has been suspended under either of these sections, with the exception of suspensions related to non-payment of child support, to apply to the DHSMV to have his or her DL reinstated on a restricted basis. The restricted license is valid until the seven-year suspension period ends for failure to pay or comply penalties under s. 318.15, F.S., or until the debt is paid.

Payment Plans with the Clerk of the Circuit Court (Clerk of Court)

Section 28.246(4), F.S., is amended to provide that a monthly payment plan with the clerk of court may not exceed two percent of the person's annual net income, divided by 12, without the consent of the applicant.

In addition, the bill requires that uniform traffic citation forms must include language indicating that a person may enter into a payment plan with the clerk of court to pay the penalty.

⁵⁷ See s. 61.13016, F.S.

Collection of Fees, Service Charges, Fines, Courts Costs, and Liens by Clerk of Court

The bill amends s. 28.246(6), F.S., regarding referring accounts to private attorneys or collection agents. The clerk of court must competitively bid a contract to procure a collection agent or private attorney by considering all pertinent criteria, including, but not limited to, performance quality and customer service. The contract with a collection agent or private attorney may be in effect for no longer than three years with the opportunity to make a maximum of two one-year extensions. The clerk of court is prohibited from assessing any collection surcharges to the account, and the collection agent or private attorney may not impose any additional fees or surcharges other than the contractually agreed upon surcharge.

Community Service Option in Lieu of Payment

The bill adds that the uniform traffic citation form must include language indicating that a person ordered to pay a noncriminal traffic infraction penalty who is unable to comply due to demonstrable hardship will be allowed by the court to satisfy payment by participating in community service. Additionally, if a person is ordered to pay a civil penalty for a noncriminal infraction in court, the court shall inquire regarding the person's ability to pay at the time the civil penalty is ordered.

The bill amends s. 27.52, F.S., concerning the application a person claiming indigent status makes to the clerk of court in order to receive a public defender. The bill provides that the person must make an election of or refusal of the option to fulfill any court-ordered financial obligation associated with his or her case by completion of community service if offered by the court. For financial obligations in criminal cases, the judge *may* rely on this information as a factor in determining the person's inability to pay court financial obligations when converting statutory financial obligations into court-ordered community service.

Effective Date

Information regarding payment plans and community service options to be added to the uniform traffic citation form will be added upon the creation of new inventory, which allows the DHSMV to deplete the current stock.

The bill takes effect October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18, Florida Constitution, provides that a mandate may exist if a law reduces the authority that counties or municipalities have to raise revenues in the aggregate. Local government tax collectors and clerks retain a portion of driver license (DL) reinstatement fees for DL suspensions and revocations possibly eliminated or reduced by this bill. However, the bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will have a positive impact on individuals who may have otherwise had their driver license (DL) suspended or revoked, or who will be eligible to receive a hardship license if their DL is suspended.

C. Government Sector Impact:

The bill will have an indeterminate negative fiscal impact to state and local government.

The Revenue Estimating Conference estimated the removal of suspension penalties for non-driving-related offenses (sections 7-10, 12, and 15-22) will reduce state and local government revenues by \$1.5 million each year for Fiscal Years 2017-2018 through 2020-2021, which will affect the General Revenue Fund, Highway Safety Operating Trust Fund, and local funds.⁵⁸

The Office of Economic and Demographic Research was unable to determine the impact of the bill on suspensions for “failure to comply” and “failure to pay court obligations” (sections 4 and 11). The Revenue Impact Conference determined that these two sections will reduce state and local revenues by an indeterminate amount.⁵⁹ The Office of the State Courts Administrator could not estimate the workload associated with persons requesting court hearings to demonstrate their inability to pay a penalty resulting in DL suspension. According to the office, there may be opportunities to manage or reduce the impact by consolidating the hearings with community service hearings.⁶⁰

The bill’s sections related to the community service option in lieu of payment (sections 1, 3, 5 and 23) and payment plans (section 2) will have an indeterminate impact on clerk revenues, according to the Revenue Impact Conference. If more individuals opt to

⁵⁸ The Office of Economic and Demographic Research, The Florida Legislature, *Revenue Estimating Impact Conference, CS SB 302*, (March 31, 2017). http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/Impact0331.pdf (Last visited Apr. 6, 2017).

⁵⁹ *Id.*

⁶⁰ Email from Sarah Naf Biehl, Chief of Legislative Affairs, Office of the State Court Administrator (April 12, 2017) (on file with the Senate Appropriations Subcommittee on Criminal and Civil Justice).

participate in community service rather than pay penalties, the bill will reduce revenues to the clerks who retain a portion of DL reinstatement fees, in addition to other fees associated with DL suspensions and revocations. The Revenue Impact Conference was unable to quantify the potential reduction in clerk revenues due to the community service provisions. Additionally, it is unknown how the bill's provisions strengthening payment plans and the competitive bidding process for collection agents or attorneys will affect the clerks' revenues.

In its analysis of last year's version of this bill, the clerks estimated that the cost to comply with the provisions of last year's bill related to the monitoring and management of the payment plans would be approximately \$7.5 million in additional full time equivalent positions (FTEs) and IT costs.⁶¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 27.52, 28.246, 316.650, 318.15, 318.18, 322.055, 322.056, 322.09, 322.245, 322.251, 322.271, 322.34, 562.11, 562.111, 569.11, 790.22, 806.13, 877.112, 938.30, and 1003.27.

This bill amends the following sections of the Florida Statutes to conform to changes made by this act: 318.14, 322.05, 322.27, and 1003.01.

This bill repeals the following sections of the Florida Statutes: 322.057, 322.091, 812.0155, and 832.09.

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 13, 2017:

The CS makes changes to the bill regarding the process for demonstrating a person is unable to pay a penalty that may result in a suspended driver license. Specifically, the CS:

- Removes from the bill that the clerk of court is the recipient of documentation evidencing the person's inability to pay;

⁶¹ Letter from the Florida Court Clerks and Comptrollers (January 12, 2016) (on file with the Senate Committee on Transportation).

- Adds language that a person who claims to be unable to pay must request a court hearing to demonstrate this fact; and
- Removes from the bill criteria of what evidence demonstrates an individual's inability to pay.

CS by Transportation on February 7, 2017:

The CS makes changes to the bill regarding referring unpaid accounts to private attorneys or collection agents. Specifically, the CS:

- Removes from the bill that the clerk of court *may* pursue collections for an account by referring the account to a private attorney or collection agent, only after first attempting to collect the unpaid amount through other collection processes;
- Removes "collection fees" as being one criteria clerks must consider when evaluating competitive bids to procure collection agents or private attorneys; and
- Removes from current law that the collection fee, which may not exceed 40 percent, includes any attorney fees paid to an attorney or collection agent, since the bill adds that the private attorney or collection agent may not impose any additional fees other than the contractually agreed-upon amount.

B. Amendments:

None.



701486

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/14/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 247 - 271

and insert:

(4) Notwithstanding any other law, a person's driver license may not be suspended solely for a failure to pay a penalty if the person requests a hearing and demonstrates to the court, after notice of the penalty and before the suspension takes place, that the person is unable to pay the penalty.



701486

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

12 And the title is amended as follows:

13 Delete lines 16 - 23

14 and insert:

15 of a penalty; amending s. 318.15, F.S.; prohibiting
16 the suspension of a person's driver license solely for
17 failure to pay a penalty if the person requests a
18 hearing and demonstrates to the court, after notice of
19 the penalty and before the suspension takes place,
20 that the person is unable to pay the penalty; amending
21 s. 318.18, F.S.; requiring a



298474

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/14/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 529 - 556

and insert:

(6) Notwithstanding any other law, a person's driver license may not be suspended solely for a failure to pay a penalty if the person requests a hearing and demonstrates to the court, after notice of the penalty and before the suspension takes place, that the person is unable to pay the penalty.



298474

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

12 And the title is amended as follows:

13 Delete lines 52 - 59

14 and insert:

15 322.245, F.S.; prohibiting the suspension of a
16 person's driver license solely for a failure to pay a
17 penalty if the person requests a hearing and
18 demonstrates to the court, after notice of the penalty
19 and before the suspension takes place, that the person
20 is unable to pay the penalty; repealing s. 322.251(7),

By the Committee on Transportation; and Senators Brandes,
Rouson, and Young

596-01727-17

2017302c1

1 A bill to be entitled
2 An act relating to penalties and fees; amending s.
3 27.52, F.S.; adding a financial information
4 requirement for a certain application form; amending
5 s. 28.246, F.S.; revising requirements relating to the
6 payment of court-related fines or other monetary
7 penalties, fees, charges, and costs; requiring a clerk
8 of court to solicit competitive bids from private
9 attorneys or collection agents for collection
10 services, subject to certain requirements; prohibiting
11 the clerk from assessing a certain surcharge;
12 prohibiting the collection agency or private attorney
13 from imposing certain additional fees or surcharges;
14 amending s. 316.650, F.S.; requiring traffic citation
15 forms to include certain language relating to payment
16 of a penalty; amending s. 318.15, F.S.; prohibiting
17 the suspension of a person's driver license solely for
18 failure to pay a penalty if the person demonstrates to
19 the court, when specified, that he or she is unable to
20 pay such penalty; requiring the person to provide
21 documentation meeting certain requirements to the
22 appropriate clerk of court in order to be considered
23 unable to pay; amending s. 318.18, F.S.; requiring a
24 court to inquire at the time a certain civil penalty
25 is ordered whether the person is able to pay it;
26 amending s. 322.055, F.S.; decreasing the period for
27 revocation or suspension of, or delay of eligibility
28 for, driver licenses or driving privileges for certain
29 persons convicted of certain drug offenses; deleting
30 provisions authorizing a driver to petition the
31 Department of Highway Safety and Motor Vehicles for

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

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32 restoration of his or her driving privilege; amending
33 s. 322.056, F.S.; decreasing the period for revocation
34 or suspension of, or delay of eligibility for, driver
35 licenses or driving privileges for certain persons
36 found guilty of certain drug offenses; deleting a
37 provision authorizing a court to direct the department
38 to issue a license for certain restricted driving
39 privileges under certain circumstances; deleting
40 requirements relating to the revocation or suspension
41 of, or delay of eligibility for, driver licenses or
42 driving privileges for certain persons found guilty of
43 certain alcohol or tobacco offenses; repealing s.
44 322.057, F.S., relating to discretionary revocation or
45 suspension of a driver license for certain persons who
46 provide alcohol to persons under a specified age;
47 amending s. 322.09, F.S.; deleting a provision
48 prohibiting the issuance of a driver license or
49 learner's driver license under certain circumstances;
50 repealing s. 322.091, F.S., relating to attendance
51 requirements for driving privileges; amending s.
52 322.245, F.S.; prohibiting the suspension of a
53 person's driver license solely for failure to pay a
54 penalty if the person demonstrates to the court, when
55 specified, that he or she is unable to pay such
56 penalty; providing applicability; requiring the person
57 to provide documentation meeting certain requirements
58 to the appropriate clerk of court in order to be
59 considered unable to pay; repealing s. 322.251(7),
60 F.S., relating to notice of suspension or revocation

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

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61 of driving privileges, reasons for reinstatement of
 62 such driving privileges, and certain electronic access
 63 to identify a person who is the subject of an
 64 outstanding warrant or capias for passing worthless
 65 bank checks; amending s. 322.271, F.S.; providing that
 66 a person whose driver license or privilege to drive
 67 has been suspended may have his or her driver license
 68 or driving privilege reinstated on a restricted basis
 69 under certain circumstances; providing the period of
 70 validity of such restricted license; amending s.
 71 322.34, F.S.; revising the underlying violations
 72 resulting in driver license or driving privilege
 73 cancellation, suspension, or revocation for which
 74 specified penalties apply; amending s. 562.11, F.S.;
 75 revising penalties for selling, giving, serving, or
 76 permitting to be served alcoholic beverages to a
 77 person under a specified age or permitting such person
 78 to consume such beverages on licensed premises;
 79 conforming provisions to changes made by the act;
 80 repealing s. 562.111(3), F.S., relating to withholding
 81 issuance of, or suspending or revoking, a driver
 82 license or driving privilege for possession of
 83 alcoholic beverages by persons under a specified age;
 84 amending s. 569.11, F.S.; revising penalties for
 85 persons under a specified age who knowingly possess,
 86 misrepresent their age or military service to
 87 purchase, or purchase or attempt to purchase tobacco
 88 products; authorizing, rather than requiring, the
 89 court to direct the Department of Highway Safety and

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90 Motor Vehicles to withhold issuance of or suspend a
 91 person's driver license or driving privilege for
 92 certain violations; amending s. 790.22, F.S.; revising
 93 penalties relating to suspending, revoking, or
 94 withholding issuance of driver licenses or driving
 95 privileges for minors under a specified age who
 96 possess firearms under certain circumstances; deleting
 97 provisions relating to penalties for certain offenses
 98 involving the use or possession of a firearm by a
 99 minor under a specified age; amending s. 806.13, F.S.;
 100 deleting provisions relating to certain penalties for
 101 criminal mischief by a minor; repealing s. 812.0155,
 102 F.S., relating to suspension of a driver license
 103 following an adjudication of guilt for theft;
 104 repealing s. 832.09, F.S., relating to suspension of a
 105 driver license after warrant or capias is issued in
 106 worthless check cases; amending s. 877.112, F.S.;
 107 revising penalties for persons under a specified age
 108 who knowingly possess, misrepresent their age or
 109 military service to purchase, or purchase or attempt
 110 to purchase any nicotine product or nicotine
 111 dispensing device; authorizing, rather than requiring,
 112 the court to direct the department to withhold
 113 issuance of or suspend a person's driver license or
 114 driving privilege for certain violations; amending s.
 115 938.30, F.S.; authorizing a judge to convert certain
 116 statutory financial obligations into court-ordered
 117 obligations to perform community service by reliance
 118 upon specified information under certain

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119 circumstances; amending s. 1003.27, F.S.; deleting
 120 provisions relating to procedures and penalties for
 121 nonenrollment and nonattendance cases; amending ss.
 122 318.14, 322.05, 322.27, and 1003.01, F.S.; conforming
 123 provisions to changes made by the act; providing
 124 applicability; providing an effective date.

125
 126 Be It Enacted by the Legislature of the State of Florida:

127
 128 Section 1. Paragraph (a) of subsection (1) of section
 129 27.52, Florida Statutes, is amended to read:

130 27.52 Determination of indigent status.—

131 (1) APPLICATION TO THE CLERK.—A person seeking appointment
 132 of a public defender under s. 27.51 based upon an inability to
 133 pay must apply to the clerk of the court for a determination of
 134 indigent status using an application form developed by the
 135 Florida Clerks of Court Operations Corporation with final
 136 approval by the Supreme Court.

137 (a) The application must include, at a minimum, the
 138 following financial information:

139 1. Net income, consisting of total salary and wages, minus
 140 deductions required by law, including court-ordered support
 141 payments.

142 2. Other income, including, but not limited to, social
 143 security benefits, union funds, veterans' benefits, workers'
 144 compensation, other regular support from absent family members,
 145 public or private employee pensions, reemployment assistance or
 146 unemployment compensation, dividends, interest, rent, trusts,
 147 and gifts.

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148 3. Assets, including, but not limited to, cash, savings
 149 accounts, bank accounts, stocks, bonds, certificates of deposit,
 150 equity in real estate, and equity in a boat or a motor vehicle
 151 or in other tangible property.

152 4. All liabilities and debts.

153 5. If applicable, the amount of any bail paid for the
 154 applicant's release from incarceration and the source of the
 155 funds.

156 6. The election of or refusal of the option to fulfill any
 157 court-ordered financial obligation associated with the case by
 158 the completion of community service as ordered by the court.

159
 160 The application must include a signature by the applicant which
 161 attests to the truthfulness of the information provided. The
 162 application form developed by the corporation must include
 163 notice that the applicant may seek court review of a clerk's
 164 determination that the applicant is not indigent, as provided in
 165 this section.

166 Section 2. Subsections (4) and (6) of section 28.246,
 167 Florida Statutes, are amended to read:

168 28.246 Payment of court-related fines or other monetary
 169 penalties, fees, charges, and costs; partial payments;
 170 distribution of funds.—

171 (4) The clerk of the circuit court shall accept partial
 172 payments for court-related fees, service charges, costs, and
 173 fines in accordance with the terms of an established payment
 174 plan. An individual seeking to defer payment of fees, service
 175 charges, costs, or fines imposed by operation of law or order of
 176 the court under any provision of general law shall apply to the

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177 clerk for enrollment in a payment plan. ~~The clerk shall enter~~
 178 ~~into a payment plan with an individual who the court determines~~
 179 ~~is indigent for costs.~~ A monthly payment amount, calculated
 180 based upon all fees and all anticipated costs, ~~may is presumed~~
 181 ~~to correspond to the person's ability to pay if the amount does~~
 182 not exceed 2 percent of the person's annual net income, as
 183 defined in s. 27.52(1), divided by 12, without the consent of
 184 the applicant. The court may review the reasonableness of the
 185 payment plan.

186 (6) (a) A clerk of court shall pursue the collection of any
 187 fees, service charges, fines, court costs, and liens for the
 188 payment of attorney fees and costs pursuant to s. 938.29 which
 189 remain unpaid after 90 days by referring the account to a
 190 private attorney who is a member in good standing of The Florida
 191 Bar or collection agent who is registered and in good standing
 192 pursuant to chapter 559. In pursuing the collection of such
 193 unpaid financial obligations through a private attorney or
 194 collection agent, the clerk of the court must have attempted to
 195 collect the unpaid amount through a collection court,
 196 collections docket, or other collections process, if any,
 197 established by the court, find this to be cost-effective and
 198 follow any applicable procurement practices.

199 (b) In retaining a private attorney or collection agent as
 200 provided in this subsection, the clerk shall solicit competitive
 201 bids from private attorneys or collection agents. The contract
 202 awarded to the successful bidder may be in effect for no longer
 203 than 3 years, with a maximum of two 1-year extensions.

204 (c) The clerk shall consider all pertinent criteria when
 205 considering bids, including, but not limited to, performance

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206 quality and customer service. The collection fee paid to the
 207 private attorney or collection agent, ~~including any reasonable~~
 208 ~~attorney's fee, paid to any attorney or collection agent~~
 209 retained by the clerk may be added to the balance owed in an
 210 amount not to exceed 40 percent of the amount owed at the time
 211 the account is referred to the attorney or agent for collection.

212 (d) The clerk may not assess any surcharge to refer the
 213 account to a private attorney or an agent for collection.

214 (e) The private attorney or collection agent may not impose
 215 any additional fees or surcharges other than the contractually
 216 agreed-upon amounts.

217 (f) The clerk shall give the private attorney or collection
 218 agent the application for the appointment of court-appointed
 219 counsel regardless of whether the court file is otherwise
 220 confidential from disclosure.

221 Section 3. Present paragraphs (b), (c), and (d) of
 222 subsection (1) of section 316.650, Florida Statutes, are
 223 redesignated as paragraphs (c), (d), and (e), respectively, a
 224 new paragraph (b) is added to that subsection, and present
 225 paragraph (c) of that subsection is amended, to read:

226 316.650 Traffic citations.—

227 (1)

228 (b) The traffic citation form must include language
 229 indicating that a person may enter into a payment plan with the
 230 clerk of court to pay a penalty. The form must also indicate
 231 that a person ordered to pay a penalty for a noncriminal traffic
 232 infraction and who is unable to comply due to demonstrable
 233 financial hardship will be allowed by the court to satisfy the
 234 payment by participating in community service pursuant to s.

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235 318.18(8)(b).

236 (d)~~(e)~~ Notwithstanding paragraphs (a) and (c) ~~(b)~~, a
 237 traffic enforcement agency may produce uniform traffic citations
 238 by electronic means. Such citations must be consistent with the
 239 state traffic court rules and the procedures established by the
 240 department and must be appropriately numbered and inventoried.
 241 Affidavit-of-compliance forms may also be produced by electronic
 242 means.

243 Section 4. Subsection (4) is added to section 318.15,
 244 Florida Statutes, to read:

245 318.15 Failure to comply with civil penalty or to appear;
 246 penalty.—

247 (4) Notwithstanding any other law, a person's driver
 248 license may not be suspended solely for failure to pay a penalty
 249 if the person demonstrates to the court, after notice of the
 250 penalty and before the suspension takes place, that he or she is
 251 unable to pay the penalty. A person is considered unable to pay
 252 if he or she provides documentation to the appropriate clerk of
 253 court evidencing that:

254 (a) The person receives reemployment assistance or
 255 unemployment compensation pursuant to chapter 443;

256 (b) The person is disabled and incapable of self-support or
 257 receives benefits under the federal Supplemental Security Income
 258 program or Social Security Disability Insurance program;

259 (c) The person receives temporary cash assistance pursuant
 260 to chapter 414;

261 (d) The person is making payments in accordance with a
 262 confirmed bankruptcy plan under chapter 11, chapter 12, or
 263 chapter 13 of the United States Bankruptcy Code, 11 U.S.C. ss.

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264 101 et seq.;

265 (e) The person has been placed on a payment plan or payment
 266 plans with the clerk of court which in total exceed what is
 267 determined to be a reasonable payment plan pursuant to s.
 268 28.246(4); or

269 (f) The person has been determined to be indigent after
 270 filing an application with the clerk in accordance with s. 27.52
 271 or s. 57.082.

272 Section 5. Paragraph (b) of subsection (8) of section
 273 318.18, Florida Statutes, is amended to read:

274 318.18 Amount of penalties.—The penalties required for a
 275 noncriminal disposition pursuant to s. 318.14 or a criminal
 276 offense listed in s. 318.17 are as follows:

277 (8)

278 (b)1.a. If a person has been ordered to pay a civil penalty
 279 for a noncriminal traffic infraction and the person is unable to
 280 comply with the court's order due to demonstrable financial
 281 hardship, the court shall allow the person to satisfy the civil
 282 penalty by participating in community service until the civil
 283 penalty is paid.

284 b. The court shall inquire at the time the civil penalty is
 285 ordered whether the person is able to pay it.

286 c. If a court orders a person to perform community service,
 287 the person shall receive credit for the civil penalty at the
 288 specified hourly credit rate per hour of community service
 289 performed, and each hour of community service performed shall
 290 reduce the civil penalty by that amount.

291 2.a. As used in this paragraph, the term "specified hourly
 292 credit rate" means the wage rate that is specified in 29 U.S.C.

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293 s. 206(a)(1) under the federal Fair Labor Standards Act of 1938,
294 that is then in effect, and that an employer subject to such
295 provision must pay per hour to each employee subject to such
296 provision.

297 b. However, if a person ordered to perform community
298 service has a trade or profession for which there is a community
299 service need, the specified hourly credit rate for each hour of
300 community service performed by that person shall be the average
301 prevailing wage rate for the trade or profession that the
302 community service agency needs.

303 3.a. The community service agency supervising the person
304 shall record the number of hours of community service completed
305 and the date the community service hours were completed. The
306 community service agency shall submit the data to the clerk of
307 court on the letterhead of the community service agency, which
308 must also bear the notarized signature of the person designated
309 to represent the community service agency.

310 b. When the number of community service hours completed by
311 the person equals the amount of the civil penalty, the clerk of
312 court shall certify this fact to the court. Thereafter, the
313 clerk of court shall record in the case file that the civil
314 penalty has been paid in full.

315 4. As used in this paragraph, the term:

316 a. "Community service" means uncompensated labor for a
317 community service agency.

318 b. "Community service agency" means a not-for-profit
319 corporation, community organization, charitable organization,
320 public officer, the state or any political subdivision of the
321 state, or any other body the purpose of which is to improve the

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322 quality of life or social welfare of the community and which
323 agrees to accept community service from persons unable to pay
324 civil penalties for noncriminal traffic infractions.

325 Section 6. Subsections (1) through (4) of section 322.055,
326 Florida Statutes, are amended to read:

327 322.055 Revocation or suspension of, or delay of
328 eligibility for, driver license for persons 18 years of age or
329 older convicted of certain drug offenses.—

330 (1) Notwithstanding s. 322.28, upon the conviction of a
331 person 18 years of age or older for possession or sale of,
332 trafficking in, or conspiracy to possess, sell, or traffic in a
333 controlled substance, the court shall direct the department to
334 revoke the driver license or driving privilege of the person.
335 The period of such revocation shall be 6 months ~~1 year~~ or until
336 the person is evaluated for and, if deemed necessary by the
337 evaluating agency, completes a drug treatment and rehabilitation
338 program approved or regulated by the Department of Children and
339 Families. However, the court may, in its sound discretion,
340 direct the department to issue a license for driving privilege
341 restricted to business or employment purposes only, as defined
342 by s. 322.271, if the person is otherwise qualified for such a
343 license. ~~A driver whose license or driving privilege has been~~
344 ~~suspended or revoked under this section or s. 322.056 may, upon~~
345 ~~the expiration of 6 months, petition the department for~~
346 ~~restoration of the driving privilege on a restricted or~~
347 ~~unrestricted basis depending on length of suspension or~~
348 ~~revocation. In no case shall~~ A restricted license may not be
349 available until 6 months of the suspension or revocation period
350 has been completed ~~expired~~.

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351 (2) If a person 18 years of age or older is convicted for
 352 the possession or sale of, trafficking in, or conspiracy to
 353 possess, sell, or traffic in a controlled substance and such
 354 person is eligible by reason of age for a driver license or
 355 privilege, the court shall direct the department to withhold
 356 issuance of such person's driver license or driving privilege
 357 for a period of 6 months ~~1 year~~ after the date the person was
 358 convicted or until the person is evaluated for and, if deemed
 359 necessary by the evaluating agency, completes a drug treatment
 360 and rehabilitation program approved or regulated by the
 361 Department of Children and Families. However, the court may, in
 362 its sound discretion, direct the department to issue a license
 363 for driving privilege restricted to business or employment
 364 purposes only, as defined by s. 322.271, if the person is
 365 otherwise qualified for such a license. ~~A driver whose license
 366 or driving privilege has been suspended or revoked under this
 367 section or s. 322.056 may, upon the expiration of 6 months,
 368 petition the department for restoration of the driving privilege
 369 on a restricted or unrestricted basis depending on the length of
 370 suspension or revocation. In no case shall A restricted license
 371 may not be available until 6 months of the suspension or
 372 revocation period has been completed expired.~~

373 (3) If a person 18 years of age or older is convicted for
 374 the possession or sale of, trafficking in, or conspiracy to
 375 possess, sell, or traffic in a controlled substance and such
 376 person's driver license or driving privilege is already under
 377 suspension or revocation for any reason, the court shall direct
 378 the department to extend the period of such suspension or
 379 revocation by an additional period of 6 months ~~1 year~~ or until

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380 the person is evaluated for and, if deemed necessary by the
 381 evaluating agency, completes a drug treatment and rehabilitation
 382 program approved or regulated by the Department of Children and
 383 Families. However, the court may, in its sound discretion,
 384 direct the department to issue a license for driving privilege
 385 restricted to business or employment purposes only, as defined
 386 by s. 322.271, if the person is otherwise qualified for such a
 387 license. ~~A driver whose license or driving privilege has been
 388 suspended or revoked under this section or s. 322.056 may, upon
 389 the expiration of 6 months, petition the department for
 390 restoration of the driving privilege on a restricted or
 391 unrestricted basis depending on the length of suspension or
 392 revocation. In no case shall A restricted license may not be
 393 available until 6 months of the suspension or revocation period
 394 has been completed expired.~~

395 (4) If a person 18 years of age or older is convicted for
 396 the possession or sale of, trafficking in, or conspiracy to
 397 possess, sell, or traffic in a controlled substance and such
 398 person is ineligible by reason of age for a driver license or
 399 driving privilege, the court shall direct the department to
 400 withhold issuance of such person's driver license or driving
 401 privilege for a period of 6 months ~~1 year~~ after the date that he
 402 or she would otherwise have become eligible or until he or she
 403 becomes eligible by reason of age for a driver license and is
 404 evaluated for and, if deemed necessary by the evaluating agency,
 405 completes a drug treatment and rehabilitation program approved
 406 or regulated by the Department of Children and Families.
 407 However, the court may, in its sound discretion, direct the
 408 department to issue a license for driving privilege restricted

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409 to business or employment purposes only, as defined by s.
 410 322.271, if the person is otherwise qualified for such a
 411 license. A driver whose license or driving privilege has been
 412 ~~suspended or revoked under this section or s. 322.056 may, upon~~
 413 ~~the expiration of 6 months, petition the department for~~
 414 ~~restoration of the driving privilege on a restricted or~~
 415 ~~unrestricted basis depending on the length of suspension or~~
 416 ~~revocation. In no case shall~~ A restricted license may not be
 417 available until 6 months of the suspension or revocation period
 418 has been completed expired.

419 Section 7. Section 322.056, Florida Statutes, is amended to
 420 read:

421 322.056 Mandatory revocation or suspension of, or delay of
 422 eligibility for, driver license for persons under age 18 found
 423 guilty of ~~certain alcohol, drug, or tobacco~~ offenses;
 424 prohibition.—

425 (1) Notwithstanding the provisions of s. 322.055, if a
 426 person under 18 years of age is found guilty of or delinquent
 427 for a violation of ~~s. 562.11(2), s. 562.111, or~~ chapter 893,
 428 and:

429 (a) The person is eligible by reason of age for a driver
 430 license or driving privilege, the court shall direct the
 431 department to revoke or to withhold issuance of his or her
 432 driver license or driving privilege for a period of 6 months.+

433 ~~1. Not less than 6 months and not more than 1 year for the~~
 434 ~~first violation.~~

435 ~~2. Two years, for a subsequent violation.~~

436 (b) The person's driver license or driving privilege is
 437 under suspension or revocation for any reason, the court shall

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438 direct the department to extend the period of suspension or
 439 revocation by an additional period of 6 months.+

440 ~~1. Not less than 6 months and not more than 1 year for the~~
 441 ~~first violation.~~

442 ~~2. Two years, for a subsequent violation.~~

443 (c) The person is ineligible by reason of age for a driver
 444 license or driving privilege, the court shall direct the
 445 department to withhold issuance of his or her driver license or
 446 driving privilege for a period of+

447 ~~1. Not less than 6 months and not more than 1 year after~~
 448 the date on which he or she would otherwise have become
 449 eligible, for the first violation.

450 ~~2. Two years after the date on which he or she would~~
 451 ~~otherwise have become eligible, for a subsequent violation.~~

452 ~~However, the court may, in its sound discretion, direct the~~
 453 ~~department to issue a license for driving privileges restricted~~
 454 ~~to business or employment purposes only, as defined in s.~~
 455 ~~322.271, if the person is otherwise qualified for such a~~
 456 ~~license.~~

457 ~~(2) If a person under 18 years of age is found by the court~~
 458 ~~to have committed a noncriminal violation under s. 569.11 or s.~~
 459 ~~877.112(6) or (7) and that person has failed to comply with the~~
 460 ~~procedures established in that section by failing to fulfill~~
 461 ~~community service requirements, failing to pay the applicable~~
 462 ~~fine, or failing to attend a locally available school-approved~~
 463 ~~anti-tobacco program, and:~~

464 ~~(a) The person is eligible by reason of age for a driver~~
 465 ~~license or driving privilege, the court shall direct the~~
 466

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467 department to revoke or to withhold issuance of his or her
 468 driver license or driving privilege as follows:

469 1. ~~For the first violation, for 30 days.~~

470 2. ~~For the second violation within 12 weeks of the first~~
 471 ~~violation, for 45 days.~~

472 ~~(b) The person's driver license or driving privilege is~~
 473 ~~under suspension or revocation for any reason, the court shall~~
 474 ~~direct the department to extend the period of suspension or~~
 475 ~~revocation by an additional period as follows:~~

476 1. ~~For the first violation, for 30 days.~~

477 2. ~~For the second violation within 12 weeks of the first~~
 478 ~~violation, for 45 days.~~

479 ~~(c) The person is ineligible by reason of age for a driver~~
 480 ~~license or driving privilege, the court shall direct the~~
 481 ~~department to withhold issuance of his or her driver license or~~
 482 ~~driving privilege as follows:~~

483 1. ~~For the first violation, for 30 days.~~

484 2. ~~For the second violation within 12 weeks of the first~~
 485 ~~violation, for 45 days.~~

486

487 ~~Any second violation of s. 569.11 or s. 877.112(6) or (7) not~~
 488 ~~within the 12-week period after the first violation will be~~
 489 ~~treated as a first violation and in the same manner as provided~~
 490 ~~in this subsection.~~

491 ~~(3) If a person under 18 years of age is found by the court~~
 492 ~~to have committed a third violation of s. 569.11 or s.~~
 493 ~~877.112(6) or (7) within 12 weeks of the first violation, the~~
 494 ~~court must direct the Department of Highway Safety and Motor~~
 495 ~~Vehicles to suspend or withhold issuance of his or her driver~~

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496 license or driving privilege for 60 consecutive days. Any third
 497 violation of s. 569.11 or s. 877.112(6) or (7) not within the
 498 12-week period after the first violation will be treated as a
 499 first violation and in the same manner as provided in subsection
 500 ~~(2).~~

501 ~~(2)(4)~~ A penalty imposed under this section shall be in
 502 addition to any other penalty imposed by law.

503 ~~(5) The suspension or revocation of a person's driver~~
 504 ~~license imposed pursuant to subsection (2) or subsection (3),~~
 505 ~~shall not result in or be cause for an increase of the convicted~~
 506 ~~person's, or his or her parent's or legal guardian's, automobile~~
 507 ~~insurance rate or premium or result in points assessed against~~
 508 ~~the person's driving record.~~

509 Section 8. Section 322.057, Florida Statutes, is repealed.

510 Section 9. Subsection (3) of section 322.09, Florida
 511 Statutes, is amended, and present subsections (4) and (5) of
 512 that section are redesignated as subsections (3) and (4),
 513 respectively, to read:

514 322.09 Application of minors; responsibility for negligence
 515 or misconduct of minor.—

516 ~~(3) The department may not issue a driver license or~~
 517 ~~learner's driver license to any applicant under the age of 18~~
 518 ~~years who is not in compliance with the requirements of s.~~
 519 ~~322.091.~~

520 Section 10. Section 322.091, Florida Statutes, is repealed.

521 Section 11. Subsection (6) is added to section 322.245,
 522 Florida Statutes, to read:

523 322.245 Suspension of license upon failure of person
 524 charged with specified offense under chapter 316, chapter 320,

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525 or this chapter to comply with directives ordered by traffic
 526 court or upon failure to pay child support in non-IV-D cases as
 527 provided in chapter 61 or failure to pay any financial
 528 obligation in any other criminal case.—

529 (6) Notwithstanding any other law, a person's driver
 530 license may not be suspended solely for failure to pay a penalty
 531 or court obligation if the person demonstrates to the court,
 532 after the court orders the penalty or obligation and before the
 533 suspension takes place, that he or she is unable to pay the
 534 penalty or court obligation. This subsection does not apply to
 535 failure to pay child support in non-IV-D cases as provided in
 536 chapter 61. A person is considered unable to pay if he or she
 537 provides documentation to the appropriate clerk of court
 538 evidencing that:

539 (a) The person receives reemployment assistance or
 540 unemployment compensation pursuant to chapter 443;

541 (b) The person is disabled and incapable of self-support or
 542 receives benefits under the federal Supplemental Security Income
 543 program or Social Security Disability Insurance program;

544 (c) The person receives temporary cash assistance pursuant
 545 to chapter 414;

546 (d) The person is making payments in accordance with a
 547 confirmed bankruptcy plan under chapter 11, chapter 12, or
 548 chapter 13 of the United States Bankruptcy Code, 11 U.S.C. ss.
 549 101 et seq.;

550 (e) The person has been placed on a payment plan or payment
 551 plans with the clerk of court which in total exceed what is
 552 determined to be a reasonable payment plan pursuant to s.
 553 28.246(4); or

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554 (f) The person has been determined to be indigent after
 555 filing an application with the clerk in accordance with s. 27.52
 556 or s. 57.082.

557 Section 12. Subsection (7) of section 322.251, Florida
 558 Statutes, is repealed.

559 Section 13. Subsection (8) is added to section 322.271,
 560 Florida Statutes, to read:

561 322.271 Authority to modify revocation, cancellation, or
 562 suspension order.—

563 (8) A person whose driver license or privilege to drive has
 564 been suspended under s. 318.15 or s. 322.245, with the exception
 565 of any suspension related to s. 61.13016, may have his or her
 566 driver license or driving privilege reinstated on a restricted
 567 basis by the department in accordance with this section. The
 568 restricted license shall be valid until the 7-year suspension
 569 period ends as provided in s. 318.15 or until the debt is paid.

570 Section 14. Subsection (10) of section 322.34, Florida
 571 Statutes, is amended to read:

572 322.34 Driving while license suspended, revoked, canceled,
 573 or disqualified.—

574 (10) (a) Notwithstanding any other provision of this
 575 section, if a person does not have a prior forcible felony
 576 conviction as defined in s. 776.08, the penalties provided in
 577 paragraph (b) apply if a person's driver license or driving
 578 privilege is canceled, suspended, or revoked for:

579 1. Failing to pay child support as provided in s. 322.245
 580 or s. 61.13016;

581 2. Failing to pay any other financial obligation as
 582 provided in s. 322.245 ~~other than those specified in s.~~

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583 ~~322.245(1);~~584 3. Failing to comply with a civil penalty required in s.
585 318.15;586 4. Failing to maintain vehicular financial responsibility
587 as required by chapter 324; or588 ~~5. Failing to comply with attendance or other requirements~~
589 ~~for minors as set forth in s. 322.091; or~~590 ~~5.6-~~ Having been designated a habitual traffic offender
591 under s. 322.264(1)(d) as a result of suspensions of his or her
592 driver license or driver privilege for any underlying violation
593 listed in subparagraphs 1.-4. ~~1.-5.~~594 (b)1. Upon a first conviction for knowingly driving while
595 his or her license is suspended, revoked, or canceled for any of
596 the underlying violations listed in subparagraphs (a)1.-5.
597 ~~(a)1.-6.~~, a person commits a misdemeanor of the second degree,
598 punishable as provided in s. 775.082 or s. 775.083.599 2. Upon a second or subsequent conviction for the same
600 offense of knowingly driving while his or her license is
601 suspended, revoked, or canceled for any of the underlying
602 violations listed in subparagraphs (a)1.-5. ~~(a)1.-6.~~, a person
603 commits a misdemeanor of the first degree, punishable as
604 provided in s. 775.082 or s. 775.083.605 Section 15. Paragraph (a) of subsection (1) and paragraph
606 (c) of subsection (2) of section 562.11, Florida Statutes, are
607 amended to read:608 562.11 Selling, giving, or serving alcoholic beverages to
609 person under age 21; providing a proper name; misrepresenting or
610 misstating age or age of another to induce licensee to serve
611 alcoholic beverages to person under 21; penalties.-

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612 (1) ~~(a)1-~~ A person may not sell, give, serve, or permit to
613 be served alcoholic beverages to a person under 21 years of age
614 or permit a person under 21 years of age to consume such
615 beverages on the licensed premises. A person who violates this
616 subparagraph commits a misdemeanor of the second degree,
617 punishable as provided in s. 775.082 or s. 775.083. A person who
618 violates this subparagraph a second or subsequent time within 1
619 year after a prior conviction commits a misdemeanor of the first
620 degree, punishable as provided in s. 775.082 or s. 775.083.621 ~~2. In addition to any other penalty imposed for a violation~~
622 ~~of subparagraph 1., the court may order the Department of~~
623 ~~Highway Safety and Motor Vehicles to withhold the issuance of,~~
624 ~~or suspend or revoke, the driver license or driving privilege,~~
625 ~~as provided in s. 322.057, of any person who violates~~
626 ~~subparagraph 1. This subparagraph does not apply to a licensee,~~
627 ~~as defined in s. 561.01, who violates subparagraph 1. while~~
628 ~~acting within the scope of his or her license or an employee or~~
629 ~~agent of a licensee, as defined in s. 561.01, who violates~~
630 ~~subparagraph 1. while engaged within the scope of his or her~~
631 ~~employment or agency.~~632 ~~3. A court that withholds the issuance of, or suspends or~~
633 ~~revokes, the driver license or driving privilege of a person~~
634 ~~pursuant to subparagraph 2. may direct the Department of Highway~~
635 ~~Safety and Motor Vehicles to issue the person a license for~~
636 ~~driving privilege restricted to business purposes only, as~~
637 ~~defined in s. 322.271, if he or she is otherwise qualified.~~638 (2) It is unlawful for any person to misrepresent or
639 misstate his or her age or the age of any other person for the
640 purpose of inducing any licensee or his or her agents or

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641 employees to sell, give, serve, or deliver any alcoholic
642 beverages to a person under 21 years of age, or for any person
643 under 21 years of age to purchase or attempt to purchase
644 alcoholic beverages.

645 (c) In addition to any other penalty imposed for a
646 violation of this subsection, if a person uses a driver license
647 or identification card issued by the Department of Highway
648 Safety and Motor Vehicles in violation of this subsection, the
649 court:

650 ~~1. may order the person to participate in public service or~~
651 ~~a community work project for a period not to exceed 40 hours;~~
652 ~~and~~

653 ~~2. Shall direct the Department of Highway Safety and Motor~~
654 ~~Vehicles to withhold issuance of, or suspend or revoke, the~~
655 ~~person's driver license or driving privilege, as provided in s.~~
656 ~~322.056.~~

657 Section 16. Subsection (3) of section 562.111, Florida
658 Statutes, is repealed.

659 Section 17. Subsections (1), (2), and (5) of section
660 569.11, Florida Statutes, are amended to read:

661 569.11 Possession, misrepresenting age or military service
662 to purchase, and purchase of tobacco products by persons under
663 18 years of age prohibited; penalties; jurisdiction; disposition
664 of fines.—

665 (1) It is unlawful for any person under 18 years of age to
666 knowingly possess any tobacco product. Any person under 18 years
667 of age who violates the provisions of this subsection commits a
668 noncriminal violation as provided in s. 775.08(3), punishable
669 by:

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670 (a) For a first violation, 16 hours of community service
671 or, instead of community service, a \$25 fine. In addition, the
672 person must attend a school-approved anti-tobacco program, if
673 locally available; or

674 (b) For a second or subsequent violation within 12 weeks
675 after ~~of~~ the first violation, a \$25 fine, ~~or~~

676 ~~(c) For a third or subsequent violation within 12 weeks of~~
677 ~~the first violation, the court must direct the Department of~~
678 ~~Highway Safety and Motor Vehicles to withhold issuance of or~~
679 ~~suspend or revoke the person's driver license or driving~~
680 ~~privilege, as provided in s. 322.056.~~

681 Any second or subsequent violation not within the 12-week time
682 period after the first violation is punishable as provided for a
683 first violation.

684 (2) It is unlawful for any person under 18 years of age to
685 misrepresent his or her age or military service for the purpose
686 of inducing a dealer or an agent or employee of the dealer to
687 sell, give, barter, furnish, or deliver any tobacco product, or
688 to purchase, or attempt to purchase, any tobacco product from a
689 person or a vending machine. Any person under 18 years of age
690 who violates a provision of this subsection commits a
691 noncriminal violation as provided in s. 775.08(3), punishable
692 by:

693 (a) For a first violation, 16 hours of community service
694 or, instead of community service, a \$25 fine and, in addition,
695 the person must attend a school-approved anti-tobacco program,
696 if available; or

697 (b) For a second or subsequent violation within 12 weeks

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699 ~~after~~ ~~of~~ the first violation, a \$25 fine, ~~or~~
 700 ~~(c) For a third or subsequent violation within 12 weeks of~~
 701 ~~the first violation, the court must direct the Department of~~
 702 ~~Highway Safety and Motor Vehicles to withhold issuance of or~~
 703 ~~suspend or revoke the person's driver license or driving~~
 704 ~~privilege, as provided in s. 322.056.~~

705
 706 Any second or subsequent violation not within the 12-week time
 707 period after the first violation is punishable as provided for a
 708 first violation.

709 (5) (a) If a person under 18 years of age is found by the
 710 court to have committed a noncriminal violation under this
 711 section and that person has failed to complete community
 712 service, pay the fine as required by paragraph (1) (a) or
 713 paragraph (2) (a), or attend a school-approved anti-tobacco
 714 program, if locally available, the court may ~~must~~ direct the
 715 Department of Highway Safety and Motor Vehicles to withhold
 716 issuance of or suspend the driver license or driving privilege
 717 of that person for a period of 30 consecutive days.

718 (b) If a person under 18 years of age is found by the court
 719 to have committed a noncriminal violation under this section and
 720 that person has failed to pay the applicable fine as required by
 721 paragraph (1) (b) or paragraph (2) (b), the court may ~~must~~ direct
 722 the Department of Highway Safety and Motor Vehicles to withhold
 723 issuance of or suspend the driver license or driving privilege
 724 of that person for a period of 45 consecutive days.

725 Section 18. Subsections (5) and (10) of section 790.22,
 726 Florida Statutes, are amended to read:

727 790.22 Use of BB guns, air or gas-operated guns, or

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728 electric weapons or devices by minor under 16; limitation;
 729 possession of firearms by minor under 18 prohibited; penalties.-

730 (5) (a) A minor who violates subsection (3) commits a
 731 misdemeanor of the first degree; for a first offense, may serve
 732 a period of detention of up to 3 days in a secure detention
 733 facility; and, in addition to any other penalty provided by law,
 734 shall be required to perform 100 hours of community service, ~~+~~
 735 ~~and:~~

736 ~~1. If the minor is eligible by reason of age for a driver~~
 737 ~~license or driving privilege, the court shall direct the~~
 738 ~~Department of Highway Safety and Motor Vehicles to revoke or to~~
 739 ~~withhold issuance of the minor's driver license or driving~~
 740 ~~privilege for up to 1 year.~~

741 ~~2. If the minor's driver license or driving privilege is~~
 742 ~~under suspension or revocation for any reason, the court shall~~
 743 ~~direct the Department of Highway Safety and Motor Vehicles to~~
 744 ~~extend the period of suspension or revocation by an additional~~
 745 ~~period of up to 1 year.~~

746 ~~3. If the minor is ineligible by reason of age for a driver~~
 747 ~~license or driving privilege, the court shall direct the~~
 748 ~~Department of Highway Safety and Motor Vehicles to withhold~~
 749 ~~issuance of the minor's driver license or driving privilege for~~
 750 ~~up to 1 year after the date on which the minor would otherwise~~
 751 ~~have become eligible.~~

752 (b) For a second or subsequent offense, a minor who
 753 violates subsection (3) commits a felony of the third degree and
 754 shall serve a period of detention of up to 15 days in a secure
 755 detention facility and shall be required to perform not less
 756 than 100 or ~~not~~ more than 250 hours of community service, ~~+~~ ~~and:~~

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757 ~~1. If the minor is eligible by reason of age for a driver~~
 758 ~~license or driving privilege, the court shall direct the~~
 759 ~~Department of Highway Safety and Motor Vehicles to revoke or to~~
 760 ~~withhold issuance of the minor's driver license or driving~~
 761 ~~privilege for up to 2 years.~~

762 ~~2. If the minor's driver license or driving privilege is~~
 763 ~~under suspension or revocation for any reason, the court shall~~
 764 ~~direct the Department of Highway Safety and Motor Vehicles to~~
 765 ~~extend the period of suspension or revocation by an additional~~
 766 ~~period of up to 2 years.~~

767 ~~3. If the minor is ineligible by reason of age for a driver~~
 768 ~~license or driving privilege, the court shall direct the~~
 769 ~~Department of Highway Safety and Motor Vehicles to withhold~~
 770 ~~issuance of the minor's driver license or driving privilege for~~
 771 ~~up to 2 years after the date on which the minor would otherwise~~
 772 ~~have become eligible.~~

773
 774 For the purposes of this subsection, community service shall be
 775 performed, if possible, in a manner involving a hospital
 776 emergency room or other medical environment that deals on a
 777 regular basis with trauma patients and gunshot wounds.

778 ~~(10) If a minor is found to have committed an offense under~~
 779 ~~subsection (9), the court shall impose the following penalties~~
 780 ~~in addition to any penalty imposed under paragraph (9)(a) or~~
 781 ~~paragraph (9)(b):~~

782 ~~(a) For a first offense:~~

783 ~~1. If the minor is eligible by reason of age for a driver~~
 784 ~~license or driving privilege, the court shall direct the~~
 785 ~~Department of Highway Safety and Motor Vehicles to revoke or to~~

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786 ~~withhold issuance of the minor's driver license or driving~~
 787 ~~privilege for up to 1 year.~~

788 ~~2. If the minor's driver license or driving privilege is~~
 789 ~~under suspension or revocation for any reason, the court shall~~
 790 ~~direct the Department of Highway Safety and Motor Vehicles to~~
 791 ~~extend the period of suspension or revocation by an additional~~
 792 ~~period for up to 1 year.~~

793 ~~3. If the minor is ineligible by reason of age for a driver~~
 794 ~~license or driving privilege, the court shall direct the~~
 795 ~~Department of Highway Safety and Motor Vehicles to withhold~~
 796 ~~issuance of the minor's driver license or driving privilege for~~
 797 ~~up to 1 year after the date on which the minor would otherwise~~
 798 ~~have become eligible.~~

799 ~~(b) For a second or subsequent offense:~~

800 ~~1. If the minor is eligible by reason of age for a driver~~
 801 ~~license or driving privilege, the court shall direct the~~
 802 ~~Department of Highway Safety and Motor Vehicles to revoke or to~~
 803 ~~withhold issuance of the minor's driver license or driving~~
 804 ~~privilege for up to 2 years.~~

805 ~~2. If the minor's driver license or driving privilege is~~
 806 ~~under suspension or revocation for any reason, the court shall~~
 807 ~~direct the Department of Highway Safety and Motor Vehicles to~~
 808 ~~extend the period of suspension or revocation by an additional~~
 809 ~~period for up to 2 years.~~

810 ~~3. If the minor is ineligible by reason of age for a driver~~
 811 ~~license or driving privilege, the court shall direct the~~
 812 ~~Department of Highway Safety and Motor Vehicles to withhold~~
 813 ~~issuance of the minor's driver license or driving privilege for~~
 814 ~~up to 2 years after the date on which the minor would otherwise~~

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815 ~~have become eligible.~~

816 Section 19. Subsections (7) and (8) of section 806.13,
817 Florida Statutes, are amended, and present subsection (9) of
818 that section is redesignated as subsection (7), to read:

819 806.13 Criminal mischief; penalties; penalty for minor.—

820 ~~(7) In addition to any other penalty provided by law, if a~~
821 ~~minor is found to have committed a delinquent act under this~~
822 ~~section for placing graffiti on any public property or private~~
823 ~~property, and:~~

824 ~~(a) The minor is eligible by reason of age for a driver~~
825 ~~license or driving privilege, the court shall direct the~~
826 ~~Department of Highway Safety and Motor Vehicles to revoke or~~
827 ~~withhold issuance of the minor's driver license or driving~~
828 ~~privilege for not more than 1 year.~~

829 ~~(b) The minor's driver license or driving privilege is~~
830 ~~under suspension or revocation for any reason, the court shall~~
831 ~~direct the Department of Highway Safety and Motor Vehieles to~~
832 ~~extend the period of suspension or revocation by an additional~~
833 ~~period of not more than 1 year.~~

834 ~~(c) The minor is ineligible by reason of age for a driver~~
835 ~~license or driving privilege, the court shall direct the~~
836 ~~Department of Highway Safety and Motor Vehieles to withhold~~
837 ~~issuance of the minor's driver license or driving privilege for~~
838 ~~not more than 1 year after the date on which he or she would~~
839 ~~otherwise have become eligible.~~

840 ~~(8) A minor whose driver license or driving privilege is~~
841 ~~revoked, suspended, or withheld under subsection (7) may elect~~
842 ~~to reduce the period of revocation, suspension, or withholding~~
843 ~~by performing community service at the rate of 1 day for each~~

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844 ~~hour of community service performed. In addition, if the court~~
845 ~~determines that due to a family hardship, the minor's driver~~
846 ~~license or driving privilege is necessary for employment or~~
847 ~~medical purposes of the minor or a member of the minor's family,~~
848 ~~the court shall order the minor to perform community service and~~
849 ~~reduce the period of revocation, suspension, or withholding at~~
850 ~~the rate of 1 day for each hour of community service performed.~~
851 ~~As used in this subsection, the term "community service" means~~
852 ~~cleaning graffiti from public property.~~

853 Section 20. Section 812.0155, Florida Statutes, is
854 repealed.

855 Section 21. Section 832.09, Florida Statutes, is repealed.

856 Section 22. Subsections (6) and (7) and paragraphs (c) and
857 (d) of subsection (8) of section 877.112, Florida Statutes, are
858 amended to read:

859 877.112 Nicotine products and nicotine dispensing devices;
860 prohibitions for minors; penalties; civil fines; signage
861 requirements; preemption.—

862 (6) PROHIBITIONS ON POSSESSION OF NICOTINE PRODUCTS OR
863 NICOTINE DISPENSING DEVICES BY MINORS.—It is unlawful for any
864 person under 18 years of age to knowingly possess any nicotine
865 product or a nicotine dispensing device. Any person under 18
866 years of age who violates this subsection commits a noncriminal
867 violation as defined in s. 775.08(3), punishable by:

868 (a) For a first violation, 16 hours of community service
869 or, instead of community service, a \$25 fine. In addition, the
870 person must attend a school-approved anti-tobacco and nicotine
871 program, if locally available; or

872 (b) For a second or subsequent violation within 12 weeks

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873 ~~after~~ of the first violation, a \$25 fine, ~~or~~
 874 ~~(c) For a third or subsequent violation within 12 weeks of~~
 875 ~~the first violation, the court must direct the Department of~~
 876 ~~Highway Safety and Motor Vehicles to withhold issuance of or~~
 877 ~~suspend or revoke the person's driver license or driving~~
 878 ~~privilege, as provided in s. 322.056.~~
 879
 880 Any second or subsequent violation not within the 12-week time
 881 period after the first violation is punishable as provided for a
 882 first violation.
 883 (7) PROHIBITION ON MISREPRESENTING AGE.—It is unlawful for
 884 any person under 18 years of age to misrepresent his or her age
 885 or military service for the purpose of inducing a retailer of
 886 nicotine products or nicotine dispensing devices or an agent or
 887 employee of such retailer to sell, give, barter, furnish, or
 888 deliver any nicotine product or nicotine dispensing device, or
 889 to purchase, or attempt to purchase, any nicotine product or
 890 nicotine dispensing device from a person or a vending machine.
 891 Any person under 18 years of age who violates this subsection
 892 commits a noncriminal violation as defined in s. 775.08(3),
 893 punishable by:
 894 (a) For a first violation, 16 hours of community service
 895 or, instead of community service, a \$25 fine and, in addition,
 896 the person must attend a school-approved anti-tobacco and
 897 nicotine program, if available; or
 898 (b) For a second or subsequent violation within 12 weeks of
 899 the first violation, a \$25 fine, ~~or~~
 900 ~~(c) For a third or subsequent violation within 12 weeks of~~
 901 ~~the first violation, the court must direct the Department of~~

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902 ~~Highway Safety and Motor Vehicles to withhold issuance of or~~
 903 ~~suspend or revoke the person's driver license or driving~~
 904 ~~privilege, as provided in s. 322.056.~~
 905
 906 Any second or subsequent violation not within the 12-week time
 907 period after the first violation is punishable as provided for a
 908 first violation.
 909 (8) PENALTIES FOR MINORS.—
 910 (c) If a person under 18 years of age is found by the court
 911 to have committed a noncriminal violation under this section and
 912 that person has failed to complete community service, pay the
 913 fine as required by paragraph (6) (a) or paragraph (7) (a), or
 914 attend a school-approved anti-tobacco and nicotine program, if
 915 locally available, the court may ~~must~~ direct the Department of
 916 Highway Safety and Motor Vehicles to withhold issuance of or
 917 suspend the driver license or driving privilege of that person
 918 for 30 consecutive days.
 919 (d) If a person under 18 years of age is found by the court
 920 to have committed a noncriminal violation under this section and
 921 that person has failed to pay the applicable fine as required by
 922 paragraph (6) (b) or paragraph (7) (b), the court may ~~must~~ direct
 923 the Department of Highway Safety and Motor Vehicles to withhold
 924 issuance of or suspend the driver license or driving privilege
 925 of that person for 45 consecutive days.
 926 Section 23. Subsection (2) of section 938.30, Florida
 927 Statutes, is amended to read:
 928 938.30 Financial obligations in criminal cases;
 929 supplementary proceedings.—
 930 (2) The court may require a person liable for payment of an

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931 obligation to appear and be examined under oath concerning the
 932 person's financial ability to pay the obligation. The judge may
 933 convert the statutory financial obligation into a court-ordered
 934 obligation to perform community service, subject to the
 935 provisions of s. 318.18(8), after examining a person under oath
 936 and determining the person's inability to pay, or by reliance
 937 upon information provided under s. 27.52(1)(a)6. Any person who
 938 fails to attend a hearing may be arrested on warrant or capias
 939 issued by the clerk upon order of the court.

940 Section 24. Subsection (2) of section 1003.27, Florida
 941 Statutes, is amended to read:

942 1003.27 Court procedure and penalties.—The court procedure
 943 and penalties for the enforcement of the provisions of this
 944 part, relating to compulsory school attendance, shall be as
 945 follows:

946 (2) NONENROLLMENT AND NONATTENDANCE CASES.—

947 ~~(a)~~ In each case of nonenrollment or of nonattendance upon
 948 the part of a student who is required to attend some school,
 949 when no valid reason for such nonenrollment or nonattendance is
 950 found, the district school superintendent shall institute a
 951 criminal prosecution against the student's parent.

952 ~~(b) Each public school principal or the principal's~~
 953 ~~designee shall notify the district school board of each minor~~
 954 ~~student under its jurisdiction who accumulates 15 unexcused~~
 955 ~~absences in a period of 90 calendar days. Each designee of the~~
 956 ~~governing body of each private school, and each parent whose~~
 957 ~~child is enrolled in a home education program, may provide the~~
 958 ~~Department of Highway Safety and Motor Vehicles with the legal~~
 959 ~~name, sex, date of birth, and social security number of each~~

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960 ~~minor student under his or her jurisdiction who fails to satisfy~~
 961 ~~relevant attendance requirements and who fails to otherwise~~
 962 ~~satisfy the requirements of s. 322.091. The district school~~
 963 ~~superintendent must provide the Department of Highway Safety and~~
 964 ~~Motor Vehicles the legal name, sex, date of birth, and social~~
 965 ~~security number of each minor student who has been reported~~
 966 ~~under this paragraph and who fails to otherwise satisfy the~~
 967 ~~requirements of s. 322.091. The Department of Highway Safety and~~
 968 ~~Motor Vehicles may not issue a driver license or learner's~~
 969 ~~driver license to, and shall suspend any previously issued~~
 970 ~~driver license or learner's driver license of, any such minor~~
 971 ~~student, pursuant to the provisions of s. 322.091.~~

972 Section 25. Paragraph (a) of subsection (10) of section
 973 318.14, Florida Statutes, is amended to read:

974 318.14 Noncriminal traffic infractions; exception;
 975 procedures.—

976 (10) (a) Any person who does not hold a commercial driver
 977 license or commercial learner's permit and who is cited while
 978 driving a noncommercial motor vehicle for an offense listed
 979 under this subsection may, in lieu of payment of fine or court
 980 appearance, elect to enter a plea of nolo contendere and provide
 981 proof of compliance to the clerk of the court, designated
 982 official, or authorized operator of a traffic violations bureau.
 983 In such case, adjudication shall be withheld; however, a person
 984 may not make an election under this subsection if the person has
 985 made an election under this subsection in the preceding 12
 986 months. A person may not make more than three elections under
 987 this subsection. This subsection applies to the following
 988 offenses:

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989 1. Operating a motor vehicle without a valid driver license
 990 in violation of s. 322.03, s. 322.065, or s. 322.15(1), or
 991 operating a motor vehicle with a license that has been suspended
 992 for failure to appear, failure to pay civil penalty, or failure
 993 to attend a driver improvement course pursuant to s. 322.291.

994 2. Operating a motor vehicle without a valid registration
 995 in violation of s. 320.0605, s. 320.07, or s. 320.131.

996 3. Operating a motor vehicle in violation of s. 316.646.

997 4. Operating a motor vehicle with a license that has been
 998 suspended under s. 61.13016 or s. 322.245 for failure to pay
 999 child support or for failure to pay any other financial
 1000 obligation as provided in s. 322.245; however, this subparagraph
 1001 does not apply if the license has been suspended pursuant to s.
 1002 322.245(1).

1003 ~~5. Operating a motor vehicle with a license that has been~~
 1004 ~~suspended under s. 322.091 for failure to meet school attendance~~
 1005 ~~requirements.~~

1006 Section 26. Subsections (1) and (2) of section 322.05,
 1007 Florida Statutes, are amended to read:

1008 322.05 Persons not to be licensed.—The department may not
 1009 issue a license:

1010 (1) To a person who is under the age of 16 years, except
 1011 that the department may issue a learner's driver license to a
 1012 person who is at least 15 years of age and who meets the
 1013 requirements of s. 322.1615 ~~ss. 322.091 and 322.1615~~ and of any
 1014 other applicable law or rule.

1015 (2) To a person who is at least 16 years of age but is
 1016 under 18 years of age unless the person ~~meets the requirements~~
 1017 ~~of s. 322.091~~ and holds a valid:

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1018 (a) Learner's driver license for at least 12 months, with
 1019 no moving traffic convictions, before applying for a license;

1020 (b) Learner's driver license for at least 12 months and who
 1021 has a moving traffic conviction but elects to attend a traffic
 1022 driving school for which adjudication must be withheld pursuant
 1023 to s. 318.14; or

1024 (c) License that was issued in another state or in a
 1025 foreign jurisdiction and that would not be subject to suspension
 1026 or revocation under the laws of this state.

1027 Section 27. Paragraph (b) of subsection (5) of section
 1028 322.27, Florida Statutes, is amended to read:

1029 322.27 Authority of department to suspend or revoke driver
 1030 license or identification card.—

1031 (5)

1032 (b) If a person whose driver license has been revoked under
 1033 paragraph (a) as a result of a third violation of driving a
 1034 motor vehicle while his or her license is suspended or revoked
 1035 provides proof of compliance for an offense listed in s.
 1036 318.14(10)(a)1.-4. ~~318.14(10)(a)1.-5.~~, the clerk of court shall
 1037 submit an amended disposition to remove the habitual traffic
 1038 offender designation.

1039 Section 28. Subsection (9) of section 1003.01, Florida
 1040 Statutes, is amended to read:

1041 1003.01 Definitions.—As used in this chapter, the term:

1042 (9) "Dropout" means a student who meets any one or more of
 1043 the following criteria:

1044 (a) The student has voluntarily removed himself or herself
 1045 from the school system before graduation for reasons that
 1046 include, but are not limited to, marriage, or the student has

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1047 withdrawn from school because he or she has failed the statewide
1048 student assessment test and thereby does not receive any of the
1049 certificates of completion;

1050 (b) The student has not met the relevant attendance
1051 requirements of the school district pursuant to State Board of
1052 Education rules, or the student was expected to attend a school
1053 but did not enter as expected for unknown reasons, or the
1054 student's whereabouts are unknown;

1055 (c) The student has withdrawn from school, but has not
1056 transferred to another public or private school or enrolled in
1057 any career, adult, home education, or alternative educational
1058 program;

1059 (d) The student has withdrawn from school due to hardship,
1060 unless such withdrawal has been granted because of ~~under the~~
1061 ~~provisions of s. 322.091~~, court action, expulsion, medical
1062 reasons, or pregnancy; or

1063 (e) The student is not eligible to attend school because of
1064 reaching the maximum age for an exceptional student program in
1065 accordance with the district's policy.

1066

1067 The State Board of Education may adopt rules to implement ~~the~~
1068 ~~provisions of~~ this subsection.

1069 Section 29. The amendment made by this act to s. 316.650,
1070 Florida Statutes, shall apply upon the creation of a new
1071 inventory of uniform traffic citation forms.

1072 Section 30. This act shall take effect October 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Aaron Bean,
Appropriation Subcommittee on
Criminal and Civil Justice

Subject: Committee Agenda Request

Date: February 7th, 2017

I respectfully request that **Senate Bill #302**, relating to **Penalties and Fees**, be placed on the:

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

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

Senator Jeff Brandes
Florida Senate, District 24

ACJ

APPEARANCE RECORD

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

4/13/17
Meeting Date

9B 302
Bill Number (if applicable)

333852
Amendment Barcode (if applicable)

Topic Driver License Suspensions

Name Fred Baggett

Job Title _____

Address 101 E. College Ave.
Street

Phone 591 0915

Tallahassee FL 32301
City State Zip

Email BaggettF@GTLaw.com

Speaking: For Against Information

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

Representing Fl. Association of Court Clerks

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/13/17

302

Meeting Date

Bill Number (if applicable)

Topic Penalties and Fees

Amendment Barcode (if applicable)

Name Carla Laroche

Job Title Law Fellow

Address PO Box 10788

Phone 850-521-3003

Street

Tallahassee

FL

32302

Email carla.laroche@splcenter.org

City

State

Zip

Speaking: For Against Information

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

Representing Southern Poverty Law Center

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

APPEARANCE RECORD

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

4/13/17

Meeting Date

CS/SB 302

Bill Number (if applicable)

Topic PENALTIES + FEES

Amendment Barcode (if applicable)

Name KARA GROSS

Job Title LEGISLATIVE COUNSEL

Address 4500 BISLAYNE BLVD

Phone 780-963-4436

Street

MIAMI FL 33137

City

State

Zip

Email KGROSS@ACLUFL.ORG

Speaking: For Against Information

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

Representing ACLU OF FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

APPEARANCE RECORD

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

4/13/17

Meeting Date

302

Bill Number (if applicable)

Topic Penalties & Fees

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 2d W Park Av

Phone _____

Street

Tallahassee

City

State

32301

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.

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

APPEARANCE RECORD

April 13, 2017

Meeting Date

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

CS/SB 302

Bill Number (if applicable)

Topic Penalties and Fees

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 N. Gadsden Street

Phone 850-488-6850

Street

Tallahassee

FL

32301

Email ndaniels@flpda.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.

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 446

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Passidomo

SUBJECT: Underground Facilities

DATE: March 29, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Mitchell</u>	<u>Rogers</u>	<u>EP</u>	Fav/CS
2.	<u>Caldwell</u>	<u>Caldwell</u>	<u>CU</u>	Favorable
3.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	Favorable
4.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 446 amends ch. 556, F.S., the “Underground Facility Damage Prevention and Safety Act” by:

- Requiring an excavator that causes contact with or damage to any pipe or other underground facility to immediately report the contact or damage by calling 911 if any natural gas or other hazardous substance or hazardous material regulated by the Pipeline and Hazardous Materials Safety Administration (PHMSA) of the U.S. Department of Transportation (USDOT) has escaped;
- Requiring a member operator to file a report with the Sunshine State One-Call of Florida (SSOCF) system of all events it has received notice of through the system which have resulted in damages to its underground facilities. The report must be submitted at least on an annual basis or more frequently at the option and sole discretion of the member operator and must include, if known, the cause, nature, and location of the damage;
- Providing that, if a citation is issued by a state law enforcement officer, 80 percent of the civil penalty collected by the clerk of the court for the citation will be distributed to the governmental entity whose employee issued it; and
- Requiring the Sunshine State One-Call of Florida (SSOCF) board of director’s annual progress report to the Legislature and the Governor on the participation by municipalities and counties in the one-call notification system, to include a summary of the damage reporting data received by the system for the preceding year and any analysis of the data by the board.

The bill may have an insignificant, positive impact on state government revenues.

The bill has an effective date of July 1, 2017.

II. Present Situation:

Florida Underground Facility Damage Prevention and Safety Act

Chapter 556, F.S., is the “Underground Facility Damage Prevention and Safety Act” (Act). The purpose of the Act is to identify and locate underground facilities¹ prior to an excavation or demolition to prevent injury to persons or property or interruption of services resulting from damage to those facilities.² To accomplish this, the Act creates a not-for-profit corporation to administer a free-access notification system whereby a person intending to conduct excavation or demolition activities can give prior notice through the system of the person’s intended activities. Prior notifications provide operators of underground facilities the opportunity to identify and locate their nearby facilities.³ All operators of underground facilities in the state are required to be members of the corporation (“member operators”) and are required to use and participate in the system.⁴

The not-for-profit corporation created under the Act is Sunshine State One-Call of Florida, Inc. (SSOCF), which exercises its powers through a board of directors.⁵ The system provides a single toll-free telephone number within Florida which excavators use to notify member operators of planned excavation or demolition activities.⁶ An excavator must notify the system not less than two full business days before beginning the operations.⁷ The excavator must also provide specified identification, location, and operational information which remain valid for 30 calendar days.⁸ Upon receipt of this notice, the system provides to the person a list of names of the member operators who will be advised of the notification and a notification number which specifies the date and time of the notification.⁹

¹ Section 556.102(13), F.S., defines “underground facility” as “any public or private personal property which is buried, placed below ground, or submerged on any member operator's right-of-way, easement, or permitted use which is being used or will be used in connection with the storage or conveyance of water; sewage; electronic, telephonic, or telegraphic communication; electric energy; oil; petroleum products; natural gas; optical signals; or other substances, and includes, but is not limited to, pipelines, pipes, sewers, conduits, cables, valves, and lines. For purposes of this act, a liquefied petroleum gas line regulated under ch. 527 is not an underground facility unless such line is subject to the requirements of Title 49 C.F.R. adopted by the Department of Agriculture and Consumer Services, provided there is no encroachment on any member operator's right-of-way, easement, or permitted use. Petroleum storage systems subject to regulation pursuant to ch. 376 are not considered underground facilities for the purposes of this act unless the storage system is located on a member operator's right-of-way or easement. Storm drainage systems are not considered underground facilities.”

² Section 556.101(3), F.S.

³ Section 556.101(2), F.S.

⁴ Section 556.103(1), F.S.

⁵ Section 556.103, F.S.

⁶ Section 556.104, F.S.

⁷ Section 556.105(1)(a), F.S. The statute provides an exception to this requirement for excavation beneath state waters, but does not specify a time frame for notifying the system of such an excavation.

⁸ Section 556.105(1)(c), F.S.

⁹ Section 556.105(3), F.S.

The system operator in turn notifies the potentially affected member operators of the planned excavation or demolition activities.¹⁰ Within two full business days after the time the notification is received by the system (or 10 days if the proposed excavation is in proximity to facilities beneath state waters), potentially affected member operators must determine the location of their underground facilities in relation to the proposed excavation or demolition. If a member operator determines that a proposed excavation or demolition is in proximity to or conflicts with an underground facility, the member operator must identify the horizontal route of the facility in a specified manner.¹¹ If this cannot be done within two business days after notification is received, the member operator must contact the person giving notice and negotiate a new schedule and time that is agreeable and does not unreasonably delay the excavator. An excavator is required to delay excavations until one of the following events occurs:

- All affected member operator's underground facilities have been marked and located;
- The excavator has been notified that no member operator has underground facilities in the area described in the notice; or
- The time allowed for markings has expired.

If a member operator has not located and marked its underground facilities within the time allowed for marking, the excavator may proceed with the excavation, provided the excavator does so with reasonable care and uses detection equipment or other acceptable means to locate underground facilities. An excavator may not conduct demolition in an area until all member operators' underground facilities have been marked and located or removed.¹²

The Act also establishes violations of certain provisions as noncriminal infractions that are enforceable by citations which may be issued by any local or state law enforcement officer, government code inspector, or code enforcement officer. The Act establishes a civil penalty of \$500, plus court costs, for such infractions.¹³ If a citation is issued by a local law enforcement officer, a local government code inspector, or a code enforcement officer, 80 percent of the civil penalty collected by the clerk of the court will be distributed to the governmental entity whose employee issued the citation, with 20 percent of the penalty retained by the clerk of the court to cover administrative costs.¹⁴ If a citation is issued by a state law enforcement officer, the civil penalty collected by the clerk of the court is retained by the clerk for deposit into the fine and forfeiture fund established pursuant to s. 142.01, F.S.¹⁵ The fine and forfeiture fund is established by the clerk of the circuit court in each county of this state and functions as a separate fund for use by the clerk of the circuit court in performing court-related functions.

By March 31 of each year, each clerk of court must submit a report to Sunshine State One-Call of Florida (SSOCF) listing each violation notice written under s. 556.107(1)(a), F.S., which has been filed in that county during the preceding calendar year.¹⁶ The report must state the name

¹⁰ Section 556.105(5), F.S. The statute also provides that member operators with state-owned underground facilities located within the right-of-way of a state highway need not be notified of excavation or demolition activities and are under no obligation to mark or locate facilities.

¹¹ Section 556.105(5), F.S.

¹² Section 556.105(6), F.S.

¹³ Section 556.107(1), F.S.

¹⁴ Section 556.107(1)(c), F.S.

¹⁵ *Id.*

¹⁶ Section 556.107(2), F.S.

and address of the member or excavator who committed each infraction and indicate whether or not the civil penalty for the infraction was paid.¹⁷ The Florida Court Clerks and Comptrollers reported that a total of 23 citations were issued statewide under the Act in 2015, and a total of 19 citations were issued in 2016. None of these citations were issued by state law enforcement officers.¹⁸ Additionally, the SSOFCF board must submit an annual progress report, including a summary of the reports to the system from the clerks of court, to the Governor, no later than 60 days before the convening of each regular session of the Legislature.¹⁹ The SSOFCF board must also submit to the President of the Senate, the Speaker of the House of Representatives, and the Governor, no later than 60 days before the convening of each regular session of the Legislature, an annual progress report on the participation by municipalities and counties in the one-call notification system, including a summary of the reports to the system from the clerks of court.²⁰

U.S. Department of Transportation Pipeline and Hazardous Material Safety Administration - Pipeline Damage Prevention Programs

The U.S. Department of Transportation (USDOT) has back-stop authority to conduct administrative civil enforcement proceedings against excavators who damage hazardous liquid and natural gas pipelines in a state that has failed to adequately enforce its excavation damage prevention or one-call laws.²¹

On July 13, 2015, the U.S. Department of Transportation (USDOT) Pipeline and Hazardous Materials Safety Administration (PHMSA) announced the issuance of a final rule to establish the process for evaluating state excavation damage prevention law enforcement programs and enforce minimum Federal damage prevention standards in states where damage prevention law enforcement is deemed inadequate or does not exist.²²

Under its rule,²³ Pipeline and Hazardous Materials Safety Administration (PHMSA) uses the following criteria in evaluating the effectiveness of a state damage prevention program:

- Does the state have the authority to enforce its state excavation damage prevention law using civil penalties and other appropriate sanctions for violations?
- Has the state designated a state agency or other body as the authority responsible for enforcement of the state excavation damage prevention law?
- Is the state assessing civil penalties and other appropriate sanctions for violations at levels sufficient to deter noncompliance and is the state making publicly available information that demonstrates the effectiveness of the state's enforcement program?

¹⁷ *Id.*

¹⁸ Email message dated March 7, 2017, from Christopher J. Campbell, Director, Legislative and Government Affairs, Florida Court Clerks and Comptrollers (on file with Senate Environmental Preservation and Conservation Committee).

¹⁹ Section 556.103(4), F.S.

²⁰ Section 556.103(5), F.S.

²¹ 49 U.S.C. s, 60114.

²² U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, *About Excavation Enforcement Final Rule*, <http://phmsa.dot.gov/pipeline/safety-awareness-and-outreach/excavator-enforcement> (last visited March 20, 2017).

²³ U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, *Pipeline Safety: Pipeline Damage Prevention Programs*, 80 Fed. Reg. 43,836 (July 23, 2015) (codified at 49 C.F.R. Pts. 196 and 198).

- Does the enforcement authority (if one exists) have a reliable mechanism (e.g., mandatory reporting, complaint driven reporting) for learning about excavation damage to underground facilities?
- Does the state employ excavation damage investigation practices that are adequate to determine the responsible party or parties when excavation damage to underground facilities occurs?
- At a minimum, does the state’s excavation damage prevention program include the following requirements?:
 - Excavators may not engage in excavation activity without first using an available one-call notification system to establish the location of underground facilities in the excavation area.
 - Excavators may not engage in excavation activity without regard to the marked location of a pipeline facility as established by a pipeline operator.
 - An excavator who causes damage to a pipeline facility:
 - Must report the damage to the operator of the facility at the earliest practical moment following discovery of the damage; and
 - If the damage results in the escape of any PHMSA regulated natural or other gas or hazardous liquid, must promptly report to other appropriate authorities by calling the 911 emergency telephone number or another emergency telephone number.
- Does the state limit exemptions for excavators from its excavation damage prevention law?
 - A state must provide to PHMSA a written justification for any exemptions for excavators from state damage prevention requirements.
 - PHMSA will make the written justifications available to the public.²⁴

Hazardous substances regulated by Pipeline and Hazardous Materials Safety Administration (PHMSA) include a host of chemical and radionuclides found in appendix A of Title 49, C.F.R., s. 172.101,²⁵ but do not include petroleum or crude oil, or natural gas in various states or mixtures.²⁶ Petroleum, crude oil, and natural gas are hazardous materials, regulated by PHMSA in Title 49, C.F.R., s. 172.101.²⁷ The Sunshine State One-Call of Florida (SSOCF) has identified proposals that will enhance the effectiveness of the Act according to the criteria adopted by PHMSA. They are reflected in the provisions of this bill.

III. Effect of Proposed Changes:

Procedures for Contact or Damage

If an excavator’s contact with or damage to an underground pipe or any other underground facility results in the escape of any natural gas or other hazardous substance or hazardous

²⁴ *Id.*

²⁵ U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, *Subchapter C - Hazardous Materials Regulations*, 49 C.F.R. s. 172.101, available at <https://www.gpo.gov/fdsys/pkg/CFR-2016-title49-vol2/xml/CFR-2016-title49-vol2-sec172-101.xml> (last visited March 20, 2017).

²⁶ See 49 C.F.R. s. 171.8 for definitions of “hazardous material” and “hazardous substance,” available at <https://www.gpo.gov/fdsys/pkg/CFR-2016-title49-vol2/xml/CFR-2016-title49-vol2-sec171-8.xml>. (last visited March 20, 2017).

²⁷ U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, *Subchapter C - Hazardous Materials Regulations*, 49 C.F.R. s. 172.101, available at <https://www.gpo.gov/fdsys/pkg/CFR-2016-title49-vol2/xml/CFR-2016-title49-vol2-sec172-101.xml>.

material regulated by the Pipeline and Hazardous Materials Safety Administration (PHMSA), the excavator must immediately report the contact or damage by calling the 911 emergency telephone number.

Section 2 amends s. 556.105, F.S., to require a member operator to file with the Sunshine State One-Call of Florida (SSOCF) system a report of all events it has received notice of through the system that have resulted in damages to any pipe, cable or the cable's protective covering, or other underground facility. Member operators must submit these reports at least annually to the system, no later than March 31, for all such events that occurred in the prior calendar year. Member operators may, at their option and sole discretion, submit the reports to the system on a more frequent basis. These member operator reports are required to include, if known, the cause, nature, and location of the damage. The bill also requires the system to establish and maintain a process to facilitate submission of reports by member operators.

These reporting requirements enhance the Underground Facility Damage Prevention and Safety Act (Act) and may provide the procedures necessary to meet the requirements of the 2015 rule that contains the criteria used by the Pipeline and Hazardous Materials Safety Administration (PHMSA) in its evaluation of the effectiveness of Florida's damage prevention enforcement program.

Civil Penalty Citations

Section 3 amends s. 556.107, F.S., to remove the current provision that directs civil penalties collected by clerks of court from citations issued by state law enforcement officers to be retained by the clerk for deposit into the fine and forfeiture fund. Under this section, 80 percent of the penalty resulting from a citation issued by a state law enforcement officer will be distributed to the state, and 20 percent of the penalty will be retained by the clerk of the court to cover administrative costs, in addition to other court costs. Eighty percent of the penalty resulting from a citation issued by a local government entity will continue to go to the local government that issues the citation.

Annual Progress Report on Participation by Municipalities and Counties

Section 1 amends s. 556.103, F.S., to require the Sunshine State One-Call of Florida (SSOCF) board of director's annual progress report to the President of the Senate, the Speaker of the House of Representatives, and the Governor on the participation by municipalities and counties in the one-call notification system to include:

- A summary of the damage reporting data received by the system for the preceding year regarding events that damage underground facilities, including information from member operator reports and from notifications member operators receive from excavators that have made contact with or damaged underground facilities, including information regarding temporary or permanent repairs to the facilities resulting from any contact or damage and 911 calls made as a result of the escape of substances from underground facilities that have been impacted; and
- Any analysis of the data by the board.

This expansion of information provided in an annual progress report may provide the data necessary to meet the requirements of Pipeline and Hazardous Materials Safety Administration (PHMSA) in its evaluation of the effectiveness of Florida's damage prevention enforcement program.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Although the bill shifts revenues currently retained by the clerk of the court in the fine and forfeiture fund to the state agencies that issue certain citations, the provisions of Art. VII, sec. 19 of the State Constitution do not appear to apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The requirement that a member operator file an annual report with the Sunshine State One-Call of Florida (SSOCF) if an excavation or demolition event damages any of its pipes, cables, or other underground facilities does not appear to be a significant economic impact on the private sector.

C. Government Sector Impact:

The bill may result in an insignificant increase in state revenues as a result of state law enforcement entities issuing citations for violations. The Florida Court Clerks and Comptrollers reports that 23 citations were issued statewide under the "Underground Facility Damage Prevention and Safety Act" in 2015, and 19 citations were issued in 2016. However, in recent years, no citations have been issued by state law enforcement agencies.²⁸

VI. Technical Deficiencies:

None.

²⁸ Email message dated March 7, 2017, from Christopher J. Campbell, Director, Legislative and Government Affairs, Florida Court Clerks and Comptrollers (on file with Senate Environmental Preservation and Conservation Committee).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 556.103, 556.105, and 556.107.

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 Environmental Preservation and Conservation on March 14, 2017:

Includes hazardous materials with any natural gas or other hazardous substances as contents requiring an excavator to call 911 should any of them escape from an underground pipe or other underground facility as a result of contact or damage to the pipe or facility by the excavator.

- B. **Amendments:**

None.

By the Committee on Environmental Preservation and Conservation;
and Senator Passidomo

592-02439-17

2017446c1

A bill to be entitled

An act relating to underground facilities; amending s. 556.103, F.S.; revising the information that must be submitted to the Legislature annually by the board of directors of Sunshine State One-Call of Florida, Inc.; amending s. 556.105, F.S.; requiring excavators to call the 911 emergency telephone number under certain circumstances; requiring member operators to file a report with the free-access notification system under certain circumstances; providing reporting frequencies and required data to be submitted; amending s. 556.107, F.S.; specifying how certain civil penalties issued by state law enforcement officers shall be distributed; deleting a requirement that certain citations be deposited into the fine and forfeiture fund; providing an effective date.

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

Section 1. Subsection (5) of section 556.103, Florida Statutes, is amended to read:

556.103 Creation of the corporation; establishment of the board of directors; authority of the board; annual report.—

(5) The board of directors shall submit to the President of the Senate, the Speaker of the House of Representatives, and the Governor, not later than 60 days before the convening of each regular session of the Legislature, an annual progress report on the participation by municipalities and counties in the one-call notification system created by this chapter. The report must

Page 1 of 3

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

592-02439-17

2017446c1

include a summary of the reports to the system from the clerks of court, a summary of the damage reporting data received by the system under s. 556.105(12) for the preceding year, and any analysis of the data by the board of directors.

Section 2. Subsection (12) of section 556.105, Florida Statutes, is amended to read:

556.105 Procedures.—

(12) (a) If any contact with or damage to any pipe, cable, or its protective covering, or any other underground facility occurs, the excavator causing the contact or damage shall immediately notify the member operator. If contact with or damage to an underground pipe or any other underground facility results in the escape of any natural gas or other hazardous substance or material regulated by the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation, the excavator must immediately report the contact or damage by calling the 911 emergency telephone number. Upon receiving notice, the member operator shall send personnel to the location as soon as possible to effect temporary or permanent repair of the contact or damage. Until such time as the contact or damage has been repaired, the excavator shall cease excavation or demolition activities that may cause further damage to such underground facility.

(b) If an event damages any pipe, cable or its protective covering, or other underground facility, the member operator receiving the notice shall file a report with the system. Reports must be submitted annually to the system, no later than March 31 for the prior calendar year, or more frequently at the option and sole discretion of the member operator. Each report

Page 2 of 3

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592-02439-17

2017446c1

59 must describe, if known, the cause, nature, and location of the
60 damage. The system shall establish and maintain a process to
61 facilitate submission of reports by member operators.

62 Section 3. Paragraph (c) of subsection (1) of section
63 556.107, Florida Statutes, is amended to read:

64 556.107 Violations.—

65 (1) NONCRIMINAL INFRACTIONS.—

66 (c) Any excavator or member operator who commits a
67 noncriminal infraction under paragraph (a) may be required to
68 pay a civil penalty for each infraction, which is \$500 plus
69 court costs. If a citation is issued by a state law enforcement
70 officer, a local law enforcement officer, a local government
71 code inspector, or a code enforcement officer, 80 percent of the
72 civil penalty collected by the clerk of the court shall be
73 distributed to the ~~local~~ governmental entity whose employee
74 issued the citation and 20 percent of the penalty shall be
75 retained by the clerk to cover administrative costs, in addition
76 to other court costs. ~~If a citation is issued by a state law~~
77 ~~enforcement officer, the civil penalty collected by the clerk~~
78 ~~shall be retained by the clerk for deposit into the fine and~~
79 ~~forfeiture fund established pursuant to s. 142.01.~~ Any person
80 who fails to properly respond to a citation issued pursuant to
81 paragraph (b) shall, in addition to the citation, be charged
82 with the offense of failing to respond to the citation and, upon
83 conviction, commits a misdemeanor of the second degree,
84 punishable as provided in s. 775.082 or s. 775.083. A written
85 warning to this effect must be provided at the time any citation
86 is issued pursuant to paragraph (b).

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



**SENATOR KATHLEEN
PASSIDOMO**
28th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Ethics and Elections, *Chair*
Healthy Policy, *Vice Chair*
Appropriations Subcommittee on Health
and
Human Services
Appropriations Subcommittee on
Transportation,
Tourism, and Economic Development
Commerce and Tourism

SELECT COMMITTEE:

Joint Select Committee on Collective
Bargaining

JOINT COMMITTEE:

Joint Legislative Auditing Committee

March 29, 2017

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

Dear Chair Bean:

CS/Senate Bill 446, has been referred to the Appropriations Subcommittee on Criminal and Civil Justice. I would appreciate the placing of this bill on the committee agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Passidomo", with a horizontal line extending to the right.

Kathleen C. Passidomo

Cc: Tim Sadberry, Staff Director
Lisa Roberts, Committee Assistant

REPLY TO:

- 3299 East Tamiami Trail, Suite 203, Naples, Florida 34112 (239) 417-6205
- 318 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5028

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

APPEARANCE RECORD

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

4-13-17

Meeting Date

446

Bill Number (if applicable)

Topic Underground Facilities

Amendment Barcode (if applicable)

Name Mark Sweet

Job Title Executive Director

Address 403 Pine Tree Road

Phone 386-801-3279

Street

Lake Mary FL 32746

City

State

Zip

Email mark.sweet@sunshine811.com

Speaking: For Against Information

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

Representing Sunshine 811

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

4/13/17

Meeting Date

SB 446

Bill Number (if applicable)

Topic Underground Facilities

Amendment Barcode (if applicable)

Name Kari Hebrank

Job Title _____

Address 113 E College Ave. suit 200
Street

Phone 850-514-5183

Tallahassee 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 NUCA FL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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 448 (475178)

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

SUBJECT: Prearrest Diversion Programs

DATE: April 14, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>McAuliffe</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 448 creates s. 901.40, F.S., to encourage local communities and public or private educational institutions to implement a prearrest diversion program. The bill prescribes a model program that local communities may adopt. The model program allows a law enforcement officer, at the officer's sole discretion, to issue a civil citation or similar prearrest diversion program notice to an adult who:

- Commits a misdemeanor offense (as determined by the program);
- Admits to committing the offense or does not contest the offense;
- Has not previously been arrested; and
- Has not previously received an adult civil citation or similar prearrest diversion program notice, unless the terms of the local adult prearrest diversion program allows otherwise.

The model program requires the program operator to electronically provide the participant's personal identifying information to the clerk of the circuit court in the county where the operator provides services. The clerk must keep this information in a statewide database and provide a single point of access for the information.

An adult who agrees to a civil citation or similar prearrest diversion program notice must successfully complete a program that includes intervention and community service hours. If the adult does not successfully complete the program, the law enforcement officer must determine if there is good cause to arrest the adult for the original misdemeanor offense, and refer the case to

the state attorney to determine if prosecution is appropriate, or to allow the adult to continue in the program.

The bill has no impact on state revenues or expenditures. The creation of a prearrest diversion program could result in cost savings for local governments. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2018.

II. Present Situation:

Through the years the term “diversion” has been used broadly to refer to programs that allow an individual to avoid incarceration but still result in a criminal conviction. In recent years, the term diversion has also begun to be used to refer to programs that address an individual’s behavior but do not result in a conviction. “At either end of the diversion spectrum, the overriding goals are the same – to maximize the opportunity for success and minimize the likelihood of recidivism.”¹

An example of diversion is prearrest diversion. One form of prearrest diversion is a civil citation program where a law enforcement officer may issue a civil citation to an individual who commits an eligible misdemeanor offense (as determined by the prearrest diversion program), meets other eligibility requirements, and agrees to participate in and successfully complete a program (interventions and sanctions, including community service hours). If the individual successfully completes the program, he or she does not have an arrest or arrest record.²

Juvenile civil citation programs are in operation throughout the state and are recommended by Florida law.³ Florida law does not specifically address adult civil citation programs or other prearrest diversion programs for adults.

Juvenile Civil Citation

Section 985.12, F.S., encourages local entities to establish juvenile civil citation programs. The statute provides a framework for a modal juvenile civil citation program, which provides an alternative to custody by the Department of Juvenile Justice (DJJ) for children who commit nonserious delinquent acts.⁴ Under the model program, if a juvenile admits to committing a misdemeanor⁵ a law enforcement officer has the discretion to:

- Issue a warning or inform the juvenile’s parent of the child’s infraction;
- Issue a civil citation or require participation in a similar diversion program; or

¹ Center for Health and Justice at TASC, *No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives*, (December 2013), pg. 6 and 8, available at http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report_web.pdf (last visited February 20, 2017).

² Civil Citation Network, *Adult Civil Citation Program*, (revised September 2013), pg. 2, available at <http://www.discvillage.com/DOCS/AdultCivilCitationBrochure.pdf> (last visited February 20, 2017).

³ Section 985.12, F.S.

⁴ Section 985.12(1), F.S.

⁵ Misdemeanors involving sexual or firearm offenses are currently ineligible for civil citation programs under the DJJ Civil Citation Model Plan. *2017 Bill Analysis for SB 196*, Department of Juvenile Justice, (January 18, 2017) (on file with the Senate Criminal Justice Committee).

- Arrest the juvenile.⁶

These programs are discretionary⁷ to participate in by the child and require the youth to complete no more than 50 community service hours. The programs may also require participation in intervention services appropriate to the identified needs of the youth, including family counseling, urinalysis monitoring, and substance abuse and mental health treatment services.⁸

The Leon County Adult Civil Citation Program

The American Bar Association has observed: “Although Florida’s civil citation programs are focused on juveniles, the guidelines and principles inherent in the programs are generally applicable to adults, as well.”⁹ Leon County operates an adult civil citation program.¹⁰

The Leon County’s program provides a law enforcement officer with the discretion to issue a civil citation once probable cause has been determined to arrest an adult and the officer has advised the adult of his or her Miranda rights and obtained an admission.¹¹ The law enforcement officer must then verify whether the adult meets all of the following criteria:

- The offense is one of the following misdemeanor offenses:
 - Possession of alcohol by a person under 21 years of age;
 - Possession of less than 20 grams of marijuana;
 - Possession of drug paraphernalia;
 - An open house party violation;
 - Selling or giving alcoholic beverages to a minor;
 - Criminal mischief (restitution may not exceed \$50);
 - Trespass;
 - Non-domestic battery or assault;
 - Petit theft (restitution may not exceed \$50); or
 - Disorderly conduct.
- The adult resides within the Second Judicial Circuit;¹² and
- The adult is a first-time adult offender (no previous arrest as an adult, and no previous adult civil citation).¹³

⁶ Section 985.12(1), F.S.

⁷ See example, Nineteenth Judicial Circuit Court of Florida, Programs and Services, Juvenile, Civil Citation, *Juvenile Programs – Civil Citation*, available at <http://www.circuit19.org/programs/prgjuvenilecc.html> (last visited February 20, 2017).

⁸ Section 985.12(1), F.S.

⁹ American Bar Association, Criminal Justice Section, *State Policy Implementation Project*, pg. 5, available at http://www.americanbar.org/content/dam/aba/administrative/criminal_justice/spip_civilcitations.authcheckdam.pdf (last visited February 20, 2017).

¹⁰ Alert M. Kopak, *Top reasons to expand adult civil citation program*, Tallahassee Democrat, June 17, 2016, available at <http://www.tallahassee.com/story/opinion/2016/06/17/top-reasons-expand-adult-civil-citation-program/86046394/> (last visited February 20, 2017).

¹¹ Civil Citation Network, Pilot Adult Civil Citation Program, *Implementation Guide*, Second Judicial Circuit of Florida, (August 2013), pg. 4, available at <http://www.civilcitationnetwork.com/docs/Implementation-Guide.pdf> (last visited February 20, 2017).

¹² The Second Judicial Circuit includes the following counties: Franklin, Gadsden, Jefferson, Leon, Liberty, and Wakulla. See Florida’s Second Judicial Circuit, *Court Map*, available at <http://2ndcircuit.leoncountyfl.gov/> (last visited February 20, 2017). *Supra* note 11 at 2-3.

¹³ A prior juvenile civil citation does not make the adult ineligible for a civil citation. *Supra* note 11 at 3.

If the officer determines that the adult is eligible to participate in the adult civil citation program and a civil citation is appropriate, the officer then must explain to the adult that participation in the adult civil citation program is voluntary.¹⁴ If the adult chooses not to participate in the adult civil citation program, the officer either issues a Notice to Appear (NTA) or transports the adult to the jail for formal booking.¹⁵

If the adult agrees to participate in the adult civil citation program, the officer issues a civil citation and the adult has 7 days to report to DISC Village, Inc.,¹⁶ for intake and assessment. Based on the results of the assessment and initial drug screening, the provider creates an individualized intervention plan. The intervention plan includes:

- Counseling sessions (at least three with a behavioral health specialist);
- Drug screening;
- Online educational intervention modules; and
- Community service hours.¹⁷

The adult must also pay a \$350 fee to participate in the program.¹⁸ If the adult successfully completes all sanctions and intervention services, the social services provider notifies the referring law enforcement agency, and the person does not have an arrest record.¹⁹

If the participant does not successfully complete the program, the referring law enforcement agency is notified and then contacts the adult and attempts to issue a NTA. If the adult does not comply with arrangements to receive a NTA, an arrest affidavit and warrant are submitted. Subsequently, the adult may face prosecution if the state attorney determines that prosecution is appropriate.²⁰

Statistics on the Leon County Adult Civil Citation Program

From March 2013 to August 2016, the Tallahassee Police Department and Leon County Sheriff's Office issued 1,113 adult civil citations with an average successful completion rate of 83 percent. Of those who successfully completed the adult civil citation program, the rearrest rate was 7 percent and for those who did not successfully complete the program, the rearrest rate was 61 percent.²¹

¹⁴ *Supra* note 11 at 4.

¹⁵ *Supra* note 11 at 3.

¹⁶ DISC Village, Inc., is a non-profit social services provider. DISC Village, Inc., also operates the juvenile assessment center and juvenile civil citation program that serve counties in the Second Judicial Circuit. *See Disc Village*, available at <http://www.discvillage.com/home.html> (last visited February 20, 2017).

¹⁷ *Supra* note 11 at 5, 9-10, and 12.

¹⁸ Email from Barney T. Bishop, President and CEO, Florida Smart Justice Alliance, to Senate Criminal Justice Committee Staff, (February 27, 2017) (on file with the Senate Criminal Justice Committee).

¹⁹ *Id.* at 12.

²⁰ *Id.*

²¹ Civil Citation Network, *Tallahassee/Leon County Three-Year Outcomes, Pre-arrest Diversion Adult Civil Citation Program*, p. 1, (on file with the Senate Criminal Justice Committee).

III. Effect of Proposed Changes:

The bill creates s. 901.40, F.S., to encourage local communities and public or private educational institutions to implement a prearrest diversion program. The bill provides a framework for a model adult civil citation program that may be adopted.

The model program allows a law enforcement officer, at the officer's sole discretion, to issue a civil citation or similar prearrest diversion program notice to an adult who:

- Commits a misdemeanor offense (as determined by the program);
- Admits to committing the offense or does not contest the offense;
- Has not previously been arrested; and
- Has not previously received an adult civil citation or similar prearrest diversion program notice, unless the terms of the local adult prearrest diversion program allows otherwise.

The model program requires a committee to develop policies and procedures for the program, including, eligibility criteria, program implementation and operation, the determination of a fee, if any, to be paid by adults participating in the program, and qualifying misdemeanor offenses.

The committee is comprised of:

- Representatives of participating law enforcement agencies;
- A representative of the program services provider;
- The public defender;
- The state attorney; and
- The clerk of the circuit court.

The model program committee must solicit input from other interested stakeholders when developing the program's policies and procedures. The model program may be operated by a law enforcement agency, the county or municipality, or another entity that the county or city selects.

The model program requires an adult who receives a civil citation or similar prearrest diversion program notice to report for intake and be provided appropriate assessment, intervention, education, and behavioral health care services. While in the model program, the adult must complete the required community service hours and pay restitution.

The model program also requires the program operator to electronically provide the participant's personal identifying information to the clerk of the circuit court in the county where the operator provides services. The clerk must keep this information in a statewide database and provide a single point of access for the information.

If the program assesses a fee for participation in the civil citation or similar prearrest diversion program, the clerks receive a reasonable portion for receiving and maintaining the specified information. The clerk's portion must be deposited into the clerk's fine and forfeiture fund established in s. 142.01, F.S. The bill specifies that this information is not a court record and requires the clerk maintain confidentiality of the participant's personal identifying information.

The model program provides that if the adult does not successfully complete the program, the law enforcement officer must determine if there is good cause to arrest the adult for the original

misdemeanor offense, and refer the case to the state attorney to determine if prosecution is appropriate, or to allow the adult to continue in the program.

Counties and municipalities are not preempted from enacting noncriminal sanctions for a violation of an ordinance or other violation. Counties, municipalities, and public or private educational institutions are not preempted from creating their own model for a prearrest diversion program for adults. However, if a prearrest diversion program is implemented the program is encouraged to share information with other programs.

The bill is effective July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not mandate that local governments create a prearrest diversion program for adults; it only “encourages” the creation of such a program. Additionally, criminal laws are excluded from Article VII, section 18 of the Florida Constitution, relating to state mandates that affect revenues and expenditures of local governments.

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:

Participants of a prearrest diversion program will likely have to pay fees to participate. For example, under the Leon County model, an eligible adult who chooses to participate in the adult civil citation program must pay a program fee of \$350, but this fee may be waived if the participant does not have the means to pay it.²² The participant may also have to pay restitution as part of a prearrest diversion program.

C. Government Sector Impact:

Any fiscal impact on the clerks is indeterminate at the time because it is not known how many programs will choose to participate in the model civil citation program. However, the bill provides that if the program assesses a fee for participation in the civil citation or

²² *Supra* note 18.

similar prearrest diversion program, the clerks receive a reasonable portion for receiving and maintaining the specified information.

The bill does not mandate that local governments or public or private educational institutions create prearrest diversion programs for adults. Under the Leon County model, the adult civil citation program is self-sustaining (paid for by program fees).²³ The fee for the Leon County adult civil citation program is \$350.²⁴

Creation of a prearrest diversion program may result in cost savings (e.g., reduced detention/confinement costs and booking/arrest-processing costs), depending on the number of eligible offenses, other eligibility criteria chosen, the pool of eligible adults, the number of participating law enforcement agencies, the use of civil citations or similar prearrest diversion program notices by those agencies, and any impact the program may have in reducing arrests.

The Criminal Justice Impact Conference met on March 2, 2017, and found that the bill would have no impact on prison beds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The approach taken by the bill affords law enforcement officers complete discretion in the decision to arrest or issue a civil citation or similar prearrest diversion program notice. The Florida Supreme Court has remarked that “the discretionary judgmental power granted a police officer to make an arrest and enforce the law” is “considered basic to the police power function of governmental entities and is recognized as critical to a law enforcement officer’s ability to carry out his duties.”²⁵

The bill does not require the provider to notify the clerk of the civil citation; the bill only requires personal identifying information be provided.

The bill also does not specify what database system the clerks will use to maintain this information.

CS/CS/CS/SB 450 is the related public records bill linked to this bill.

VIII. Statutes Affected:

This bill creates section 901.40 of the Florida Statutes.

²³ Adult Civil Citation, *Senate Bill 618 – Pre-Arrest Diversion Programs*, November 5, 2015 (on file with the Senate Committee on Criminal Justice).

²⁴ *Supra* note 18.

²⁵ *Everton v. Willard*, 468 So.2d 936, 938 (Fla.1985).

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 13, 2017:

The committee substitute:

- Requires the program operator to electronically provide the participant's personal identifying information to the clerk of the circuit court in the county where the program provides services;
- Specifies that this information is not a court record and the clerk must maintain confidentiality of the participant's personal identifying information;
- Requires the clerk to keep this information in a statewide database and provide a single point of access; and
- Specifies that if the program requires a fee for participation then the clerk must receive a reasonable portion for receiving and maintaining the information.

CS by Criminal Justice on March 13, 2017:

The committee substitute:

- Removes the requirement that the misdemeanor offense must be a *nonviolent* misdemeanor;
- Revises model program criteria to allow an eligible adult to not contest the offense (as an alternative to admitting to committing the offense);
- Allows local adult prearrest diversion programs to determine whether an adult can receive another civil citation or similar prearrest diversion program notice even if he or she already has received one;
- Removes the provision allowing the victim to object to the issuance of a civil citation;
- Specifies that if an adult does not successfully complete the program, the law enforcement officer has the discretion to arrest the adult or allow the adult to continue in the program;
- Clarifies that programs can determine whether to charge a fee for participation; and
- Makes technical changes recommended by staff.

- B. **Amendments:**

None.



333852

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/14/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 81 - 104

and insert:

(3) PROGRAM DEVELOPMENT; IMPLEMENTATION; OPERATION.-

(a) Representatives of participating law enforcement agencies, a representative of the program services provider, the public defender, the state attorney, and the clerk of the circuit court shall create the prearrest diversion program and develop its policies and procedures, including, but not limited



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11 to, eligibility criteria, program implementation and operation,
12 and the determination of the fee, if any, to be paid by adults
13 participating in the program. In developing the policies and
14 procedures for the program, the parties must solicit input from
15 other interested stakeholders. The program may be operated by an
16 entity such as a law enforcement agency, the county or
17 municipality, or another entity selected by the county or
18 municipality.

19 (b) Upon intake of any person participating in the program,
20 the program operator shall electronically provide a
21 participant's personal identifying information to the clerk of
22 the circuit court for the county in which the program provides
23 services. Such information is not a court record, and the clerk
24 must maintain confidentiality of the participant's personal
25 identifying information in accordance with subsection (6). The
26 clerk shall maintain such information in a statewide database,
27 which must provide a single point of access for all such
28 statewide information. If the program includes a fee for
29 participation, the clerk must receive a reasonable portion, to
30 be determined by the stakeholders creating the program, for
31 receiving and maintaining the personal identifying information.
32 The fee must be deposited by the clerk into the clerk's fine and
33 forfeiture fund established pursuant to s. 142.01.

34 (4) QUALIFYING OFFENSES.—Misdemeanor offenses that qualify
35 the offender for a prearrest diversion program must be selected
36 as part of the program development under subsection (3).

37 (5) APPLICABILITY.—This section does not preempt a county
38 or municipality from enacting noncriminal sanctions for a
39 violation of an ordinance or other violation, and it does not



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40 preempt a county, a municipality, or a public or private
41 educational institution from creating its own model for a
42 prearrest diversion program for adults.

43 Section 1. This act shall take effect July 1, 2018.

44

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

46 And the title is amended as follows:

47 Delete line 30

48 and insert:

49 entities to operate the program; requiring the
50 prearrest diversion program operator to electronically
51 provide a participant's personal identifying
52 information to the clerk of the circuit court;
53 specifying requirements for the clerk on the handling
54 of the information and maintaining it in a statewide
55 database; providing for fee sharing under certain
56 circumstances; requiring fees received by the clerk to
57 be deposited in a certain fund; specifying how the

By the Committee on Criminal Justice; and Senator Brandes

591-02385A-17

2017448c1

1 A bill to be entitled
 2 An act relating to prearrest diversion programs;
 3 creating s. 901.40, F.S.; encouraging local
 4 communities and public or private educational
 5 institutions to implement prearrest diversion programs
 6 for certain offenders; encouraging prearrest diversion
 7 programs to share information with other prearrest
 8 diversion programs; authorizing law enforcement
 9 officers, at their sole discretion, to issue a civil
 10 citation or similar prearrest diversion program notice
 11 to adults under specified circumstances; requiring an
 12 adult who is issued a civil citation or similar
 13 prearrest diversion program notice by a participating
 14 law enforcement agency to report for intake as
 15 required by the prearrest diversion program; requiring
 16 the program to provide certain appropriate services;
 17 requiring that an adult who is issued a civil citation
 18 or similar prearrest diversion program notice fulfill
 19 a community service requirement; requiring the adult
 20 to pay restitution to a victim; requiring the law
 21 enforcement officer to determine if there is good
 22 cause to arrest an adult who did not successfully
 23 complete the program and refer the case to the state
 24 attorney or allow the adult to continue in the
 25 program; requiring specified entities to create the
 26 prearrest diversion program; requiring the entities to
 27 develop policies and procedures for the development
 28 and operation of the program and to solicit input from
 29 other interested stakeholders; authorizing specified

Page 1 of 4

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

591-02385A-17

2017448c1

30 entities to operate the program; specifying how the
 31 misdemeanor offenses that are eligible for the
 32 prearrest diversion program are selected; providing
 33 applicability; providing an effective date.
 34

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

36
 37 Section 1. Section 901.40, Florida Statutes, is created to
 38 read:

39 901.40 Prearrest diversion programs.-

40 (1) INTENT.-The Legislature encourages local communities
 41 and public or private educational institutions to implement
 42 prearrest diversion programs that afford certain adults who
 43 fulfill specified intervention and community service obligations
 44 the opportunity to avoid an arrest record. The Legislature does
 45 not mandate that a particular prearrest diversion program for
 46 adults be adopted, but finds that the adoption of the model
 47 provided in this section would allow certain adults to avoid an
 48 arrest record, while ensuring that those adults receive
 49 appropriate intervention and fulfill community service
 50 obligations. If a prearrest diversion program is implemented,
 51 the program is encouraged to share information with other
 52 prearrest diversion programs.

53 (2) MODEL PREARREST DIVERSION PROGRAM.-Local communities
 54 and public or private educational institutions may adopt a
 55 program in which:

56 (a) Law enforcement officers, at their sole discretion, may
 57 issue a civil citation or similar prearrest diversion program
 58 notice to certain adults who commit a qualifying misdemeanor

Page 2 of 4

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

591-02385A-17

2017448c1

59 offense selected by the program. A civil citation or similar
 60 prearrest diversion program notice may be issued if the adult:

61 1. Admits that he or she committed the offense or does not
 62 contest the offense; and

63 2. Has not previously been arrested and has not received an
 64 adult civil citation or similar prearrest diversion program
 65 notice, unless the terms of the local adult prearrest diversion
 66 program allow otherwise.

67 (b) An adult who receives a civil citation or similar
 68 prearrest diversion program notice shall report for intake as
 69 required by the local prearrest diversion program and shall be
 70 provided appropriate assessment, intervention, education, and
 71 behavioral health care services by the program. While in the
 72 local prearrest diversion program, the adult shall perform
 73 community service hours as specified by the program. The adult
 74 shall pay restitution due to the victim as a program
 75 requirement. If the adult does not successfully complete the
 76 prearrest diversion program, the law enforcement officer shall
 77 determine if there is good cause to arrest the adult for the
 78 original misdemeanor offense and refer the case to the state
 79 attorney to determine if prosecution is appropriate or allow the
 80 adult to continue in the program.

81 (3) PROGRAM DEVELOPMENT; IMPLEMENTATION; OPERATION.—
 82 Representatives of participating law enforcement agencies, a
 83 representative of the program services provider, the public
 84 defender, the state attorney, and the clerk of the circuit court
 85 shall create the prearrest diversion program and develop its
 86 policies and procedures, including, but not limited to,
 87 eligibility criteria, program implementation and operation, and

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2017448c1

88 the determination of the fee, if any, to be paid by adults
 89 participating in the program. In developing the policies and
 90 procedures for the program, the parties must solicit input from
 91 other interested stakeholders. The program may be operated by an
 92 entity such as a law enforcement agency, the county or
 93 municipality, or another entity selected by the county or
 94 municipality.

95 (4) QUALIFYING OFFENSES.—Misdemeanor offenses that qualify
 96 the offender for a prearrest diversion program must be selected
 97 as part of the program development under subsection (3).

98 (5) APPLICABILITY.—This section does not preempt a county
 99 or municipality from enacting noncriminal sanctions for a
 100 violation of an ordinance or other violation, and it does not
 101 preempt a county, a municipality, or a public or private
 102 educational institution from creating its own model for a
 103 prearrest diversion program for adults.

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



The Florida Senate

Committee Agenda Request

To: Senator Aaron Bean,
Appropriations Subcommittee on
Criminal and Civil Justice

Subject: Committee Agenda Request

Date: March 13th, 2017

I respectfully request that **Senate Bill #448**, relating to **Prearrest Diversion Programs**, be placed on the:

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

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

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/13/17

Meeting Date

448

Bill Number (if applicable)

Topic Pre-arrest Diversion Program

Amendment

Amendment Barcode (if applicable)

Name Melissa Miller

Job Title Executive Director

Address 169 Sinclair Rd

Phone (850) 284-2090

Street

City TLM FL

State

Zip 32312

Zip

Email normm19@alaska.gov

Speaking: For Against Information

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

Representing NORMAL TALKING ASSEE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 13, 2017

Meeting Date

CS/SB 448

Bill Number (if applicable)

Topic Prearrest Diversion Programs

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 N. Gadsden Street

Phone 850-488-6850

Street

Tallahassee

FL

32301

Email ndaniels@flpda.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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/13/2017

448

Meeting Date

Bill Number (if applicable)

333852

Amendment Barcode (if applicable)

Topic

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-877-2165

Street

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

City

State

Zip

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.

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APPEARANCE RECORD

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

4/13/17

Meeting Date

CS/13 448

Bill Number (if applicable)

Topic Civil Citation Pre Arrest

Amendment Barcode (if applicable)

Name Fred Buggett

Job Title _____

Address 101 E. College Ave.
Street

Phone 591 0915

Tallahassee FL 32301
City State Zip

Email BuggettF@GTLaw.com

Speaking: For Against Information

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

Representing Fl. Association of Court Clerks

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.

APPEARANCE RECORD

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

4/13/17
Meeting Date

448
Bill Number (if applicable)

Topic SB 448 - Prearrest Div. Prog

Amendment Barcode (if applicable)

Name Ellie Piloseno

Job Title Research Analyst

Address 106 N. Bronough St.

Phone 850-272-5052

Tallahassee FL 32301
City State Zip

Email epiloseno@floridataxwatch.org

Speaking: For Against Information

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

Representing Florida Tax 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/13/17

448

Meeting Date

Bill Number (if applicable)

Topic Prearrest Diversion Programs

Amendment Barcode (if applicable)

Name Carla Laroche

Job Title Law Fellow

Address PO Box 10788

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32302

Email carla.laroche@splcenter.org

City

State

Zip

Speaking: For Against Information

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

Representing Southern Poverty Law Center

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

4/13/17

Meeting Date

448

Bill Number (if applicable)

Topic PRE-ARREST DIVERSION

Amendment Barcode (if applicable)

Name GREG FROST

Job Title PRESIDENT

Address 3333 W. PENSACOLA

Phone 850-544-7350

Street

TALLAHASSEE FL 32304

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing CIVIL CITATION NETWORK

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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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)

13 Apr 17

Meeting Date

448

Bill Number (if applicable)

Topic Prearrest Diversion

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe

Phone 850.510.9922

Street

Tall
City

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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4/13/17
Meeting Date

CS/SB 448
Bill Number (if applicable)

Topic PREARREST DIVERSION

Amendment Barcode (if applicable)

Name KARA GROSS

Job Title LEGISLATIVE COUNSEL

Address 4500 BISCAYNE BLVD
Street

Phone 786-343-4436

MIAMI, FL 33137
City State Zip

Email KGROSS@ACLUFL.ORG

Speaking: For Against Information

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

Representing ACLU OF FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE
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4/13/2017

448

Meeting Date

Bill Number (if applicable)

333852

Amendment Barcode (if applicable)

Topic _____

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-877-2165

Street

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

City

State

Zip

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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4/13/2017

448

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-877-2165

Street

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

City

State

Zip

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

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4/13/2017

Meeting Date

448

Bill Number (if applicable)

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Speaking: For Against Information

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

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Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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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 748

INTRODUCER: Judiciary Committee and Senator Steube

SUBJECT: Florida Court Educational Council

DATE: April 13, 2017

REVISED: 4/14/17

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 748 establishes the composition and duties of the Florida Court Educational Council in statute. The Council was originally established in 1978 by an administrative order of the Florida Supreme Court and has operated at the discretion of the Court.

The Council, as established by the bill, will be composed of 17 active judges who are elected by the Florida Conference of District Court of Appeal Judges, the Florida Conference of Circuit Court Judge, or the Florida Conference of County Court Judges.. The Council will adopt a comprehensive plan for operating the Court Education Trust Fund and the expenditure of moneys deposited into the trust fund for education and training programs for judges and other court personnel.

The bill requires the Council to adopt guidelines for administrative expenses and to describe in an annual report its efforts to reduce administrative expenses below 44 percent. The Council may not employ more than 15 full-time employees and must be headquartered at the First District Court of Appeal in Tallahassee.

The Council must submit an annual report to the Legislature detailing the number of judges and court personnel who attend training or education programs and provide specifics about the programs. The report must also detail the amount of moneys deposited into the trust fund and the balance at the end of the fiscal year.

If any provisions of the bill are declared invalid, the bill provides that the current fees that support the trust fund may not be assessed and that the remaining unencumbered funds will revert to the General Revenue Fund and the trust fund will be terminated.

The bill does not impact state revenues or expenditures.

The bill takes effect July 1, 2017.

II. Present Situation:

The Florida Court Educational Council

The Florida Supreme Court established the Florida Court Educational Council by administrative order in 1978. It has operated under the direction of the Supreme Court since its inception. The Council was given the responsibility to develop and maintain a comprehensive educational program for judges and court personnel. It was also tasked with making budget, program, and policy recommendations to the Supreme Court for continuing education for judges and some court professionals.¹

Education and Training

Today, the Council and the Office of State Courts Administrator provide training to judges and court staff through a variety of courses on legal issues, ethics, and administrative skills.² The Court's judicial education program has grown substantially over the years to meet the needs of the states almost 1,000 judges.³ In 2016, more than 3,245 judges and court staff received training funded through Court Education Trust Fund,⁴ which is discussed below. An additional 142 people attended distance learning sessions, and many publications are provided online.

Council Membership

The Council is composed of 20 members who are appointed by the Chief Justice of the Supreme Court in an administrative order. The current members are justices or judges from each of the four court levels, the Supreme Court, district courts of appeal, circuit court, and county court, as well as one trial court administrator, and a magistrate.⁵ The current number of members and area of responsibility are:

- Florida Supreme Court – Chief Justice (1).
- District Court of Appeal (2).
- Circuit Courts (4).
- County Courts (4).
- Deans and Associate Deans (4).

¹ *In Re: Florida Court Educational Council*, Fla. Admin. Order No. AOSC14-35. (July 1, 2014).

² Office of Program Policy Analysis & Government Accountability, Report No. 15-13, (December 2015) available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1513rpt.pdf>.

³ Office of the State Court Administrator, Florida, *Short History of Florida State Courts System Processes, Programs, and Initiatives* (2016) available at http://www.flcourts.org/core/fileparse.php/646/urlt/Short-History_2016.pdf.

⁴ Office of the State Courts Administrator, *2017 Judicial Impact Statement for SB 748* (March 23, 2017) (on file with the Senate Committee on Judiciary).

⁵ *In Re: Florida Court Education Council*, Fla. Admin. Order No AOSC16-42 (June 30, 2016) (on file with the Senate Committee on Judiciary).

- Trial Court Administrators (1).
- Florida Court Personnel (2).
- Universal Planning Committee (2).

The Court Education Section, within the Office of State Courts Administrator, provides staffing needs for the Council. The Court Education Section assists in managing the trust fund discussed below and oversees budgeting, record keeping, and travel reimbursements. They also assist with planning and developing training and help judges meet the continuing education requirements.⁶ According to the Office of the State Courts Administrator, there are currently 15 full-time employees who create and administer court education in the state.⁷

Court Education Trust Fund

The Supreme Court, through the Florida Court Education Council, administers the Court Education Trust Fund, which was established by the Legislature in 1982.⁸ The trust fund moneys are used to provide education and training for judges and other court personnel, as determined by the Council.⁹ The Council is responsible for developing a comprehensive plan for the operation of the trust fund and for the expenditure of the moneys deposited into the trust fund. The plan provides for travel, per diem, tuition, educational materials, and other costs incurred for the educational programs, both in and out of state, for the benefit of the judiciary of the state.¹⁰

The trust fund is funded from two sources: a portion of the filing fees for trial and appellate proceedings¹¹ and service charges in probate matters.¹² These fees or service charges amount to \$3.50 per applicable filing.

On July 1, 2015, the Court Education Trust Fund had a cash balance of \$1,204,003. During Fiscal Year 2015-16, the trust fund accrued \$2,585,091 in total revenues and had \$2,019,300 in total disbursements. The ending cash balance on June 30, 2016, was \$1,769,794.

The Supreme Court, operating through the Council, is required to submit an annual report by October 1 to the President of the Senate and Speaker of the House of Representatives. The report must include the number of judges and court personnel who attend each training and educational program, the program attended and its location, and the costs incurred. The report must also identify which judges and personnel attended out-of-state programs and the costs incurred. Finally, the report must show the total dollars deposited into the fund for each fiscal year and the balance at the end of the fiscal year.

⁶ See *supra* note 2.

⁷ See *supra* note 4.

⁸ Ch. 82-168, s. 1, Laws of Fla. and s. 25.384, F.S.

⁹ Section 25.384(2)(a), F.S.

¹⁰ *Id.*

¹¹ Sections 28.241(1)(a)l.c., and 34.041(1)(b), F.S.

¹² Section 28.2401(3), F.S.

III. Effect of Proposed Changes:

Court Education Trust Fund

The bill removes the Supreme Court as the administrator of the Court Education Trust Fund and names the Florida Court Educational Council as the administrator. The Council is required to adopt a comprehensive plan for operating the Court Education Trust Fund and for the expenditure of the moneys in the trust fund. The responsibilities transferred to the Council are almost identical to those required under current law. The comprehensive plan must provide for travel, per diem, tuition, educational materials, and other related costs incurred for in-state and out-of-state education and training programs for judges and court personnel to benefit the judiciary. The programs will be determined by the Council.

Florida Court Educational Council

Appointment and Composition

The bill significantly changes the method of appointment and composition of the Council. The Chief Justice of the Supreme Court will not make the appointments to the Council. Instead, the members will be elected to staggered 2-year terms by other judges. Specifically, two members of the council will be elected by the Florida Conference of District Court of Appeal Judges from among its members. Ten members will be elected by the Florida Conference of Circuit Court Judges from among its members. And five members will be elected by the Florida Conference of County Court Judges from among its members. The Council will elect its chair for a 1-year term and also elect other officers from the membership when it deems necessary.

Duties

The administrative duties of the council include:

- Adopting guidelines on permissible administrative expenses;
- Adopting policies and guidelines relative to the selection of education and training programs, the approval of courses and the selection of participants as well as developing and funding programs for new judges, hearing officers, and magistrates;
- Adopting reporting formats; and
- Employing and supervising up to 15 council employees.

New Location

The Council and its employees will be headquartered at the First District Court of Appeal in Tallahassee.

Annual Report

The annual report required under the bill is virtually identical to the annual report required under current law. It must be submitted by October 1 to the President of the Senate and the Speaker of House and include the number of judges and court personnel who attend in-state training or educational programs, the program attended and its location, and the costs involved. The report must also include the judges and court personnel who attend out-of-state programs and the costs incurred with those programs. The annual report must identify the total dollars deposited into the

trust fund for each fiscal year and the balance remaining in the trust fund at the end of the fiscal year.

The report must also provide a description of the efforts the council makes to reduce its administrative expenses below 44 percent of the previous year's gross receipts on administrative expenses. However, the report does not need to address the council's efforts to minimize its administrative expenses if the council's administrative expenses fall below 25 percent of the previous year's gross receipts.

Invalidity and Reversion

The bill provides that if any of its substantive provisions relating to the Court Education Trust Fund or the Florida Court Educational Council are declared invalid, all of the substantive provisions are invalid. Additionally, upon the finding of invalidity, at least some of the fees funding the Court Education Trust Fund may not be assessed and the funds in the trust fund revert to the General Revenue Fund.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

There are two constitutional provisions that are relevant to this bill. Article V, s. 2(a) of the State Constitution states that "The supreme court shall adopt rules for the practice and procedure in all courts including . . . the administrative supervision of all courts."

Article V, s. 14(d) of State Constitution states that "The judiciary shall have no power to fix appropriations." There is no case law indicating that the Court's authority to provide administrative supervision of all courts includes the exclusive authority to direct funding for court education programs or determine who is eligible to participate in an education program.

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

If a substantive provision of the bill is declared invalid, the additional filing fee or surcharge of \$3.50 that funds the Court Education Trust Fund is not to be assessed. Additionally, at the time of the finding of invalidity, any remaining unencumbered funds in the trust fund are to revert to the General Revenue Fund.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the State Court Administrator (OSCA), in its fiscal impact analysis, observes that moving the Office of Court Education (OCE) to the First District Court of Appeal could require “retrofitting” the new location to the OCE’s needs. Further, the move “would result in lost efficiencies and unused space the OCE currently occupies and shares with other OSCA staff as part of a 10-year lease obligation”.¹³ OSCA was unable to quantify the potential fiscal impact to the courts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 25.384 and 25.385.

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

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

CS by Judiciary on March 28, 2017:

The committee substitute differs from the original bill in four ways. First, the committee substitute provides for the election of the members of the Florida Court Education Council. Second, the committee substitute increases number of employees that the council may employ to 15. Third, the committee substitute no longer limits the administrative expenses of the council. Instead, the council is generally required to report on its efforts to reduce its administrative expenses. Lastly, the committee substitute

¹³ Office of the State Court Administrator, *Senate Bill 748 Fiscal Analysis* (April 13, 2017) (on file with the Senate Appropriations Subcommittee on Criminal and Civil Justice).

requires that the council be headquartered at the First District Court of Appeal rather than the Ninth Judicial Circuit.

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 Steube

590-02997-17

2017748c1

A bill to be entitled

An act relating to the Florida Court Educational Council; amending s. 25.384, F.S.; specifying that the Court Education Trust Fund shall be administered by the Florida Court Educational Council; deleting a provision requiring the council to provide an annual report; amending s. 25.385, F.S.; specifying the membership, voting procedures, and duties of the council; specifying the location of the council headquarters; requiring the council to submit an annual report concerning educational and training programs for judges and other personnel; providing for nonseverability; providing an effective date.

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

Section 1. Subsections (1), (2), and (4) of section 25.384, Florida Statutes, are amended to read:

25.384 Court Education Trust Fund.—

(1) There is created a Court Education Trust Fund to be administered by ~~the Supreme Court through~~ the Florida Court Educational Council as set forth in s. 25.385.

(2) (a) The Florida Court Educational Council shall adopt a comprehensive plan for the operation of the Court Education Trust Fund and the expenditure of the moneys deposited in the trust fund.

(b) The plan shall provide for travel, per diem, tuition, educational materials, and other related costs incurred for in-state and out-of-state education and training programs for

Page 1 of 6

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

590-02997-17

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judges and other court personnel to benefit the judiciary of the state. Such ~~The trust fund moneys shall be used to provide education and training programs shall be for judges and other court personnel as defined and determined by the Florida Court Educational council as set forth in s. 25.385.~~

~~(b) The Supreme Court, through its Florida Court Educational Council, shall adopt a comprehensive plan for the operation of the trust fund and the expenditure of the moneys deposited in the trust fund. The plan shall provide for travel, per diem, tuition, educational materials, and other related costs incurred for educational programs, in and out of state, which will be of benefit to the judiciary of the state.~~

~~(4) The Supreme Court, through the Florida Court Educational Council, shall submit a report each year, on October 1, to the President of the Senate and the Speaker of the House of Representatives, which report shall include the total number of judges and other court personnel attending each training or educational program, the educational program attended and the location of the program, and the costs incurred. In addition, the report shall identify the judges and other court personnel attending out-of-state programs and the costs associated with such programs. The report shall also show the total dollars deposited in the fund for the fiscal year and the balance at the end of the fiscal year.~~

Section 2. Section 25.385, Florida Statutes, is amended to read:

25.385 Florida Court Educational Council; composition; duties; reports standards for instruction of circuit and county court judges in handling domestic violence cases.—

Page 2 of 6

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590-02997-17

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59 (1) (a) The membership of the Florida Court Educational
60 Council, as it was constituted before January 1, 2018, is
61 terminated and replaced as provided in this section. The Florida
62 Court Educational Council shall consist of 17 members. All of
63 the members must be active judges.

64 1. Two members of the council shall be elected to staggered
65 terms by the Florida Conference of District Court of Appeal
66 Judges from its membership pursuant to conference adopted
67 procedures. One council member shall be elected for a term
68 ending December 31, 2019, and subsequently for 2-year terms
69 ending on December 31 of each odd-numbered year and the other
70 council member shall be elected for a term ending on December
71 31, 2020, and subsequently for 2-year terms ending on December
72 31 of each even-numbered year.

73 2. Ten members of the council shall be elected to staggered
74 terms by the Florida Conference of Circuit Court Judges from its
75 membership pursuant to conference adopted procedures. Five
76 council members shall each be elected for a term ending December
77 31, 2019, and subsequently for 2-year terms ending on December
78 31 of each odd-numbered year. The five remaining council members
79 shall each be elected for a term ending on December 31, 2020,
80 and subsequently for 2-year terms ending on December 31 of each
81 even-numbered year.

82 3. Five members of the council shall be elected to
83 staggered terms by the Florida Conference of County Court Judges
84 from its membership pursuant to conference adopted procedures.
85 Three council members shall each be elected for a term ending
86 December 31, 2019, and subsequently for 2-year terms ending on
87 December 31 of each odd-numbered year. The two remaining council

Page 3 of 6

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590-02997-17

2017748c1

88 members shall each be elected for a term ending on December 31,
89 2020, and subsequently for 2-year terms ending on December 31 of
90 each even-numbered year.

91 4. Each vacancy shall be filled for the remainder of an
92 unexpired term in the same manner as the original appointment.

93 5. Council members may serve consecutive terms.

94 6. The council shall elect a chair from its membership for
95 a 1-year term to preside at all council meetings. The council
96 shall also elect other officers from its membership as it deems
97 necessary.

98 (b) A majority of the council members shall constitute a
99 quorum, and the affirmative vote of a majority of the members
100 present shall be necessary for any action to be taken by the
101 council.

102 (c) The administrative duties of the council include:

103 1. Adopting guidelines on permissible administrative
104 expenses. The council shall minimize administrative expenses and
105 maximize educational opportunities for judges and judicial
106 staff.

107 a. Administrative expenses include office space expenses;
108 salaries for full-time employees, or the equivalent, unless such
109 employees teach judges or judicial staff on a full-time basis;
110 compensation for part-time assistance, unless such individuals
111 are retained to teach judges or judicial staff; and equipment
112 and supplies purchased or leased by the council. Upon approval
113 of the council, any employee who documents time spent teaching
114 judges or judicial staff on less than a full-time basis may have
115 the pro-rata portion of his or her salary deducted from the
116 calculation of administrative expenses.

Page 4 of 6

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

590-02997-17

2017748c1

117 b. As part of the report required by subsection (3), the
 118 council shall provide a description of all efforts the council
 119 has made to reduce administrative expenses below 44 percent.
 120 This part of the report is not required for any year in which
 121 the council spends less than 25 percent of the previous year's
 122 gross receipts on administrative expenses.

123 2. Adopting policies and guidelines related to the
 124 selection of continuing judicial and judicial staff education
 125 and training programs, approval of courses for such programs,
 126 and selection of participants. The council shall also develop
 127 and fund appropriate education and training programs for new
 128 trial judges, appellate judges, child support hearing officers,
 129 and magistrates.

130 3. Adopting reporting formats.

131 4. Employing and supervising all council employees. Council
 132 employees shall report only to the chair of the council and may
 133 not be assigned any duties except those dealing directly with
 134 court education. It is unlawful to require a council employee to
 135 perform duties unrelated to judicial or judicial staff education
 136 if such duties are not authorized by the council. The council
 137 may not employ more than 15 full-time employees. The council
 138 must employ less than 15 full-time employees if the council
 139 determines that the judicial and judicial staff education
 140 training objectives of the council can be accomplished with
 141 fewer than 15 employees.

142 (d) The council and its employees shall be headquartered at
 143 the First District Court of Appeal.

144 (2) (a) ~~(1)~~ The Florida Court Educational council shall
 145 establish standards for instruction of circuit and county court

590-02997-17

2017748c1

146 judges who have responsibility for domestic violence cases, and
 147 the council shall provide such instruction on a periodic and
 148 timely basis.

149 ~~(b)(2)~~ As used in this subsection, ~~section~~

150 ~~(a)~~ the term "domestic violence" has the meaning set forth
 151 in s. 741.28.

152 ~~(b)~~ "Family or household member" has the meaning set forth
 153 ~~in s. 741.28.~~

154 (3) The council shall submit a report each year, on October
 155 1, to the President of the Senate and the Speaker of the House
 156 of Representatives that includes the total number of judges and
 157 other court personnel attending each in-state training or
 158 educational program, the training or educational program
 159 attended and the location of the program, and the costs
 160 incurred. The report shall also identify the judges and other
 161 court personnel attending out-of-state training or educational
 162 programs and the costs associated with such programs. The report
 163 shall identify the total dollars deposited into the trust fund
 164 for the fiscal year and the balance in the trust fund at the end
 165 of the fiscal year.

166 Section 3. If any provision contained in section 1 or
 167 section 2 of this act is declared invalid for any reason, then
 168 sections 1 and 2 of this act shall be declared invalid, the fees
 169 that would be directed to the Court Education Trust Fund may not
 170 be assessed pursuant to ss. 28.2401(3), 28.241(1)(a)1.c.,
 171 28.241(1)(a)2.e., and 34.041(1)(b), the remaining unencumbered
 172 funds in the Court Education Trust Fund shall revert to the
 173 General Revenue Fund, and the trust fund shall be terminated.

174 Section 4. This act shall take effect January 1, 2018.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE

23rd District

March 28, 2017

The Honorable Aaron Bean
Florida Senate
306 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Bean,

I am writing this letter because my bill, SB 748 : Florida Court Education Council, has been referred to the Senate Appropriations Subcommittee for Criminal and Civil Justice. This bill passed the Senate Judiciary Committee on March 28. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

Thank you for your consideration. Please contact me if you have any questions.

Very respectfully yours,

A handwritten signature in blue ink, appearing to read "W. Gregory Steube".

W. Gregory Steube, District 23

REPLY TO:

- 722 Apex Road, Unit A, Sarasota, Florida 34240 (941)342-9162
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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4/13/17

Meeting Date

748

Bill Number (if applicable)

Topic Florida Court Educational Council

Amendment Barcode (if applicable)

Name Judge Angela Cowden

Job Title Circuit Judge, 10th Judicial Circuit

Address 430 S. Commerce Ave.

Phone 863-402-6617

Street

Sebring

FL

33870

Email

City

State

Zip

Speaking: For Against Information

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

Representing Conference of Circuit Court Judges

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/CS/SB 776

INTRODUCER: Communications, Energy, and Public Utilities Committee; Criminal Justice Committee;
and Senator Baxley

SUBJECT: Unlawful Acquisition of Utility Services

DATE: April 12, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Caldwell</u>	<u>Caldwell</u>	<u>CU</u>	<u>Fav/CS</u>
3.	<u>McAuliffe</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Favorable</u>
4.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 776 revises provisions relating to utility theft as follows:

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

The bill may have a positive fiscal impact on public and private utilities to the extent that additional restitution is made to those utilities relating to theft of utilities.

The bill is effective October 1, 2017.

II. Present Situation:

Theft of Utilities and Marijuana

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

A man in Tampa was arrested for growing marijuana and stealing over \$4,500 in electricity over a 3-month period. Authorities discovered an illegal tap was supplying the unmetered power to the house where the man was growing marijuana.⁴ In Brooksville, Florida, the Withlacoochee River Electric Cooperative informed the Hernando County Sheriff's Office of three different locations where irregular power usage had been detected. The sheriff's office executed search warrants and found extensive marijuana grow operations at all three locations. The cooperative approximated that its total loss due to the theft and labor costs for all three locations was over \$143,000.⁵

Section 812.14, F.S., Theft of Utilities

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

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

- Willfully alter, tamper with, injure, or knowingly cause to be injured any meter, meter seal, pipe, conduit, wire, line, cable, transformer, amplifier, or other apparatus or device belonging to a utility line service which causes loss or damage or to prevent any meter installed for registering from registering the quantity used;
- Alter the index or break the seal of any meter;
- Hinder or interfere with any meter or device; or
- Knowingly use, waste, or cause the waste of electricity or gas or water passing through any meter, wire, pipe, or fitting, or other appliance or appurtenance connected with or belonging

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

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

³ *Supra* note 1.

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

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

to any utility, after the meter, wire, pipe or fitting, or other appliance or appurtenance has been tampered with, injured, or altered.⁶

It is also a crime to:

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

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

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

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

- Presence of the device or alteration can be attributed to a deliberate act in furtherance of an intent to avoid payment for utility services;
- Person charged has received the direct benefit of the reduction of the cost of the utility services; and
- Customer or recipient of the utility services has received the direct benefit of the utility service for at least one full billing cycle.¹³

It is a first degree misdemeanor for a person or entity that owns, leases, or subleases property to allow a tenant or occupant to use utility services knowing, or under such circumstances that a

⁶ Section 812.14(2)(a), F.S.

⁷ Section 812.14(2)(b) and (c), F.S.

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

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

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

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

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

¹³ Section 812.14(3), F.S.

reasonable person would believe, that the utility services have been connected in one of the above listed ways.¹⁴ It is prima facie evidence of a person's intent to violate this provision if:

- A controlled substance and materials for manufacturing the controlled substance intended for sale or distribution to another were found in a dwelling or structure;
- The dwelling or structure has been visibly modified to accommodate the use of equipment to grow marijuana indoors, including, but not limited to, the installation of equipment to provide additional air conditioning, equipment to provide high-wattage lighting, or equipment for hydroponic cultivation; and
- The person or entity that owned, leased, or subleased the dwelling or structure knew of, or under such circumstances believed, that there was a controlled substance and materials for manufacturing a controlled substance in the dwelling or structure, regardless of whether the person or entity was involved in the manufacture or sale of a controlled substance or was in actual possession of the dwelling or structure.¹⁵

Theft of Utility Services for the Purpose of Facilitating the Manufacture of a Controlled Substance

Theft of utility services for the purpose of facilitating the manufacture of a controlled substance is punishable as a theft under s. 812.014, F.S.¹⁶ There is prima facie evidence of a person's intent to violate this provision if:

- The person committed theft of utility services that resulted in a dwelling or structure receiving unauthorized access to utility services;¹⁷
- A controlled substance and materials for manufacturing the controlled substance were found in the dwelling or structure; and
- The person knew of the presence of the controlled substance and materials for manufacturing the controlled substance in the dwelling or structure, regardless of whether the person was involved in the manufacture of the controlled substance.¹⁸

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

The Public Service Commission regulates the utilities in Florida through market oversight, monitoring the safety, reliability, and services of the utilities and rate base, and economic regulation.¹⁹ The Public Service Commission rules allow a utility to bill a customer in the event of unauthorized or fraudulent use, or meter tampering. The utility may bill for a reasonable estimate of the energy that was used.²⁰

¹⁴ Section 812.14(5), F.S.

¹⁵ Section 812.14(6), F.S.

¹⁶ Section 812.14(8), F.S.

¹⁷ Section 810.011, F.S., defines "dwelling" as a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof; and a "structure" as a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof. ("Curtilage" means the area of land occupied by a dwelling and its yard and outbuildings actually enclosed or considered as enclosed.)

¹⁸ Section 812.14(9), F.S.

¹⁹ My Florida, Public Service Commission, *The PSC's Role*, available at <http://www.psc.state.fl.us/> (last visited March 16, 2017).

²⁰ Rule 25-6.104, F.A.C.

Civil Damages

In a civil action, any person who is found to have committed an offense in s. 812.14, F.S., is liable to a utility involved for an amount equal to three times the amount of the services unlawfully obtained or \$3,000, whichever is greater.²¹

Restitution in a Criminal Case

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

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

When a court determines whether to order restitution and the amount of restitution, it must consider the amount of the loss sustained by the victim because of the offense.²²

III. Effect of Proposed Changes:

The bill provides that prima facie evidence includes:

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

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

- The costs to repair or replace damaged property owned by a utility, including reasonable labor costs.
- Reasonable costs for the use of specialized equipment to investigate or calculate the amount of unlawfully obtained electric services, including reasonable labor costs.
- The amount of unlawfully obtained electric services.

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

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

- The date of an overload notification from a transformer, or the tripping of a transformer, that the utility reasonably believes was overloaded because of the theft of electricity.
- The date the utility verified a substantive difference between the amount of electricity used at a property and the amount billed to the accountholder.
- The date the utility or a law enforcement officer located a tap or other device bypassing a meter.
- The date the utility or a law enforcement officer observed or verified meter tampering.
- The maturity of a cannabis crop found in a dwelling or structure using unlawfully obtained electric services or the number of cannabis crops the utility or a law enforcement officer reasonably believes to have been grown in the dwelling or structure.

²¹ Section 812.14(10), F.S.

²² Section 775.089(6)(a), F.S.

- The date the utility or a law enforcement agency received a report of suspicious activity potentially indicating the presence of the unlawful cultivation of cannabis in a dwelling or structure or when a law enforcement officer or an employee or contractor of a utility observes such suspicious activity.
- The date when a utility observes a significant change in metered energy usage.
- The date when an account with the utility was opened for a property that receives both metered and unlawfully obtained electric services.
- Any other facts or data reasonably relied upon by utilities to estimate the start date of a theft of electricity.

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

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

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

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

The bill specifies the criminal offenses that bear a significant relationship and are causally connected to a violation of s. 812.14, F.S., include, but are not limited to, offenses relating to the unlawful cultivation of cannabis in a dwelling or structure if the theft of electricity was used to facilitate the growth of the cannabis.

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

The bill is effective October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or

municipalities have to raise revenues in the aggregate as such authority existed on February 1, 1989; or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

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

Section 775.089(7), F.S., requires that the state prove the amount of loss sustained by a victim by the preponderance of the evidence. The bill specifies that once the state has made a prima facie showing the burden shifts to the defendant to demonstrate that the loss is something other than that claimed by a utility. If this provision shifts the burden to the defendant without the state having to prove the amount of loss by the preponderance of the evidence, and if the bill treats these defendants differently than any other defendant in a restitution hearing, the bill could be found unconstitutional.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/CS/SB 776 allows the state to seek restitution for utilities for criminal offenses that are causally connected to the damages or losses and bear a significant relationship to those damages or losses. This may result in an indeterminate positive fiscal impact on utilities.

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

C. Government Sector Impact:

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

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

In several instances, the bill provides certain criteria for a prima facie showing that can be used to prove start date of theft or estimated use. Those criteria are “that the utility reasonably believes²³” and “reasonably relied upon by utilities.²⁴” This standard suggests that if the utility believes the evidence is reasonable, such evidence meets the prima facie showing. This standard is different from a more general standard of whether it is reasonable for the utility to rely on such evidence or that the court finds to be reasonable. While all are subjective, the latter standards are less so.

VIII. Statutes Affected:

This bill substantially amends section 812.14 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/CS by Communications, Energy, and Public Utilities Committee on March 28, 2017:

The committee substitute reverts the penalty from grand theft back to current law.

CS by Criminal Justice on March 21, 2017:

The committee substitute:

²³ Section 812.14(11)(b)1.a. and (11)(b)2.e., F.S., of the bill.

²⁴ Section 812.14(11)(b)1.i., F.S., of the bill.

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

Changes the effective date from July 1, 2017, to October 1, 2017.

B. Amendments:

None.

By the Committees on Communications, Energy, and Public Utilities; and Criminal Justice; and Senator Baxley

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1 A bill to be entitled
 2 An act relating to the unlawful acquisition of utility
 3 services; amending s. 812.14, F.S.; revising the
 4 elements that constitute theft of utilities;
 5 clarifying that the presence of certain devices and
 6 alterations on the property of, and the actual
 7 possession by, a person constitutes prima facie
 8 evidence of a violation; clarifying that certain
 9 evidence of the manufacturing of a controlled
 10 substance in a leased dwelling constitutes prima facie
 11 evidence of a violation by an owner, lessor,
 12 sublessor; clarifying that specified circumstances
 13 create prima facie evidence of theft of utility
 14 services for the purpose of facilitating the
 15 manufacture of a controlled substance; revising such
 16 circumstances; specifying the types of damages that
 17 may be recovered as civil damages or restitution in a
 18 criminal case for damaging property of a utility or
 19 for the theft of electricity services; specifying the
 20 methods and bases used to determine and assess damages
 21 in a civil action or restitution in a criminal case
 22 for damaging property of a utility or for the theft of
 23 electricity services; providing an effective date.

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

26
 27 Section 1. Section 812.14, Florida Statutes, is amended to
 28 read:
 29 812.14 Trespass and larceny with relation to utility

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30 fixtures; theft of utility services.—

31 (1) As used in this section, "utility" includes any person,
 32 firm, corporation, association, or political subdivision,
 33 whether private, municipal, county, or cooperative, which is
 34 engaged in the sale, generation, provision, or delivery of gas,
 35 electricity, heat, water, oil, sewer service, telephone service,
 36 telegraph service, radio service, or telecommunication service.

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

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

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

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

50 (d) Knowingly ~~to~~ use, waste, or allow ~~suffer~~ the waste of,
 51 by any means, ~~of~~ electricity, ~~or~~ gas, or water passing through
 52 any such meter, wire, pipe, or fitting, or other appliance or
 53 appurtenance connected with or belonging to any such utility,
 54 after the ~~such~~ meter, wire, pipe, or fitting, or other appliance
 55 or appurtenance has been tampered with, injured, or altered;
 56 (e) ~~(b)~~ Connect ~~Make~~ or cause a ~~to be made~~ any connection
 57 with a ~~any~~ wire, main, service pipe or other pipes, appliance,
 58 or appurtenance in a ~~such~~ manner that uses ~~as to use~~, without

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59 the consent of the utility, any service or any electricity, gas,
60 or water; ~~or to~~

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

66 (g) Cause, without the consent of a utility, such
67 electricity, gas, or water to bypass ~~passing through~~ a meter
68 provided by the utility; or ~~and used for measuring and~~
69 ~~registering the quantity of electricity, gas, or water passing~~
70 ~~through the same.~~

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

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

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

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

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

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

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

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

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

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

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117 cultivation; and

118 (c) The person or entity that owned, leased, or subleased
119 the dwelling or structure knew of, or did so under such
120 circumstances as would induce a reasonable person to believe in,
121 the presence of a controlled substance and materials for
122 manufacturing a controlled substance in the dwelling or
123 structure, regardless of whether the person or entity was
124 involved in the manufacture or sale of a controlled substance or
125 was in actual possession of the dwelling or structure.

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

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

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

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

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

143 (c) The person knew or should have known of the presence of
144 the controlled substance and materials for manufacturing the
145 controlled substance in the dwelling or structure, regardless of

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146 whether the person was involved in the manufacture of the
147 controlled substance.

148 (10) Whoever is found in a civil action to have violated
149 this section is liable to the utility involved in an amount
150 equal to 3 times the amount of services unlawfully obtained or
151 \$3,000, whichever is greater.

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

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

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

161 3. The amount of unlawfully obtained electricity services.

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

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

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

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175 b. The date the utility verified a substantive difference
 176 between the amount of electricity used at a property and the
 177 amount billed to the account holder.
 178 c. The date the utility or a law enforcement officer
 179 located a tap or other device bypassing a meter.
 180 d. The date the utility or a law enforcement officer
 181 observed or verified meter tampering.
 182 e. The maturity of a cannabis crop found in a dwelling or
 183 structure using unlawfully obtained electricity services the
 184 utility or a law enforcement officer reasonably believes to have
 185 been grown in the dwelling or structure.
 186 f. The date the utility or a law enforcement agency
 187 received a report of suspicious activity potentially indicating
 188 the presence of the unlawful cultivation of cannabis in a
 189 dwelling or structure or the date a law enforcement officer or
 190 an employee or contractor of a utility observed such suspicious
 191 activity.
 192 g. The date when a utility observed a significant change in
 193 metered energy usage.
 194 h. The date when an account with the utility was opened for
 195 a property that receives both metered and unlawfully obtained
 196 electricity services.
 197 i. Any other fact or data reasonably relied upon by the
 198 utility to estimate the start date of a theft of electricity.
 199 2. The estimated average daily or hourly use of the
 200 electricity may be based upon any, or a combination, of the
 201 following:
 202 a. The load imposed by the fixtures, appliances, or
 203 equipment powered by unlawfully obtained electricity services.

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

579-02988-17

2017776c2

204 b. Recordings by the utility of the amount of electricity
 205 used by a property or the difference between the amount used and
 206 the amount billed.
 207 c. A comparison of the amount of electricity historically
 208 used by the property and the amount billed while the property
 209 was using unlawfully obtained electricity.
 210 d. A reasonable analysis of a meter that was altered or
 211 tampered with to prevent the creation of an accurate record of
 212 the amount of electricity obtained.
 213 e. Any other fact or data reasonably relied upon by
 214 utilities to estimate the amount of unlawfully obtained
 215 electricity services.
 216 (12) A court order requiring a defendant to pay restitution
 217 for damages to the property of a utility or for the theft of
 218 electricity need only be based on a conviction for a criminal
 219 offense that is causally connected to the damages or losses and
 220 bears a significant relationship to those damages or losses. A
 221 conviction for a violation of this section is not a prerequisite
 222 for a restitution order. Criminal offenses that bear a
 223 significant relationship and are causally connected to a
 224 violation of this section include, but are not limited to,
 225 offenses relating to the unlawful cultivation of cannabis in a
 226 dwelling or structure if the theft of electricity was used to
 227 facilitate the growth of the cannabis.
 228 (13) The amount of restitution that a defendant may be
 229 ordered to pay is not limited by the monetary threshold of any
 230 criminal charge on which the restitution order is based.
 231 (14)(11) This section does not apply to licensed and
 232 certified electrical contractors while such persons are

Page 8 of 9

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

579-02988-17

2017776c2

233 performing usual and ordinary service in accordance with
234 recognized standards.

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

236



THE FLORIDA SENATE

SENATOR DENNIS BAXLEY
12th District

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

SELECT COMMITTEE:
Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:
Joint Legislative Auditing Committee

March 29, 2017

The Honorable Senator Aaron Bean
306 Senate Office Building
Tallahassee, Florida 32399

Dear Chairman Bean,

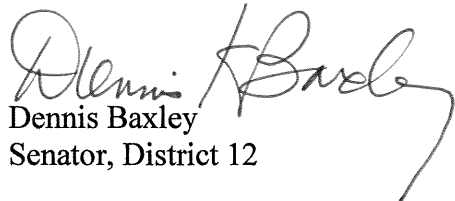
I respectfully request you place Senate Bill 776 Unlawful Acquisition of Utility Services on the Communications, Energy and Public Utility agenda.

This bill provides prosecutors and electric utility companies to obtain restitution for stolen electricity, which is often used to power illegal marijuana grow houses. It provides a methodology for utility company's estimate for stolen electricity.

It also provides the defendant, an opportunity to rebut the presumption by demonstrating that the utility's loss is something other than the utility's claim.

I appreciate your favorable consideration.

Onward & Upward,


Dennis Baxley
Senator, District 12

DKB/dd

cc: Tim Sadberry, Staff Director

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 13, 2017

Meeting Date

CS/SB 776

Bill Number (if applicable)

Topic Unlawful Acquisition of Utility Services

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 N. Gadsden Street

Phone 850-488-6850

Street

Tallahassee

FL

32301

Email ndaniels@flpda.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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4.13.17

Meeting Date

776

Bill Number (if applicable)

Topic THEFT OF UTIL. SERVICES

Amendment Barcode (if applicable)

Name MIKE BJORKLUND

Job Title DIR. OF LEG. AFFAIRS

Address 2916 APALACHEE PKWY
Street

Phone 850-877-6166

TALL.
City

FL
State

32301
Zip

Email

Speaking: For Against Information

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

Representing FECA

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 844 (528916)

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

SUBJECT: Criminal Offenses Involving Tombs and Memorials

DATE: April 14, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>McAuliffe</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 844 provides an exception for cemeteries exempt under ch. 497, F.S., from the criminal penalties in s. 872.02, F.S.

Currently, under s. 872.02, F.S., it is a third degree felony to willfully and knowingly damage or remove a tomb, monument, or other specified structure and a second degree felony to willfully and knowingly disturb the contents of a grave or tomb. The penalties do not apply to certain persons, like cemeteries operating under ch. 497, F.S., (the Florida Funeral, Cemetery, and Consumer Services Act). However, there are cemeteries that are exempt from the regulation and licensing requirements of ch. 497, F.S., and these cemeteries are not exempt from the criminal penalties of s. 872.02, F.S. If a person at such a cemetery were to disinter a dead human body at the request of a legally authorized person, he or she could be criminally charged under s. 872.02, F.S.

The bill provides an exception for cemeteries exempt under ch. 497, F.S., from the criminal penalties in s. 872.02, F.S. The bill also specifies the criteria that an exempt cemetery must meet to relocate the contents of a grave or tomb. If a legally authorized person refuses to sign a contract or objects to the relocation a public hearing must be held before the applicable city council or county commission.

The bill also clarifies elements of the offense of disturbing the contents of a grave or tomb.

The Criminal Justice Impact Conference met on March 2, 2017, and determined that the bill, as originally filed, will insignificantly increase state prison beds. The bill may have a negative fiscal impact on both privately owned exempt cemeteries and county and city owned exempt cemeteries. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2017.

II. Present Situation:

Cemeteries

A cemetery is a place dedicated to, used, or intended to be used for the permanent interment of human remains or cremated remains. A cemetery can be any combination of one or more of the following structures or places:

- Land or earth interment;
- Mausoleum, vault, or crypt interment; or
- Columbarium, ossuary, scattering garden, or other structure or place used or intended to be used for the interment or disposition of cremated remains.¹

Chapter 497, F.S., the Florida Funeral, Cemetery, and Consumer Services Act, specifies that the Board of Funeral, Cemetery and Consumer Services (board) oversee the regulation and licensing of cemeteries. Section 497.260, F.S., exempts numerous types of cemeteries from these regulation and licensing requirements. Currently, there are 171 licensed cemeteries² and anywhere from 3500-5000 cemeteries exempt from licensing and regulation in Florida.³

Exempt cemeteries include:

- Religious institution cemeteries of less than 5 acres, which provide only single-level ground burial;
- County and municipal cemeteries;
- Community and nonprofit association cemeteries, which provide only single-level ground burial and do not sell burial spaces or burial merchandise;
- Cemeteries owned and operated or dedicated by a religious institution prior to June 23, 1976;
- Cemeteries beneficially owned and operated since July 1, 1915, by a fraternal organization or its corporate agent;
- A columbarium consisting of less than one-half acre, which is owned by and immediately contiguous to an existing religious institution facility and is subject to local government zoning;⁴

¹ Section 497.005(13), F.S.

² Division of Funeral, Cemetery and Consumer Services, *Who We Regulate, Regulated Categories and Number of Licensees*, August 19, 2016, available at <http://www.myfloridacfo.com/Division/FuneralCemetery/About/Whoweregulate.htm> (last visited March 7, 2017).

³ Department of Financial Services, *Bill Analysis for House Bill 107*, January 3, 2017, (on file with the Senate Criminal Justice Committee).

⁴ The religious institution establishing such a columbarium must ensure that the columbarium is perpetually kept and maintained in a manner consistent with ch. 497, F.S. If the religious institution relocates, the religious institution must

- Family cemeteries of less than 2 acres, which do not sell burial spaces or burial merchandise;
- A mausoleum consisting of 2 acres or less, which is owned by and immediately contiguous to an existing religious institution facility and is subject to local government zoning;⁵ and
- A columbarium consisting of 5 acres or less which is located on the main campus of a state university.⁶

Disinterment

Disinterment is the removal of a dead human body from earth interment or aboveground interment.⁷ The board regulates the disinterment or transportation of human remains.⁸ Funeral directors are also required to obtain written consent from a legally authorized person⁹ or a court prior to the disinterment or reinterment of a dead human body.¹⁰ A legally authorized person is defined as one of the following, listed in order of priority:

- The decedent, when written inter vivos authorizations and directions are provided by the decedent;
- The person designated by the decedent as authorized to direct disposition as listed on the decedent's United States Department of Defense Record of Emergency Data;
- The surviving spouse, unless the spouse has been arrested for committing an act of domestic violence against the deceased that resulted in or contributed to the death of the deceased;
- A son or daughter who is 18 years of age or older;
- A parent;
- A brother or sister who is 18 years of age or older;
- A grandchild who is 18 years of age or older;
- A grandparent; or
- Any person in the next degree of kinship.

The regulations for disinterment or reinterment or the requirement to obtain written consent prior do not apply to exempt cemeteries.

relocate all of the urns and remains placed in the columbarium, which were placed therein during its use by the religious institution. Section 497.260(1)(f), F.S.

⁵ The religious institution establishing such a mausoleum must ensure that the mausoleum is kept and maintained in a manner consistent with ch. 497, F.S., and limit its availability to members of the religious institution. The religious institution establishing such a mausoleum must have been incorporated for at least 25 years and have sufficient funds in an endowment fund to cover the costs of construction of the mausoleum. Section 497.260(1)(h), F.S.

⁶ Section 497.260(1), F.S. The university or university direct-support organization, which establishes the columbarium shall ensure that the columbarium is constructed and perpetually kept and maintained in a manner consistent with subsection (2) and ch. 497, F.S. Section 1000.21, F.S., defines a "state university" to include any branch campuses, centers, or other affiliates of the following institutions: The University of Florida, The Florida State University, The Florida Agricultural and Mechanical University, The University of South Florida, The Florida Atlantic University, The University of West Florida, The University of Central Florida, The University of North Florida, The Florida International University, The Florida Gulf Coast University, New College of Florida, The Florida Polytechnic University.

⁷ Section 497.005(31), F.S.

⁸ Section 497.384(2), F.S.

⁹ Section 497.005(43), F.S.

¹⁰ Section 497.384(3), F.S.

Offenses concerning graves

Section 872.02, F.S., provides criminal penalties for injuring or removing a tomb or monument or disturbing the contents of a grave or tomb. It is a third degree felony¹¹ for a person to willfully and knowingly destroy, mutilate, deface, injure, or remove any:

- Tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other structure or thing placed or designed for a memorial of the dead;
- Fence, railing, curb, or other thing intended for the protection or ornamentation of any tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other structure before mentioned; or
- Enclosure for the burial of the dead, or willfully destroy, mutilate, remove, cut, break, or injure any tree, shrub, or plant placed or being within any such enclosure.¹²

It is a second degree felony¹³ if a person willfully and knowing disturbs the contents of a grave or tomb.

The above criminal penalties do not apply to:

- Any person acting under the direction or authority of the Division of Historical Resources of the Department of State;
- Cemeteries operating under ch. 497, F.S.; or
- Any person authorized by law to remove or disturb a tomb.

Cemeteries exempt under ch. 497, F.S., are not exempt from the criminal penalties of s. 872.02, F.S. If a person at an exempt cemetery were to disinter a dead human body at the request of a legally authorized person, he or she could be criminally charged.

III. Effect of Proposed Changes:

The bill amends s. 872.02, F.S., to provide an exception for cemeteries exempt under ch. 497, F.S., from the newly imposed criminal penalties.

The bill specifies that it a third degree felony if a person willfully and knowingly destroys, mutilates, defaces, injures, or removes any tomb monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other *approved* structure or *approved* thing placed or designed for a memorial of the dead.

The bill also provides that anyone performing routine maintenance and upkeep is exempt from the penalties associated with willfully destroying, mutilating, removing, cutting, breaking, or injuring any tree, shrub, or plant placed or being within any enclosure for the burial of the dead.

¹¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

¹² Section 872.02(1), F.S.

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

The bill specifies that the second degree felony offense of disturbing the contents of a grave or tomb includes the conduct of excavation, exposure, movement, and removal of the contents of a grave or tomb.

The bill also allows a cemetery to remove or relocate the contents of a grave or tomb in response to a natural disaster.

An owner, officer, employee or agent of an exempt cemetery are exempt from the above stated criminal penalties and may relocate the contents of a grave or tomb after receiving a written and signed contract between the owner and a legally authorized person.

If a legally authorized person cannot be located after a reasonable search or if 75 years or more have elapsed since the date of entombment, interment, or inurnment, then public notice must be posted. A public notice must be published once a week for four consecutive weeks in a newspaper of general circulation within the county in which the cemetery is located.

The public notice must contain the:

- Name of the cemetery;
- Name, address, and telephone number of the representative of the cemetery with whom written objections may be filed;
- Reason for the relocation of the contents of the grave or tomb;
- Names of the human remains to be relocated;
- Approximate date of the initial entombment, interment or inurnment;
- Proposed site of relocation; and
- Proposed date of relocation, which may not be less than 30 days after the last publication.

If a legally authorized person does not object within 30 days from the last date of publication of the public notice, the cemetery may proceed with the relocation.

If a legally authorized person refuses to sign a contract or objects to the relocation a public hearing must be held before the city council if the cemetery is in a municipality. If the cemetery is not in a municipality the hearing must be held before the appropriate county commission. The city council or county commission has sole authority to grant a request for relocation for the contents of such graves or tombs.

The bill is effective October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent that the cities or counties have to hold and participate in hearings or post a public notice this will likely cost the cities and counties money. Subsection (b) of section 18, Article VII of the Florida Constitution, provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate,

as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2016-2017 was \$2 million or less.^{14, 15, 16}

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have a negative fiscal impact on privately owned exempt cemeteries. The bill requires exempt cemeteries to publicly notice the plan to relocate the contents of a grave or tomb. If the relocation is objected to, a hearing is required. The notice and hearing process could cause privately owned exempt cemeteries to incur costs.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on March 2, 2017, and determined that the bill, as originally filed, will insignificantly increase state prison beds (an increase of 10 or fewer prison beds).

The bill may have a negative fiscal impact on county or city owned exempt cemeteries. The bill requires exempt cemeteries to publicly notice the plan to relocate the contents of a grave or tomb. If the relocation is objected to, a hearing is required. The notice and hearing process and holding the hearings could cause exempt cemeteries owned by cities or counties to incur costs.

VI. Technical Deficiencies:

None.

¹⁴ FLA. CONST. art. VII, s. 18(d).

¹⁵ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Feb. 13, 2017).

¹⁶ Based on the Demographic Estimating Conference's population adopted on November 1, 2016. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 13, 2017).

VII. Related Issues:

The bill does not include any criteria for the city councils or county commissions to use in the relocation disputes or any recourse for the councils or commissions to provide if they deny a relocation.

VIII. Statutes Affected:

This bill substantially amends section 872.02 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 13, 2017:

The committee substitute:

- Clarifies that an exempt cemetery may have a public hearing, as provided in subsection (6), if a legally authorized person refuses to sign a contract with the owner exempt cemetery, as provided in subsection (5)(a); and
- Adds a reference to subsection (5) in subsection (6) to clarify when a public hearing is authorized.

CS by Criminal Justice on March 13, 2017:

The committee substitute:

- Deletes proposed changes to the terms “tomb” and “memorial”;
- Deletes proposed changes to the penalties for injuring or removing a tomb or monument;
- Clarifies that any cemetery may remove or relocate the contents of a grave or tomb as a response to a natural disaster;
- Allows an exempt cemetery to relocate the contents of a grave or tomb if there is a signed contract between the cemetery owner and a legally authorized person;
- Allows an exempt cemetery to publicly notice a relocation if a legally authorized person cannot be found after a reasonable search;
- Revises hearing requirements; and
- Changes the effective date.

- B. **Amendments:**

None.



869370

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/14/2017	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 75

and insert:

6. If a legally authorized person refuses to sign a contract, as provided in (5) (a), or if a legally authorized person objects, as provided in (5) (b), a public

By the Committee on Criminal Justice; and Senators Simmons and Baxley

591-02378B-17

2017844c1

A bill to be entitled

An act relating to criminal offenses involving tombs and memorials; amending s. 872.02, F.S.; providing that a person who willfully and knowingly excavates, exposes, moves, or removes the contents of a grave or tomb commits a felony; revising applicability; authorizing an owner, officer, employee, or agent of specified cemeteries to relocate the contents of a grave or tomb, subject to certain conditions; providing an effective date.

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

Section 1. Section 872.02, Florida Statutes, is amended to read

872.02 Injuring or removing tomb or monument; disturbing contents of grave or tomb; penalties.—

(1) A person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 if he or she:

(a) ~~who~~ Willfully and knowingly destroys, mutilates, defaces, injures, or removes any tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other approved structure or approved thing placed or designed for a memorial of the dead, or any fence, railing, curb, or other thing intended for the protection or ornamentation of any tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial

Page 1 of 3

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591-02378B-17

2017844c1

artifacts, or other structure before mentioned, or for any enclosure for the burial of the dead; ~~or~~

(b) Willfully destroys, mutilates, removes, cuts, breaks, or injures any tree, shrub, or plant placed or being within any such enclosure, except for a person performing routine maintenance and upkeep ~~commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

(2) A person who willfully and knowingly excavates, exposes, moves, removes, or otherwise disturbs the contents of a ~~tomb or grave or tomb~~ commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) This section does ~~shall~~ not apply to any person acting under the direction or authority of the Division of Historical Resources of the Department of State, to cemeteries operating under chapter 497, any cemeteries removing or relocating the contents of a grave or tomb as a response to a natural disaster, or to any person otherwise authorized by law to remove or disturb a tomb, monument, gravestone, burial mound, or similar structure, or its contents, as described in subsection (1).

(4) For purposes of this section, the term "tomb" includes any mausoleum, columbarium, or belowground crypt.

(5) Notwithstanding subsections (1) and (2), an owner, officer, employee, or agent of a cemetery exempt from regulation pursuant to s. 497.260 may relocate the contents of a grave or tomb:

(a) After receiving a written and signed contract between the owner and a legally authorized person as defined in s. 497.005(43).

(b) If a legally authorized person cannot be located after

Page 2 of 3

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

591-02378B-17

2017844c1

59 a reasonable search or if 75 years or more have elapsed since
60 the date of entombment, interment, or inurnment, then public
61 notice must be posted. The public notice must be published once
62 a week for 4 consecutive weeks in a newspaper of general
63 circulation in the county where the cemetery is located. The
64 public notice must contain the name of the cemetery; the name,
65 address, and telephone number of the cemetery representative
66 with whom objections may be filed; the reason for relocation of
67 the contents of the graves or tombs; the names of the human
68 remains to be relocated; the approximate date of the initial
69 entombment, interment, or inurnment; the proposed site of
70 relocation; and the proposed date of relocation. The proposed
71 date of relocation may not be less than 30 days from last date
72 of publication. If no objection from a legally authorized person
73 is received within 30 days from the last date of publication of
74 the public notice, the cemetery may proceed with relocation.

75 (6) If a legally authorized person objects, a public
76 hearing shall be held before the county commission of the county
77 where the cemetery is located, or the city council, if the
78 cemetery is located in a municipality, and the county commission
79 or the city council shall have sole authority to grant a request
80 for relocation of the contents of such graves or tombs.

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



The Florida Senate

Committee Agenda Request

To: Senator Aaron Bean, Chair
Appropriations Subcommittee on Criminal and Civil Justice

Subject: Committee Agenda Request

Date: March 16, 2017

I respectfully request that **Senate Bill 844**, relating to Criminal Offenses Involving Tombs and Memorials, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons".

Senator David Simmons
Florida Senate, District 9

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-13-17

Meeting Date

CS/SB 844
Bill Number (if applicable)

Topic Tombs + Memorials in Cemeteries

Amendment Barcode (if applicable)

Name BOB BOYD

Job Title ATTY FOR CATHOLIC CEMETERIES OF ARCHDIOCESE OF MIAMI

Address 660 E. JEFFERSON ST. Phone 850-412-0306

Street

TALLAHASSEE FL 32301

City

State

Zip

Email bboyd@scelawfirm.com

Speaking: For Against Information

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

Representing CATHOLIC CEMETERIES OF ARCHDIOCESE OF MIAMI

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 1068 (342712)

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

SUBJECT: Sentencing

DATE: April 14, 2017 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner/Erickson</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>McAuliffe</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 1068 authorizes a court to sentence an offender to a term in the county jail in the county where the offense was committed for up to 24 months if the offender meets the following criteria:

- The offender's total sentence points are more than 44 points, but no more than 60 points;
- The offender's primary offense is not a forcible felony, except that an offender whose primary offense is a third degree felony burglary or trespass offense is eligible to be sentenced to a county jail; or
- The offender's primary offense is not punishable by a minimum mandatory sentence exceeding 24 months.

The court may only sentence an offender to a county jail under the bill if there is a contractual agreement between the chief correctional officer of the county and the Department of Corrections (DOC). The DOC must enter into such contract upon the request of a chief correctional officer. Contracts are to be awarded by the DOC on a first-come, first-served basis. The contract must specifically establish the maximum number of beds and the validated per diem rate. The contract must provide for per diem reimbursement for occupied inmate days based on the contracting county's most recent annual adult male custody or adult female custody per diem rates not to exceed \$60. All contractual per diem rates must be validated by the Auditor General before payments are made.

The bill also amends the Criminal Punishment Code (Code) to create upward departure sentencing for noncapital felony offenses committed on or after October 1, 2017. An upward departure sentence is a sentence that exceeds a specified permissible sentencing range. In order to impose an upward departure sentence, the court must provide a written statement specifying the reasons for the departure. The bill lists a number of “aggravating circumstances” for which an upward departure sentence is reasonably justified. The defendant and the state may appeal a sentence outside the permissible sentencing range.

Regarding the provisions of the bill involving county jails, all contracts are contingent upon a specific appropriation as provided by law. The bill appropriates \$1,609,285 from the GRF to DOC to pay for the costs of incarcerating state prison inmates in county jails that the DOC would not otherwise incur if incarcerated in a state prison.

According to the Auditor General, if the number of contractual per diem rates that must be validated by the Auditor General is de minimis, the impact to the Auditor General could be minimal.

The Criminal Justice Impact Conference, which provides the final, official prison bed impact, if any, met on March 29, 2017 and determined that the provisions of the bill involving the upward departure sentencing will have a “negative indeterminate impact” (an unquantifiable decrease in prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2017.

II. Present Situation:

The Criminal Punishment Code and Sentencing

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

The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining

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

² Florida’s Criminal Punishment Code: A Comparative Assessment (FY 2012-2013) (Executive Summary), Florida Department of Corrections, available at http://www.dc.state.fl.us/pub/sg_annual/1213/executives.html (last visited on March 23, 2017).

³ Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

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

total by 25 percent. Absent mitigation,⁵ the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.⁶

Upward Departure Sentences under the Former Sentencing Guidelines

Under the former (pre-Code) sentencing guidelines, a recommended sentence was scored and the court was authorized to sentence within permitted sentencing ranges (based upon scored total sentence points).⁷ If the court wished to impose a prison sentence that varied upward by more than 25 percent from the recommended guidelines prison sentence, the court had to provide a written statement delineating the reasons for the departure.⁸ This type of sentence was often referred to as an “upward departure” sentence. The Legislature provided a list of some reasons for which a departure was reasonably justified. These departure reasons were referred to as “aggravating circumstances.”⁹ An upward departure sentence had to be within any relevant maximum sentence provided by s. 775.082, F.S.¹⁰

Under the former sentencing guidelines, the failure of a trial court to impose a sentence within the sentencing guidelines was subject to appellate review under ch. 924, F.S., but the extent of departure from a guidelines sentence was not subject to appellate review.¹¹ Under ch. 924, F.S., a defendant and the state were authorized to appeal a sentence imposed outside the range permitted by the guidelines authorized under ch. 921, F.S.¹² In contrast, currently under the Code, only a downward departure sentence may be appealed and only the state may appeal this departure.¹³ With few exceptions,¹⁴ a Code sentence within the range of the lowest permissible sentence up to

⁵ The court may “mitigate” or “depart downward” from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

⁶ If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment.

⁷ Sections 921.0014(1)(b) and 921.0016(1)(b), F.S. (1997). If total sentence points were less than or equal to 40, the recommended sentence was a nonstate prison sanction, but the court could increase total sentence points by up to, and including, 15 percent. Section 921.0014(2), F.S. (1997). If total sentence points were greater than 40 and less than or equal to 52, the court could impose a state prison sentence. *Id.* If total sentence points were greater than 52, the court was required to impose a prison sentence calculated by total sentence points. *Id.* Recommended sentence length in state prison months could be increased by up to, and including, 25 percent, but could not be increased if total sentence points had been increased by up to, and including, 15 percent. *Id.*

⁸ Section 921.0016(1)(c), F.S. (1997). The statement had to be filed within 7 days after the date of sentencing. *Id.* A written transcription of orally stated reasons for departure from the guidelines at sentencing was permissible if it was filed within 7 days after the date of sentencing. *Id.*

⁹ Section 921.0016(3), F.S. (1997).

¹⁰ Section 921.0016(1)(e), F.S. (1997). Section 775.082(3), F.S., provides the maximum sentences for felonies. The maximum sentences for noncapital felonies are: 5 years imprisonment for a third degree felony; 15 years imprisonment for a second degree felony; generally 30 years imprisonment for a first degree felony; and generally life imprisonment or imprisonment for a term of years not exceeding life imprisonment for a life felony. *Id.*

¹¹ Section 921.0016(2), F.S. (1997).

¹² Section 924.06(1)(e), F.S. (1997), authorized this appeal by a defendant. Section 924.07(1)(i), F.S. (1997), authorized this appeal by the state.

¹³ Section 924.06, F.S., does not address an appeal by a defendant of a downward departure sentence. Section 924.07(1)(i), F.S., authorizes the state to appeal a downward departure sentence. The extent of downward departure is not subject to appellate review. Section 921.0026(1), F.S.

¹⁴ An exception is fundamental error. A defendant challenging a sentencing error must generally file a motion under Fla. R. Crim. P. 3.800(b) in order to raise fundamental error on appeal. *Nawaz v. State*, 28 So.3d 122, 124 (Fla. 1st DCA 2010). A

and including the statutory maximum penalty is not appealable: “As to the sentence itself, ‘the general rule in Florida is that when a sentence is *within statutory limits*, it is not subject to *review* by an appellate court.’”¹⁵

Length of Stay

According to a recent study of the operations of the Department of Corrections (DOC), length of stay (LOS) in Florida correctional facilities exceeds the national LOS average (30 months). LOS has consistently increased in Florida “from just under 30 months on average in 2008 to almost 40 months by 2015.”¹⁶ According to the study’s authors, the longer average LOS in Florida “explains to a large degree Florida’s significantly higher incarceration rate of 522 per 100,000 population versus the U.S. state incarceration rate of 416 per 100,000.”¹⁷

Departure from a Code Sentence When Total Sentencing Points are 22 Points or Fewer

An exception to typical Code sentencing is found in s. 775.082(10), F.S. Under this subsection, if a defendant is sentenced for an offense committed on or after July 1, 2009, which is a third degree felony but not a forcible felony,¹⁸ and if the total sentence points pursuant to s. 921.0024, F.S., are 22 points or fewer, the court must sentence the offender to a nonstate prison sanction. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a state correctional facility.

Alternative Sentencing

An offender with a sentence in excess of one year typically serves his or her sentence in a state correctional facility operated by the Department of Corrections (DOC);¹⁹ however, other options are statutorily authorized and sometimes available. These include placement in a:

- Prison diversion program for offenders who meet certain criteria, including a requirement to have no more than 54 total sentence points.²⁰

defendant is not required to file a motion under this rule in order to appeal fundamental error in the sentencing process. *Id.* Fundamental error in the sentencing process is error “basic to the judicial decision under review and equivalent to a denial of due process.” *State v. Johnson*, 616 So.2d 1, 3 (Fla. 1993). A sentence may be within statutory limits but if the trial court considered “constitutionally impermissible factors” in imposing the sentence, then the court committed fundamental error. *Nawaz*, 28 So.3d at 124. For example, it is fundamental error if a court considered “charges of which an accused has been acquitted in passing sentence.” *Epprecht v. State*, 488 So.2d 129, 131 (Fla. 3d DCA 1986).

¹⁵ *Charles v. State*, 204 So.3d 63, 66 (Fla. 4th DCA 2016), quoting *Howard v. State*, 820 So.2d 337, 339 (Fla. 4th DCA 2002) (emphasis provided by the court). A defendant may appeal a Code sentence that exceeds the statutory maximum penalty under s. 775.082, F.S., unless otherwise provided by law. Section 924.06(1)(e), F.S.

¹⁶ Study of Operations of the Florida Department of Corrections (prepared by Carter Goble Associates, LLC), Report No. 15-FDC (November 2015), Office of Program Policy Analysis and Government Accountability, Florida Legislature, p. 80 (footnote omitted). This study is available at <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=15-FDC> (last visited on March 23, 2017).

¹⁷ *Id.*

¹⁸ Section 776.08, F.S., defines a “forcible felony” as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

¹⁹ Section 921.0024(2), F.S.

²⁰ Section 921.00241, F.S. The court may sentence the offender to a term of probation, community control, or community supervision with mandatory participation in a prison diversion program of the DOC.

- Local detention facility if the offender’s sentence is between 366 days and 22 months and there is a contract between the DOC and the chief correctional officer for the applicable county.²¹
- Imprisonment in county jail if the total of the prisoner’s cumulative sentences is not more than one year.²²
- County work camps operated under a county/state contractual arrangement.²³
- County or municipal facility pursuant to a contract between the DOC and such facility. Section 944.171, F.S., authorizes the DOC to contract with county or municipal facilities for the purpose of housing inmates. The DOC indicates that such contractual arrangements have been used as recently as FY 2011-2012, with Franklin, Washington, and Lafayette Counties.²⁴

III. Effect of Proposed Changes:

Sentencing of Offenders to County Jail

Effective July 1, 2017, Section 6 creates s. 950.021, F.S., to authorize a court to sentence an offender to a term in the county jail in the county where the offense was committed for up to 24 months if the offender meets all of the following criteria:

- The offender’s total sentence points on the Code worksheet are more than 44 points, but no more than 60 points.
- The offender’s primary offense is not a forcible felony as defined in s. 776.08, F.S., except that an offender whose primary offense is a third degree felony under ch. 810, F.S., entitled “Burglary and Trespass,” is eligible to be sentenced to a county jail.
- The offender’s primary offense is not punishable by a minimum mandatory sentence in excess of 24 months.

Section 6 provides that the court may only sentence an offender meeting the above-referenced criteria to county jail if there is a contract for the applicable county between the county’s chief correctional officer and the DOC.

The DOC must enter into a contract with a county when requested by the county’s chief correctional officer. The contract must specifically establish the maximum number of beds and the validated per diem rate. The contract must provide for per diem reimbursement for occupied inmate days based on the contracting county’s most recent annual adult male custody or adult female custody per diem rates not to exceed \$60 per inmate. All contractual per diem rates must be validated by the Auditor General before payments are made.

A contract is contingent upon a specific appropriation as provided in law. Contracts must be awarded by the DOC on a first-come, first-served basis up to the maximum appropriation. The maximum appropriation allowable consists of funds appropriated in or transferred to the specific appropriation category created by the bill entitled “Inmates Sentenced to County Jail” (ISCJ).

²¹ Section 921.188, F.S.

²² Section 922.051, F.S.

²³ Section 950.002, F.S.

²⁴ Department of Corrections, *Senate Bill 1068 Analysis* (March 23, 2017) (on file with the Senate Committee on Criminal Justice).

In addition to an appropriation, the bill authorizes the DOC to transfer funds into the ISCJ specific appropriation category to fulfill DOC's contractual per diem obligation that may not exceed the DOC's average male or female total per diem published for the preceding fiscal year. This allows the DOC flexibility in the amount it must transfer into this specific category because the number of counties that will request contracts to have offenders sentenced to their jails is unknown. The maximum appropriation allowable would be the appropriated funds plus any funds that are transferred from other DOC categories to fulfill DOC's contractual per diem obligation. All contractual per diem rates as well as per diem rates used by the DOC must be validated by the Auditor General.

Criminal Punishment Code Sentencing

The bill amends the Criminal Punishment Code (Code) to create upward departure sentencing for noncapital felony offenses committed on or after October 1, 2017. An upward departure sentence is a sentence that exceeds a specified permissible sentencing range.

The bill amends s. 921.002, F.S., (Section 1), which provides principles and requirements regarding the Code and appeals of Code sentencing. New provisions are added relating to upward departure sentencing under the Code (see descriptions of sections 2 and 3 of the bill), which are applicable to any noncapital felony offense committed on or after October 1, 2017. These provisions:

- Require that reasons for an upward departure sentence be articulated in writing;
- Specify the level of proof (preponderance of the evidence) necessary to establish facts supporting the departure;
- Provide that an upward departure sentence will be upheld when at least one circumstance supports the departure (even if there is a circumstance found that does not justify the departure); and
- Authorize an appeal by a defendant and the state of a sentence outside the permissible sentencing range.

The bill amends s. 921.0024, F.S., (Section 2), the Code worksheet, to create a new subsection (3), which applies to any noncapital felony offense committed on or after October 1, 2017. New subsection (3) tracks current law relating to Code sentencing as follows:

- Adheres to the current method for calculating total sentence points and the lowest permissible sentence in prison months (when total sentence points exceed 44 points);
- Authorizes concurrent or consecutive sentencing;
- Requires that the lowest permissible sentence in prison months be imposed if this sentence exceeds the statutory maximum sentence provided in s. 775.082, F.S.;
- Authorizes life imprisonment if total sentence points are greater than or equal to 363;
- Prohibits an offender sentenced to life imprisonment from any form of discretionary early release, except executive clemency or conditional medical release; and
- Adheres to any requirement under s. 921.0024(1), F.S., to impose a statutory maximum sentence.²⁵

²⁵ Section 921.0024(1)(b), F.S., provides for sentence point multipliers for an offense related to a criminal gang and for an adult-on-minor sex offense. If application of either multiplier results in the lowest permissible sentence exceeding the

Sentencing under new subsection (3) also differs substantially from sentencing under the current Code.

Sentencing under the current Code:

- If total sentence points equal or are less than 44 points, the lowest permissible sentence is any nonstate prison sanction, unless the court determines that a sentence up to the statutory maximum is appropriate.
- If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated. Generally, the permissible sentencing range is the scored lowest permissible sentence in prison months up to and including the statutory maximum under s. 775.082, F.S. However, if the calculated lowest permissible sentence exceeds the statutory maximum under s. 775.082, F.S., the lowest permissible sentence is imposed.

Sentencing under the bill:

- Under new paragraph (3)(c), if total sentence points equal or are less than 44 points, the court may impose a nonstate prison sanction or the court may increase the total sentence points by up to, and including, 25 percent.
- Under new paragraph (3)(c), if total sentence points exceed 44 points as a result of this “up to 25 percent increase,” the court may not impose a state prison sentence that is longer than the scored lowest permissible sentence in prison months (calculated under new paragraph (3)(d)).
- Paragraph (3)(d), specifies how the lowest permissible sentence in prison months is calculated (when total sentence points exceed 44 points). The calculation is identical to the current Code. It also follows the current Code in providing that if the calculated lowest permissible sentence exceeds the statutory maximum under s. 775.082, F.S., the lowest permissible sentence is imposed.
- New paragraph (3)(e) applies to the defendant whose total sentence points exceed 44 points. The defendant’s lowest permissible sentence in prison months is calculated under new paragraph (3)(d). Once calculated, the court is permitted under new paragraph (3)(e) to impose a state prison sentence that does not vary upward by more than 25 percent from the scored lowest permissible sentence in prison months. This sentence may not exceed the statutory maximum sentence provided in s. 775.082, F.S.
- New paragraph (3)(f) specifies that, except as provided in s. 921.00261, F.S. (upward departure sentencing), the trial court may not impose a prison sentence that varies upward by more than 25 percent from the scored lowest permissible sentence in prison months. The permissible range for sentencing for an upward departure sentence imposed by the court pursuant to s. 921.00261, F.S., is the lowest permissible sentence up to and including the statutory maximum sentence provided in s. 775.082, F.S.

The bill creates s. 921.00261, F.S., (Section 3), which explains what sentence constitutes an upward departure sentence and what requirements must be met by the trial court to impose this departure sentence:

- A sentence pursuant to s. 921.0024(3)(d) or (e), F.S., is not an upward departure sentence. An upward departure sentence is a state prison sentence that varies upward by *more* than 25

statutory maximum sentence for the primary offense under ch. 775, F.S., the court may not apply the multiplier and must sentence the defendant to the statutory maximum sentence.

percent from the lowest permissible sentence in prison months calculated pursuant to s. 921.0024(3)(d), F.S.

- The trial court may impose an upward departure sentence only if the sentence is accompanied by a written statement from the court specifying the reasons for the departure, filed within 7 days after the date of sentencing. A written transcription of orally stated reasons for this departure is permissible if it is filed by the court within 7 days after the date of sentencing.
- The imposition of a split sentence of incarceration followed by community control or probation does not by itself constitute an upward departure. For the purpose of determining the maximum sentence authorized by law, any community control portion of a split sentence does not constitute a term of imprisonment.
- An upward departure sentence must be within any relevant maximum sentence limitations provided by s. 775.082, F.S.
- An upward departure sentence is discouraged unless there are circumstances or factors that reasonably justify the departure. The failure of the trial court to impose a sentence within the range authorized by s. 921.0024(3), F.S., is subject to appellate review under ch. 924, F.S., but the extent of the departure from such range is not subject to appellate review.

Aggravating circumstances to be considered include, but are not limited to, the following.

- The departure results from a legitimate, uncoerced plea bargain.
- The offense was one of violence and was committed in a manner that was especially heinous, atrocious, or cruel.
- The offenses before the court for sentencing arose out of separate episodes, the primary offense is scored at offense level 4 or higher, and the defendant has committed five or more offenses within a 180-day period which have resulted in convictions.
- The primary offense is scored at offense level 3, and the defendant has committed eight or more offenses within a 180-day period which have resulted in convictions.
- The offense before the court for disposition was committed within 6 months after the defendant was discharged from probation, community control, or pretrial intervention or diversion or released from state prison, whichever is later.
- The defendant occupied a leadership role in a criminal organization.
- The offense was committed by a public official under color of office.
- The defendant knew the victim was a law enforcement officer at the time of the offense, the offense was a violent offense, and that status is not an element of the primary offense.
- The offense created a substantial risk of death or great bodily harm to many persons or to one or more children.
- The victim was especially vulnerable due to age or physical or mental disability.
- The offense was motivated by prejudice based on race, color, ancestry, ethnicity, religion, sexual orientation, or national origin of the victim.
- The victim suffered extraordinary physical or emotional trauma or permanent physical injury or was treated with particular cruelty.
- The victim was physically attacked by the defendant in the presence of one or more members of the victim's family.
- The offense resulted in substantial economic hardship to the victim and consisted of an illegal act or acts committed by means of concealment, guile, or fraud to obtain money or property, to avoid payment or loss of money or property, or to obtain business or professional advantage, when two or more of the following circumstances were present:

- The offense involved multiple victims or multiple incidents per victim.
- The offense involved a high degree of sophistication or planning or occurred over a lengthy period of time.
- The defendant used position or status to facilitate the commission of the offense, including positions of trust, confidence, or fiduciary relationship; or
- The defendant was in the past involved in other conduct similar to that involved in the current offense.
- The offense was committed in order to prevent or avoid arrest, to impede or prevent prosecution for the conduct underlying the offense, or to effect an escape from custody.
- The defendant is not amenable to rehabilitation or supervision, as evidenced by an escalating pattern of criminal conduct, which is a progression from nonviolent to violent crimes, a progression of increasingly violent crimes, or a pattern of increasingly serious criminal activity.
- The defendant induced a minor to participate in any of the offenses pending before the court for disposition.
- The primary offense is scored at offense level 7 or higher, and the defendant has been convicted of an additional offense that scored, or would have scored, at an offense level 8 or higher.
- The defendant has an extensive unscorable juvenile record.
- The defendant committed an offense involving sexual contact or sexual penetration, and, as a direct result of the offense, the victim contracted a sexually transmissible disease.

Most of the provisions of s. 921.00261, F.S., including the listed aggravating circumstances, mirror provisions of prior law relating to the pre-Code sentencing guidelines.²⁶

The bill amends s. 924.06, F.S., (Section 4), to authorize a defendant to appeal a sentence imposed outside the range authorized by s. 921.0024(3), F.S. The bill also amends s. 924.07, F.S., (Section 5), to authorize the state to appeal a sentence imposed outside the range authorized by s. 921.0024(3), F.S.

Reenactments

The bill reenacts s. 958.04, F.S., (Section 7). This reenactment is to incorporate amendments made by the bill to ss. 924.06 and 924.07, F.S.

Appropriation

The bill provides an appropriation of \$1,609,285 to pay for the costs of incarcerating state prison inmates in county jails that the DOC would not otherwise incur if incarcerated in a state prison.

Effective Date

The bill is effective July 1, 2017, (Section 8).

²⁶ See s. 921.0016, F.S. (1997).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Department of Corrections (DOC) states that CS/SB 1068 may result in the elimination of privately operated community release center contracts if the DOC is required to contract with the sheriffs for the inmates currently served by these contracts.

C. Government Sector Impact:

Sentencing of Offenders to County Jail

According to the Auditor General, if the number of contractual per diem rates that must be validated by the Auditor General is de minimis, the impact to the Auditor General could be minimal.²⁷

For Fiscal Year 2015-2016 the per diem for all DOC facilities excluding private facilities is \$53.49. This is an average of the adult male per diem of \$48.28 and female per diem of \$57.06. The per diem accounts for the operation of a full facility including expenditures for security, and other support staff, utilities, maintenance, insurance, medical, and education. When the inmate population impacted in small increments statewide, the inmate variable per diem of \$15.91 is the most appropriate to use. The variable per diem is used when the change to the inmate population does not require the opening or closure of an additional housing unit and therefore does not include funding for staffing. This per diem includes costs more directly aligned with individual inmate care such as medical, food, inmate clothing, and personal care items.²⁸

²⁷ E-mail from Auditor General staff dated April, 7, 2017 (on file with the Senate Appropriation Subcommittee on Criminal and Civil Justice).

²⁸ *Id.*

The bill provides for per diem reimbursement for occupied inmate days based on the contracting county’s most recent annual adult male custody or adult female custody per diem rates, not to exceed \$60 per inmate. The bill appropriates \$1,609,285 from the GRF to DOC.

	County Jails	DOC
Number of Inmates	100.00	100.00
Per Diem Rate	60.00	15.91
Cost Per Day	6,000.00	1,591.00
Total Annual Costs	2,190,000.00	580,715.00
Difference	1,609,285.00	

Criminal Punishment Code Sentencing

The Criminal Justice Impact Conference, which provides the final, official prison bed impact, if any, met on March 29, 2017 and determined that the provisions of the bill involving the upward departure sentencing will have a “negative indeterminate impact” (an unquantifiable decrease in prison beds). The EDR notes: “It is not known how current court discretion will be impacted by these changes to sentencing under the Code, especially the creation of upward departure sentencing. Furthermore, since upward departure sentencing does not currently exist under the Code (generally, the sentencing range is the lowest permissible sentence up to the statutory maximum), the prison bed impact of sentencing as proposed in the bill cannot be ascertained from DOC data on sentencing.”²⁹

VI. Technical Deficiencies:

The bill does not specify if the inmates sentenced to county jail will be required to serve 85 percent of the sentence. Without this provision, the bill could result in inmates sentenced to county jails serving less than 85 percent of the sentence imposed. Section 951.21, F.S., provides counties the discretion to reduce the time an inmate must serve by the award of gain time.

The DOC states that because of the discretionary authority afforded the county, the actual percentage of a sentence an inmate will serve may vary depending on local policies and interpretations of the statute. The DOC further explains that it is clear that the maximum amount of a sentence that could be satisfied by gain time is 25 percent, meaning the inmate would serve 75 percent of the sentence.³⁰

²⁹ Impact information was provided by staff of the Office of Economic and Demographic Research on March 6, 2017 via e-mail (on file with the Senate Committee on Criminal Justice).

³⁰ Department of Corrections, *Senate Bill 1068 Analysis* (March 23, 2017) (on file with the Senate Committee on Criminal Justice).

Section 951.21(1), F.S., authorizes the county to grant up to 5 days per month for the first 2 years of a sentence “when no charge of misconduct has been sustained against a county prisoner.” Section 951.21(3), F.S., authorizes “an extra good-time allowance for meritorious conduct or exceptional industry not to exceed 5 days per month.” If an inmate earns the maximum allowable award under these statutes of 10 days per month, the sentence could be reduced by up to 25 percent by virtue of the application of gain time.³¹

VII. Related Issues:

It appears that any contract between the DOC and a county would be limited to one year; however, inmates under this section could be sentenced to up to 24 months. “The bill does not address what would happen to the inmate’s sentence or confinement if a contract is revised or cancelled and the inmate’s service of sentence is still active after the contract cancellation.”³²

The DOC also notes that “the bill states that the court will ‘sentence’ the offender to county jail, which means that the court will impose a sentence and also determine where the offender will serve the sentence. The bill language creates confusion as to whether the offender is being committed to the Department and housed in the county jail, or whether the offender is being committed to the county.”³³

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 921.002, 921.0024, 924.06, and 924.07.

This bill creates sections 921.00261 and 950.021 of the Florida Statutes.

This bill reenacts section 958.04 of the Florida Statutes. This reenactment is to incorporate amendments made by the bill to ss. 924.06 and 924.07, F.S.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

Recommended CS/CS by Appropriation Subcommittee on Criminal and Civil Justice on April 13, 2017:

The CS deletes an incorrect reference in the bill to the General Appropriations Act, and provides an appropriation of \$1,609,285 to pay for the costs of incarcerating state prison inmates in county jails that the DOC would not otherwise incur if incarcerated in a state prison.

CS by Criminal Justice on March 27, 2017:

The CS:

³¹ *Id.*

³² *Id.*

³³ *Id.*

- Specifies what sentencing under the Code is permitted without a written reason for sentencing.
- Provides that sentencing that exceeds a permitted range is an upward departure sentence and requires a written reason to justify the departure.
- Lists a number of “aggravating circumstances” for which an upward departure sentence is reasonably justified.
- Authorizes the defendant and the state to appeal a sentence outside the permissible sentencing range.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/13/2017	.	
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Appropriations Subcommittee on Criminal and Civil Justice
(Brandes) recommended the following:

Senate Amendment (with title amendment)

Between lines 305 and 306

insert:

Section 6. Section 950.013, Florida Statutes, is created to
read:

950.013 Operating jail in adjoining county.—A county may
operate a jail in an adjoining county if agreed to by interlocal
agreement with the county or municipality where the jail is
located. The authority of the correctional officers employed by



833352

11 the county operating the jail is consistent with those powers of
12 a correctional officer as defined in s. 943.10. The
13 municipality, county, chief law enforcement officer, or
14 designated chief correctional officer of the jurisdiction where
15 the facility is located assumes no liability by virtue of the
16 facility's location within its county, and actions of the jail's
17 correctional officers and employees remain the responsibility of
18 the employing county, officer, or agency. This provision does
19 not act as a waiver of sovereign immunity or any of the
20 procedures set forth in s. 768.28.

21
22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 Between lines 23 and 24

25 insert:

26 950.013, F.S.; authorizing a county to operate a jail
27 in an adjoining county if agreed to by interlocal
28 agreement with the county or municipality where the
29 jail is located; providing no assumption of liability
30 by certain persons or entities by virtue of the
31 facility's location within their county; specifying
32 that the responsibility remains with the employing
33 county, officer, or agency; providing construction;
34 creating s.



109356

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/14/2017	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 339 - 342
and insert:
specific appropriation as provided by law. Contracts shall be
awarded by the Department of Corrections on a first-come, first-
served basis up to the maximum appropriation allowable for this
purpose.



389028

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/14/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 380 and 381
insert:

Section 8. For the 2017-2018 fiscal year, the sum of \$1,609,285 in nonrecurring funds from the General Revenue Fund is appropriated to the Department of Corrections, Inmates Sentenced to County Jail appropriation category in the Executive Direction and Support Services budget entity for the purpose of implementing s. 950.021, Florida Statutes, as created in this



389028

11 act.

12

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

14 And the title is amended as follows:

15 Delete line 34

16 and insert:

17 924.07, F.S., in references thereto; providing an

18 appropriation; providing an

By the Committee on Criminal Justice; and Senator Brandes

591-02920-17

20171068c1

1 A bill to be entitled
 2 An act relating to sentencing; amending s. 921.002,
 3 F.S.; specifying requirements for sentencing and
 4 appeals of sentences for offenses committed on or
 5 after a certain date; authorizing upward departures of
 6 sentences under certain circumstances; amending s.
 7 921.0024, F.S.; providing applicability; creating
 8 requirements for permissible sentences for nonstate
 9 prison sanctions and state prison sanctions;
 10 authorizing a judge to depart from the guidelines
 11 under certain circumstances; prohibiting departure
 12 sentences under certain circumstances; creating s.
 13 921.00261, F.S.; providing applicability; defining the
 14 term "upward departure sentence"; specifying
 15 requirements for imposing an upward departure
 16 sentence; providing a circumstance under which a
 17 sentence is subject to appellate review; providing
 18 aggravating circumstances under which an upward
 19 departure sentence is reasonably justified; amending
 20 s. 924.06, F.S.; authorizing a defendant to appeal a
 21 sentence outside a specified range; amending s.
 22 924.07, F.S.; authorizing the state to appeal a
 23 sentence outside a specified range; creating s.
 24 950.021, F.S.; authorizing a court to sentence certain
 25 offenders to a term in county jail for up to 24 months
 26 if the offender meets specified criteria and if the
 27 county has a contract with the Department of
 28 Corrections; providing contractual requirements;
 29 requiring specific appropriations; providing for such

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30 appropriations; requiring validation of per diem
 31 rates; reenacting s. 958.04(3), F.S., relating to
 32 judicial disposition of youthful offenders, to
 33 incorporate the amendments made to ss. 924.06 and
 34 924.07, F.S, in references thereto; providing an
 35 effective date.
 36

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

39 Section 1. Present paragraphs (g), (h), and (i) of
 40 subsection (1) of section 921.002, Florida Statutes, are
 41 redesignated as paragraphs (h), (i), and (k), respectively, new
 42 paragraphs (g) and (j) are added to that subsection, present
 43 paragraphs (g) and (h) of that subsection are amended, present
 44 subsection (4) of that section is redesignated as subsection
 45 (5), and a new subsection (4) is added to that section, to read:
 46 921.002 The Criminal Punishment Code.—The Criminal
 47 Punishment Code shall apply to all felony offenses, except
 48 capital felonies, committed on or after October 1, 1998.

49 (1) The provision of criminal penalties and of limitations
 50 upon the application of such penalties is a matter of
 51 predominantly substantive law and, as such, is a matter properly
 52 addressed by the Legislature. The Legislature, in the exercise
 53 of its authority and responsibility to establish sentencing
 54 criteria, to provide for the imposition of criminal penalties,
 55 and to make the best use of state prisons so that violent
 56 criminal offenders are appropriately incarcerated, has
 57 determined that it is in the best interest of the state to
 58 develop, implement, and revise a sentencing policy. The Criminal

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59 Punishment Code embodies the principles that:

60 (g) An upward departure sentence, as defined in s.
 61 921.00261, must be articulated in writing by the trial court
 62 judge and made only when circumstances or factors reasonably
 63 justify such sentence. The level of proof necessary to establish
 64 facts that support an upward departure sentence is a
 65 preponderance of the evidence.

66 (h)~~(g)~~ Except as provided in s. 921.0024(3), the trial
 67 court judge may impose a sentence up to and including the
 68 statutory maximum for any offense, including an offense that is
 69 before the court due to a violation of probation or community
 70 control.

71 (i)~~(h)~~ A sentence for an offense committed on or after
 72 October 1, 1998, but before October 1, 2017, may be appealed on
 73 the basis that it departs from the Criminal Punishment Code only
 74 if the sentence is below the lowest permissible sentence or as
 75 enumerated in s. 924.06(1).

76 (j) A sentence for an offense committed on or after October
 77 1, 2017, may be appealed on the basis that it departs from the
 78 Criminal Punishment Code if the sentence is below the lowest
 79 permissible sentence provided in s. 921.0024(3); is outside the
 80 range authorized by s. 921.0024(3); or is as enumerated in s.
 81 924.06(1).

82 (4) As provided in s. 921.00261, a court may impose an
 83 upward departure sentence based upon circumstances or factors
 84 that reasonably justify the aggravation of the sentence. The
 85 level of proof necessary to establish facts supporting an upward
 86 departure sentence is a preponderance of the evidence. When
 87 multiple reasons exist to support an upward departure sentence,

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88 such sentence shall be upheld when at least one circumstance or
 89 factor justifies such sentence regardless of the presence of
 90 other circumstances or factors found not to justify such
 91 sentence. Any upward departure sentence must be explained in
 92 writing by the trial court judge.

93 Section 2. Present subsections (3) through (7) of section
 94 921.0024, Florida Statutes, are redesignated as subsections (4)
 95 through (8), respectively, and a new subsection (3) is added to
 96 that section, to read:

97 921.0024 Criminal Punishment Code; worksheet computations;
 98 scoresheets.—

99 (3) (a) This subsection applies to any felony offense,
 100 except a capital felony, committed on or after October 1, 2017.

101 (b) The lowest permissible sentence is the minimum sentence
 102 that may be imposed by the trial court, absent a valid reason
 103 for departure.

104 (c) The lowest permissible sentence is any nonstate prison
 105 sanction in which the total sentence points equal or are less
 106 than 44 points. The trial court may increase the total sentence
 107 points by up to, and including, 25 percent. If the total
 108 sentence points exceed 44 points as a result of this increase,
 109 the court may not impose a state prison sentence that is longer
 110 than the lowest permissible sentence in prison months calculated
 111 pursuant to paragraph (d).

112 (d) If the total sentence points exceed 44 points, the
 113 lowest permissible sentence in prison months shall be calculated
 114 by subtracting 28 points from the total sentence points and
 115 decreasing the remaining total by 25 percent. The total sentence
 116 points shall be calculated only as a means of determining the

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117 lowest permissible sentence. The trial court may impose
 118 sentences under this subsection or s. 921.00261 concurrently or
 119 consecutively. However, any sentence to state prison must exceed
 120 1 year. If the lowest permissible sentence in prison months
 121 exceeds the statutory maximum sentence as provided in s.
 122 775.082, the lowest permissible sentence in prison months must
 123 be imposed. If the total sentence points are greater than or
 124 equal to 363, the court may sentence the offender to life
 125 imprisonment. An offender sentenced to life imprisonment under
 126 this subsection is not eligible for any form of discretionary
 127 early release, except executive clemency or conditional medical
 128 release under s. 947.149. This subsection does not supersede any
 129 requirement in subsection (1) to impose a statutory maximum
 130 sentence.

131 (e) The trial court may impose a state prison sentence that
 132 does not vary upward by more than 25 percent from the lowest
 133 permissible sentence in prison months calculated pursuant to
 134 paragraph (d). However, no sentence imposed pursuant to this
 135 paragraph may exceed the statutory maximum sentence as provided
 136 in s. 775.082.

137 (f) Except as provided in s. 921.00261, the trial court may
 138 not impose a sentence that varies upward by more than 25 percent
 139 from the lowest permissible sentence in prison months calculated
 140 pursuant to paragraph (d). The permissible range for sentencing
 141 for an upward departure sentence imposed by the court pursuant
 142 to s. 921.00261 is the lowest permissible sentence up to and
 143 including the statutory maximum, as provided in s. 775.082, for
 144 the primary offense and any additional offense before the court
 145 for sentencing.

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146 Section 3. Section 921.00261, Florida Statutes, is created
 147 to read:

148 921.00261 Upward departure sentence; aggravating
 149 circumstances.-

150 (1) (a) This section applies to any felony offense, except a
 151 capital felony, committed on or after October 1, 2017.

152 (b) The sentence imposed pursuant to s. 921.0024(3) (d) or
 153 (3) (e) is assumed to be appropriate for the offender. A sentence
 154 that the trial court is authorized to impose pursuant to s.
 155 921.0024(3) is not an upward departure sentence. As used in this
 156 section, the term "upward departure sentence" means a state
 157 prison sentence that varies upward by more than 25 percent from
 158 the lowest permissible sentence in prison months calculated
 159 pursuant to s. 921.0024(3) (d).

160 (c) The trial court may impose an upward departure sentence
 161 only if the sentence is accompanied by a written statement from
 162 the court specifying the reasons for the departure, filed within
 163 7 days after the date of sentencing. A written transcription of
 164 orally stated reasons for this departure is permissible if it is
 165 filed by the court within 7 days after the date of sentencing.

166 (d) The imposition of a split sentence of incarceration
 167 followed by community control or probation does not by itself
 168 constitute an upward departure. For the purpose of determining
 169 the maximum sentence authorized by law, any community control
 170 portion of a split sentence does not constitute a term of
 171 imprisonment.

172 (e) An upward departure sentence must be within any
 173 relevant maximum sentence limitations provided by s. 775.082.

174 (2) An upward departure sentence is discouraged unless

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175 there are circumstances or factors that reasonably justify the
 176 departure. Aggravating circumstances to be considered include,
 177 but are not limited to, those listed in subsection (3). The
 178 failure of the trial court to impose a sentence within the range
 179 authorized by s. 921.0024(3) is subject to appellate review
 180 under chapter 924, but the extent of the departure from such
 181 range is not subject to appellate review.

182 (3) Aggravating circumstances under which an upward
 183 departure sentence is reasonably justified include, but are not
 184 limited to:

185 (a) The departure results from a legitimate, uncoerced plea
 186 bargain.

187 (b) The offense was one of violence and was committed in a
 188 manner that was especially heinous, atrocious, or cruel.

189 (c) The offenses before the court for sentencing arose out
 190 of separate episodes, the primary offense is scored at offense
 191 level 4 or higher, and the defendant has committed five or more
 192 offenses within a 180-day period which have resulted in
 193 convictions.

194 (d) The primary offense is scored at offense level 3, and
 195 the defendant has committed eight or more offenses within a 180-
 196 day period which have resulted in convictions.

197 (e) The offense before the court for disposition was
 198 committed within 6 months after the defendant was discharged
 199 from probation, community control, or pretrial intervention or
 200 diversion or released from state prison, whichever is later.

201 (f) The defendant occupied a leadership role in a criminal
 202 organization.

203 (g) The offense was committed by a public official under

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204 color of office.

205 (h) The defendant knew the victim was a law enforcement
 206 officer at the time of the offense, the offense was a violent
 207 offense, and that status is not an element of the primary
 208 offense.

209 (i) The offense created a substantial risk of death or
 210 great bodily harm to many persons or to one or more children.

211 (j) The victim was especially vulnerable due to age or
 212 physical or mental disability.

213 (k) The offense was motivated by prejudice based on race,
 214 color, ancestry, ethnicity, religion, sexual orientation, or
 215 national origin of the victim.

216 (l) The victim suffered extraordinary physical or emotional
 217 trauma or permanent physical injury or was treated with
 218 particular cruelty.

219 (m) The victim was physically attacked by the defendant in
 220 the presence of one or more members of the victim's family.

221 (n) The offense resulted in substantial economic hardship
 222 to the victim and consisted of an illegal act or acts committed
 223 by means of concealment, guile, or fraud to obtain money or
 224 property, to avoid payment or loss of money or property, or to
 225 obtain business or professional advantage, when two or more of
 226 the following circumstances were present:

227 1. The offense involved multiple victims or multiple
 228 incidents per victim;

229 2. The offense involved a high degree of sophistication or
 230 planning or occurred over a lengthy period of time;

231 3. The defendant used position or status to facilitate the
 232 commission of the offense, including positions of trust,

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233 confidence, or fiduciary relationship; or
 234 4. The defendant was in the past involved in other conduct
 235 similar to that involved in the current offense.
 236 (o) The offense was committed in order to prevent or avoid
 237 arrest, to impede or prevent prosecution for the conduct
 238 underlying the offense, or to effect an escape from custody.
 239 (p) The defendant is not amenable to rehabilitation or
 240 supervision, as evidenced by an escalating pattern of criminal
 241 conduct, which is a progression from nonviolent to violent
 242 crimes, a progression of increasingly violent crimes, or a
 243 pattern of increasingly serious criminal activity.
 244 (q) The defendant induced a minor to participate in any of
 245 the offenses pending before the court for disposition.
 246 (r) The primary offense is scored at offense level 7 or
 247 higher, and the defendant has been convicted of an additional
 248 offense that scored, or would have scored, at an offense level 8
 249 or higher.
 250 (s) The defendant has an extensive unscorable juvenile
 251 record.
 252 (t) The defendant committed an offense involving sexual
 253 contact or sexual penetration, and, as a direct result of the
 254 offense, the victim contracted a sexually transmissible disease.
 255 Section 4. Subsection (1) of section 924.06, Florida
 256 Statutes, is amended to read:
 257 924.06 Appeal by defendant.—
 258 (1) A defendant may appeal any of the following ~~from~~:
 259 (a) A final judgment of conviction when probation has not
 260 been granted under chapter 948, except as provided in subsection
 261 (3).~~†~~

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262 (b) An order granting probation under chapter 948.~~†~~
 263 (c) An order revoking probation under chapter 948.~~†~~
 264 (d) A sentence, on the ground that it is illegal.~~†~~~~†~~
 265 (e) A sentence imposed under s. 921.0024 of the Criminal
 266 Punishment Code which exceeds the statutory maximum penalty
 267 provided in s. 775.082 for an offense at conviction, or the
 268 consecutive statutory maximums for offenses at conviction,
 269 unless otherwise provided by law.
 270 (f) A sentence imposed outside the range authorized by s.
 271 921.0024(3).
 272 Section 5. Subsection (1) of section 924.07, Florida
 273 Statutes, is amended to read:
 274 924.07 Appeal by state.—
 275 (1) The state may appeal any of the following ~~from~~:
 276 (a) An order dismissing an indictment or information or any
 277 count thereof or dismissing an affidavit charging the commission
 278 of a criminal offense, the violation of probation, the violation
 279 of community control, or the violation of any supervised
 280 correctional release.
 281 (b) An order granting a new trial.
 282 (c) An order arresting judgment.
 283 (d) A ruling on a question of law when the defendant is
 284 convicted and appeals from the judgment. Once the state's cross-
 285 appeal is instituted, the appellate court shall review and rule
 286 upon the question raised by the state regardless of the
 287 disposition of the defendant's appeal.
 288 (e) The sentence, on the ground that it is illegal.
 289 (f) A judgment discharging a prisoner on habeas corpus.
 290 (g) An order adjudicating a defendant insane under the

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291 Florida Rules of Criminal Procedure.

292 (h) All other pretrial orders, except that it may not take
293 more than one appeal under this subsection in any case.

294 (i) A sentence imposed below the lowest permissible
295 sentence established by the Criminal Punishment Code under
296 chapter 921.

297 (j) A ruling granting a motion for judgment of acquittal
298 after a jury verdict.

299 (k) An order denying restitution under s. 775.089.

300 (l) An order or ruling suppressing evidence or evidence in
301 limine at trial.

302 (m) An order withholding adjudication of guilt in violation
303 of s. 775.08435.

304 (n) A sentence imposed outside the range authorized by s.
305 921.0024(3).

306 Section 6. Section 950.021, Florida Statutes, is created to
307 read:

308 950.021 Sentencing of offenders to county jail.-

309 (1) Notwithstanding s. 921.0024 or any other provision of
310 law, and effective for offenses committed on or after July 1,
311 2017, a court may sentence an offender to a term in the county
312 jail in the county where the offense was committed for up to 24
313 months if the offender meets all of the following criteria:

314 (a) The offender's total sentence points score, as provided
315 in s. 921.0024, is more than 44 points but no more than 60
316 points.

317 (b) The offender's primary offense is not a forcible felony
318 as defined in s. 776.08; however, an offender whose primary
319 offense is a third degree felony under chapter 810 is eligible

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320 to be sentenced to a county jail under this paragraph.

321 (c) The offender's primary offense is not punishable by a
322 minimum mandatory sentence of more than 24 months.

323 (2) (a) The court may only sentence an offender to a county
324 jail pursuant to this section if there is a contractual
325 agreement between the chief correctional officer of that county
326 and the Department of Corrections.

327 (b) If the chief correctional officer of a county requests
328 the Department of Corrections to enter into a contract that
329 allows offenders to be sentenced to the county jail pursuant to
330 subsection (1), subject to the restrictions of this paragraph
331 and subsections (3) and (6), the Department of Corrections must
332 enter into such a contract. The contract must specifically
333 establish the maximum number of beds and the validated per diem
334 rate. The contract must provide for per diem reimbursement for
335 occupied inmate days based on the contracting county's most
336 recent annual adult male custody or adult female custody per
337 diem rates, not to exceed \$60 per inmate.

338 (3) A contract under this section is contingent upon a
339 specific appropriation in the General Appropriations Act.
340 Contracts shall be awarded by the Department of Corrections on a
341 first-come, first-served basis up to the maximum appropriation
342 allowable in the General Appropriations Act for this purpose.
343 The maximum appropriation allowable consists of funds
344 appropriated in or transferred to the specific appropriation in
345 the Inmates Sentenced to County Jail appropriation category.
346 Before any transferred appropriation under this section, the
347 Inmates Sentenced to County Jail appropriation category provides
348 for an estimated incremental appropriation for county jail beds

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349 contracted under this section in excess of the Department of
 350 Corrections' per diem for adult male and female inmates.

351 (4) The Department of Corrections shall transfer funds
 352 pursuant to s. 216.177 from other appropriation categories
 353 within the Adult Male Custody Operations or Adult and Youthful
 354 Offender Female Custody Operations budget entities to the
 355 Inmates Sentenced to County Jail appropriation category in an
 356 amount necessary to satisfy the requirements of each executed
 357 contract, but not to exceed the Department of Corrections'
 358 average total per diem published for the preceding fiscal year
 359 for adult male custody or adult and youthful offender female
 360 custody inmates for each county jail bed contracted.

361 (5) The Department of Corrections shall assume maximum
 362 annual value of each contract when determining the full use of
 363 funds appropriated and must ensure that the maximum
 364 appropriation allowable is not exceeded.

365 (6) All contractual per diem rates under this section as
 366 well as the per diem rates used by the Department of Corrections
 367 must be validated by the Auditor General before payments are
 368 made.

369 Section 7. For the purpose of incorporating the amendments
 370 made by this act to sections 924.06 and 924.07, Florida
 371 Statutes, in references thereto, subsection (3) of section
 372 958.04, Florida Statutes, is reenacted to read:

373 958.04 Judicial disposition of youthful offenders.—

374 (3) The provisions of this section shall not be used to
 375 impose a greater sentence than the permissible sentence range as
 376 established by the Criminal Punishment Code pursuant to chapter
 377 921 unless reasons are explained in writing by the trial court

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378 judge which reasonably justify departure. A sentence imposed
 379 outside of the code is subject to appeal pursuant to s. 924.06
 380 or s. 924.07.

381 Section 8. This act shall take effect July 1, 2017.

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The Florida Senate

Committee Agenda Request

To: Senator Aaron Bean,
Appropriations Subcommittee on
Criminal and Civil Justice

Subject: Committee Agenda Request

Date: March 28th, 2017

I respectfully request that **Senate Bill #1068**, relating to **Sentencing** be placed on the:

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

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

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE
APPEARANCE RECORD

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

13 Apr 17

Meeting Date

1068

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe

Phone 850.510.9922

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
APPEARANCE RECORD

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

April 13, 2017

Meeting Date

CS/SB 1068

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 N. Gadsden Street

Phone 850-488-6850

Street

Tallahassee

FL

32301

Email ndaniels@flpda.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.

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 1102 (625276)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice and Senator Rouson

SUBJECT: Criminal Offenses

DATE: April 14, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hrdlicka</u>	<u>Hrdlicka</u>	<u>CJ</u>	Favorable
2.	<u>McAuliffe</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1102 increases the minimum threshold values for several theft provisions in the Florida Statutes from:

- \$300 or more to \$1,000 or more for felony theft of state sales taxes;
- \$100 or more to \$300 or more for second degree petit theft of property;
- \$100 or more, but less than \$300, to \$300 or more, but less than \$1,000 for first degree petit theft of property and for third degree grand theft of property from a dwelling or its unenclosed curtilage;
- \$300 or more to \$1,000 or more for second degree grand theft of emergency medical equipment or law enforcement equipment;
- \$300 or more to \$750 or more for third degree grand theft of property;
- \$300 or more to \$400 or more for third degree felony retail theft;
- \$300 or more to \$500 or more for third degree felony dealing in stolen property over the Internet; and
- \$150 or more to \$500 or more for the third degree felonies of stopping payment on a check with intent to defraud producer of farm or grove products; stopping payment on a check with intent to defraud any person for goods or services; worthless checks, drafts, or debit card orders; and worthless checks, drafts, or debit card orders or electronic funds transfers to remit taxes.

The Criminal Justice Impact Conference (CJIC) determined that the overall prison bed impact of the bill as originally filed would be “negative significant” (result in a decrease of more than 25 prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2017

II. Present Situation:

There are approximately 7,700 people currently incarcerated and 38,800 on supervision for a theft crime in Florida.¹ Since 2005, at least 26 states have increased the threshold dollar amounts for felony theft crimes.² These states had various reasons for increasing the thresholds, including ensuring that the “amounts keep pace with inflation and the increase in the price of consumer goods.”³ Such increases ensure that associated “criminal sentences don’t become more severe over time simply because of natural increases in the prices of consumer goods.”⁴ “Raising felony thresholds also complements state reforms designed to focus prison beds on the most serious offenders, rather than relatively low-level ones.”⁵

The majority of states (30 states) and the District of Columbia set a \$1,000-or-greater property value threshold for felony grand theft. Fifteen states have thresholds between \$500 and \$950, and five states, including Florida, have thresholds below \$500.⁶

Theft of State Sales Taxes

Chapter 212, F.S., levies a 6 percent sales and use tax on most sales of tangible personal property.⁷ Any person who fails to remit collected sales and use tax with the intent to defraud the state commits a theft of state funds.⁸ The punishment for the offense is based upon the value, or amount, of state taxes that were not remitted:

- If the total amount was less than \$300, the offense is a second degree misdemeanor.⁹

¹ Department of Corrections, *2015-2016 Agency Statistics: Inmate Population and Community Supervision Population*, data of population by primary offenses, as of June 30, 2016, available at

http://www.dc.state.fl.us/pub/annual/1516/stats/ip_primary.html and

http://www.dc.state.fl.us/pub/annual/1516/stats/csp_primary.html (last visited March 22, 2017).

² Lawrence, Alison, *Making Sense of Sentencing: State Systems and Policies* (June 2015), p. 2, National Conference of State Legislatures, available at <http://www.ncsl.org/documents/cj/sentencing.pdf> (last visited March 22, 2017).

³ *Id.*

⁴ Gramlich, John, and Zafft, Katie, *Updating State Theft Laws Can Bring Less Incarceration – and Less Crime* (March 31, 2016), Stateline, Pew Charitable Trusts, available at <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/03/31/updating-state-theft-laws-can-bring-less-incarceration-and-less-crime> (last visited March 22, 2017).

⁵ See footnote 2.

⁶ *Id.* See also Pew Charitable Trusts, *The Effects of Changing State Theft Penalties* (February 2016), available at http://www.pewtrusts.org/~media/assets/2016/02/the_effects_of_changing_state_theft_penalties.pdf?la=en (last visited March 22, 2017).

⁷ Section 212.05, F.S.

⁸ Section 212.15, F.S.

⁹ A second degree misdemeanor is punishable by up to 60 days in jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

- If the total amount was \$300 or more, but less than \$20,000, the offense is a third degree felony.¹⁰
- If the total amount was \$20,000 or more, but less than \$100,000, the offense is a second degree felony.¹¹
- If the total amount was \$100,000 or more, the offense is a first degree felony.¹²

These amounts were set in 1993.¹³

Property Theft

Section 812.014, F.S., defines and categorizes thefts into misdemeanor or felony criminal violations. Whether a theft is a misdemeanor or a felony generally depends upon the value of the property taken by the defendant, the defendant's history of theft convictions or, in some cases, the type of property taken. A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.¹⁴

Second degree petit theft, a second degree misdemeanor, is theft of property valued at less than \$100.¹⁵ First degree petit theft, a first degree misdemeanor,¹⁶ is theft of property valued at \$100 or more but less than \$300.¹⁷ Petit theft incurs greater penalties if there is a prior theft conviction: a first degree misdemeanor if there is a prior conviction,¹⁸ and a third degree felony if there are two or more prior convictions.¹⁹

Third degree grand theft, a third degree felony, is theft of:

- Property valued at \$300 or more, but less than \$20,000.
- Specified property (e.g., a firearm or fire extinguisher).²⁰
- Property from a dwelling or its unenclosed curtilage if the property is valued at \$100 or more, but less than \$300.²¹

Second degree grand theft, a second degree felony, is theft of:

- Property valued at \$20,000 or more, but less than \$100,000;
- Cargo valued at less than \$50,000 in specified circumstances; or

¹⁰ A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000. *Id.*

¹¹ A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. *Id.*

¹² A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. *Id.*

¹³ Chapter 93-233, s. 13, L.O.F.

¹⁴ Section 812.014(1), F.S.

¹⁵ Section 812.014(3)(a), F.S.

¹⁶ A first degree misdemeanor is punishable by up to one year in jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

¹⁷ Section 812.014(2)(e), F.S.

¹⁸ Section 812.014(3)(b), F.S.

¹⁹ Section 812.014(3)(c), F.S.

²⁰ Section 812.014(2)(c), F.S.

²¹ Section 812.014(3)(d), F.S.

- Emergency medical equipment or law enforcement equipment valued at \$300 or more in specified circumstances.²²

First degree grand theft, a first degree felony, is theft of:

- Property valued at \$100,000 or more;
- A semitrailer deployed by a law enforcement officer;
- Cargo valued at \$50,000 or more in specified circumstances; or

First degree grand theft also includes any grand theft in which, in the course of committing the offense, a motor vehicle is used as specified or the offender causes damage to the real or personal property of another in excess of \$1,000.²³

The last time the Legislature increased the minimum threshold property value for third degree grand theft was in 1986.²⁴ The third degree grand theft provisions related to property taken from a dwelling or its unenclosed curtilage were added in 1996.²⁵ The second degree grand theft provisions related to emergency medical equipment were added in 2001, and law enforcement equipment in 2007.²⁶ The petit theft provisions were amended, including the thresholds, in 1996.²⁷

Retail Theft

Section 812.015(1)(d), F.S., defines retail theft as:

- The taking possession of or carrying away of merchandise, property, money, or negotiable documents;
- Altering or removing a label, universal product code, or price tag;
- Transferring merchandise from one container to another; or
- Removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value.

Theft defined as retail theft is punishable under s. 812.014, F.S., and like any other type of theft, must meet the elements of the applicable theft offense under that statute. However, s. 812.015, F.S., also provides that retail theft is a third degree felony if the theft involves property valued at \$300 or more and the person commits the theft in a specified manner (e.g., commits theft from more than one location within a 48-hour period, in which case the amount of each individual theft is aggregated to determine the value of the property stolen).²⁸

Retail theft is a second degree felony if the person has previously been convicted of third degree felony retail theft or individually, or in concert with one or more other persons, coordinates the

²² Section 812.014(2)(b), F.S. However, this theft is reclassified from a second degree felony to a first degree felony if the theft occurs within a county subject to a state of emergency declared by the Governor, is committed after the declaration is made, and is facilitated by conditions arising from the emergency.

²³ Section 812.014(2)(a), F.S.

²⁴ Chapter 86-161, s. 1, L.O.F.

²⁵ Chapter 96-388, s. 49, L.O.F.

²⁶ Chapters 2001-115, s. 2, and 2007-115, s. 2, L.O.F.

²⁷ Chapter 96-388, s. 49, L.O.F.

²⁸ Section 812.015(8), F.S.

activities of one or more persons in committing the offense of retail theft where the stolen property has a value in excess of \$3,000.²⁹ The statute also requires a fine of not less than \$50 and not more than \$1,000 for a second or subsequent conviction for petit theft from a merchant³⁰ and provides that it is a third degree felony to possess, or use or attempt to use, any antishoplifting or inventory control device countermeasure within any premises used for the retail purchase or sale of any merchandise.³¹

The thresholds for third degree felony retail theft were created and set by the Legislature in 2001.³²

Dealing in Stolen Property Over the Internet

It is a crime for any person to use the Internet to sell or offer for sale property that the person knows or has a reasonable cause to believe that the property is stolen. The punishment for the offense is based upon the value of the stolen property:

- If the total value was less than \$300, the offense is a second degree misdemeanor.
- If the total value was \$300 or more, the offense is a third degree felony.³³

This crime was created in 2001.³⁴

Checks Fraud

Stopping Payment on a Check with Intent to Defraud Producer of Farm or Grove Products

It is a crime for a person to make, draw, utter, deliver, or give a check, draft, or written order to a producer of farm or grove products with the intent to defraud such producer by stopping payment on the check, draft, or written order. The punishment for the offense is based upon the value of the farm or grove products:

- If the total value was less than \$150, the offense is a second degree misdemeanor.
- If the total value was \$150 or more, the offense is a first degree misdemeanor.³⁵

The last time the Legislature increased the minimum threshold product value for this offense was in 1986.³⁶

²⁹ Section 812.015(9), F.S.

³⁰ Section 812.015(2), F.S.

³¹ Section 812.014(7), F.S.

³² Chapter 2001-115, s. 3, L.O.F.

³³ Section 812.0195, F.S.

³⁴ Chapter 2001-115, s. 6, L.O.F.

³⁵ Section 832.04, F.S.

³⁶ Chapter 86-161, s. 7, L.O.F.

Stopping Payment on a Check with Intent to Defraud Any Person for Goods or Services

It is a crime for a person to make, draw, utter, deliver, or give a check, draft, or written order to any person for goods or services with the intent to defraud such person by stopping payment on the check, draft, or written order. The punishment for the offense is based upon the value of the goods or services:

- If the total value was less than \$150, the offense is a second degree misdemeanor.
- If the total value was \$150 or more, the offense is a third degree felony.³⁷

The last time the Legislature increased the minimum threshold goods or services value for this offense was in 1986.³⁸

Worthless Checks, Drafts, or Debit Card Orders

It is unlawful to draft or issue a check, draft, or debit card order, knowing there are insufficient funds or credit.³⁹ The punishment for violating this is a first degree misdemeanor. However, the violation is a third degree felony if the check, draft, or debit card order was for \$150 or more and the payee receives something of value.

It is also unlawful to receive anything of value by means of a worthless check or draft knowing there are insufficient funds or credit⁴⁰ and to use a debit card to obtain anything of value knowing there are insufficient funds or credit.⁴¹ The punishment for violating either of these provisions is based upon value:

- If the check, draft, or debit card order was less than \$150, the offense is a first degree misdemeanor.
- If the check, draft, or debit card order was \$150 or more, the offense is a third degree felony.⁴²

The last time the Legislature increased the minimum threshold values for this offense was in 1986.⁴³

Worthless Checks, Drafts, or Debit Card Orders or Electronic Funds Transfers to Remit Taxes

It is unlawful to draft or issue to the Department of Revenue any check or draft, or to use a debit card, to make any electronic funds transfer for the payment of any taxes, penalties, interest, fees, or associated amounts administered by the department, knowing that there are insufficient funds or credit.⁴⁴ The punishment for violating either of these provisions is based upon value:

- If the check, draft, debit card order, or electronic funds transfer was less than \$150, the offense is a second degree misdemeanor.

³⁷ Section 832.041, F.S.

³⁸ Chapter 86-161, s. 8, L.O.F.

³⁹ Section 832.05(2)(a), F.S.

⁴⁰ Section 832.05(4)(a), F.S.

⁴¹ Section 832.05(4)(b), F.S.

⁴² Section 832.05(4)(c), F.S.

⁴³ Chapter 86-161, s. 9, L.O.F.

⁴⁴ Section 832.062(1), F.S.

- If the check, draft, or debit card order was \$150 or more, the offense is a third degree felony.⁴⁵

This crime was created in 1987.⁴⁶

III. Effect of Proposed Changes:

The bill increases the minimum threshold values for several theft provisions in the Florida Statutes.

Theft of State Sales Taxes (Section 1)

The bill amends s. 212.15, F.S., to increase the values that are the basis for the punishment for the offense:

- If the total amount is less than \$1,000, instead of \$300, the offense is a second degree misdemeanor.
- If the total amount is \$1,000 or more, instead of \$300 or more, but is less than \$20,000, the offense is a third degree felony.⁴⁷

The remaining penalties are unchanged by the bill.

Sections 202.28 and 202.33, F.S., related to communication services tax, and s. 206.56, F.S., related to motor and other fuel taxes, contain similar provisions to s. 212.15, F.S., related to theft of state taxes. The bill does not change these provisions, and thus *creates a discrepancy in tax administration*.

Property Theft (Section 2)

The bill amends the following property theft provisions in s. 812.014, F.S., to increase the values that are the basis for the punishment for the offenses:

- Second degree petit theft of property valued at less than \$300, instead of \$100.
- First degree petit theft of property valued at \$300 or more, but less than \$1,000, instead of \$100 or more, but less than \$300.⁴⁸
- Third degree grand theft of property valued at \$750 or more, instead of \$300 or more, but less than \$20,000.⁴⁹

⁴⁵ Section 832.062(2), F.S.

⁴⁶ Chapter 87-102, s. 11, L.O.F.

⁴⁷ According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$300 in 1993 has the same buying power as \$505.75 in 2017 dollars. CPI Inflation Calculator available at https://www.bls.gov/data/inflation_calculator.htm (last visited March 23, 2017). "The CPI inflation calculator uses the Consumer Price Index for All Urban Consumers (CPI-U) U.S. city average series for all items, not seasonally adjusted. This data represents changes in the prices of all goods and services purchased for consumption by urban households. For the current year, the most recently published monthly index value is used."

⁴⁸ According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$300 in 1996 has the same buying power as \$465.78 in 2017 dollars.

⁴⁹ According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$300 in 1986 has the same buying power as \$666.80 in 2017 dollars.

- Third degree grand theft of property from a dwelling or its unenclosed curtilage if the property is valued at \$300 or more, but less than \$1,000, instead of \$100 or more, but less than \$300.⁵⁰
- Second degree grand theft of emergency medical equipment or law enforcement equipment valued at \$1,000 or more, instead of \$300 or more, in specified circumstances.⁵¹

Retail Theft (Section 3)

The bill amends s. 812.015, F.S., to increase the values that are the basis for the punishment for the offense:

- If the total amount is less than \$400, instead of less than \$300, the offense would be punishable as provided in s. 812.014, F.S.
- If the total amount is \$400 or more, instead of \$300 or more, the offense is a third degree felony.⁵²

It appears that more crimes may be found to be second degree petit theft:

- Under current law, retail theft of an amount *less than \$300* would likely be:
 - First degree petit theft (theft of property valued at \$100 or more, but less than \$300); or
 - Second degree petit theft (theft of property valued at less than \$100).
- Under the bill, retail theft of an amount *less than \$400* would likely be:
 - First degree petit theft (theft of property valued at \$300 or more, but less than \$1,000); or
 - Second degree petit theft (theft of property valued at less than \$300).

Additionally, the bill appears to *create a discrepancy in the punishment of crimes*:

- Under current law:
 - Retail theft of an amount \$300 or greater is a third degree felony; and
 - Property theft of an amount \$300 or greater is a third degree felony as third degree grand theft.
- Under the bill:
 - Retail theft of an amount \$400 or greater is a third degree felony; and
 - Property theft of an amount \$750 or greater is a third degree felony as third degree grand theft.

Dealing in Stolen Property Over the Internet (Section 4)

The bill amends s. 812.0195, F.S., to increase the values that are the basis for the punishment for the offense:

- If the total value is less than \$500, instead of less than \$300, the offense is a second degree misdemeanor.
- If the total value is \$500 or more, instead of \$300 or more, the offense is a third degree felony.⁵³

⁵⁰ See footnote 48.

⁵¹ According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$300 in 2001 has the same buying power as \$412.65 in 2017 dollars, and \$300 in 2007 has the same buying power as \$352.47 in 2017 dollars.

⁵² According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$300 in 2001 has the same buying power as \$412.65 in 2017 dollars.

⁵³ *Id.*

Checks Fraud

Stopping Payment on a Check with Intent to Defraud Producer of Farm or Grove Products (Section 5)

The bill amends s. 832.04, F.S., to increase the values that are the basis for the punishment for the offense:

- If the total value is less than \$500, instead of less than \$150, the offense is a second degree misdemeanor.
- If the total value is \$500 or more, instead of \$150 or more, the offense is a first degree misdemeanor.⁵⁴

Stopping Payment on a Check with Intent to Defraud Any Person for Goods or Services (Section 6)

The bill amends s. 832.041, F.S., to increase the values that are the basis for the punishment for the offense:

- If the total value is less than \$500, instead of less than \$150, the offense is a second degree misdemeanor.
- If the total value is \$500 or more, instead of \$150 or more, the offense is a third degree felony.⁵⁵

Worthless Checks, Drafts, or Debit Card Orders (Section 7)

The bill amends s. 832.05, F.S., to increase the values that are the basis for the punishment for the offenses provided in the statute.

For violations of drafting or issuing a check, draft, or debit card order, knowing there are insufficient funds or credit, the bill increases the values that are the basis for the punishment:

- If the check, draft, or debit card order is for less than \$500, instead of less than \$150, the offense is a first degree misdemeanor.
- If the check, draft, or debit card order is for \$500 or more, instead of \$150 or more, and the payee receives something of value, the offense is a third degree felony.⁵⁶

For violations of receiving anything of value by means of a worthless check or draft knowing there are insufficient funds or credit and using a debit card to obtain anything of value knowing there are insufficient funds or credit, the bill increases the values that are the basis for the punishments:

- If the check, draft, or debit card order is less than \$500, instead of less than \$150, the offense is a first degree misdemeanor.
- If the check, draft, or debit card order is \$500 or more, instead of \$150 or more, the offense is a third degree felony.⁵⁷

⁵⁴ According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$150 in 1986 has the same buying power as \$333.40 in 2017 dollars.

⁵⁵ *Id.*

⁵⁶ See footnote 49.

⁵⁷ *Id.*

Worthless Checks, Drafts, or Debit Card Orders or Electronic Funds Transfers to Remit Taxes (Section 8)

The bill amends s. 832.062, F.S., to increase the values that are the basis for the punishment for the offense:

- If the check, draft, debit card order, or electronic funds transfer is less than \$500, instead of less than \$150, the offense is a second degree misdemeanor.
- If the check, draft, or debit card order is \$500 or more, instead of \$150 or more, the offense is a third degree felony.⁵⁸

Other

The bill amends s. 921.0022, F.S., (Section 9), to make conforming changes to the Criminal Punishment Code severity ranking chart to changes made by the bill.

The bill reenacts ss. 634.319, 634.421, 636.238, 642.038, 705.102, 812.0155, 985.11, and 985.557, F.S., (Sections 10 – 17), to incorporate the changes made by the bill.

The bill is effective July 1, 2017 (Section 18).

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.

⁵⁸ According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$150 in 1987 has the same buying power as \$321.66 in 2017 dollars.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC), which provides the final, official prison bed impact, if any, reviewed SB 1102, and determined that the overall prison bed impact of the bill will be “negative significant” (result in a decrease of more than 25 prison beds).⁵⁹ The CJIC has not yet reviewed the impact of the PCS. What follows is the CJIC’s section by section analysis of the impact on state prison beds of the bill as originally filed:

Theft of State Sales Taxes (Section 1)

A person who commits petit theft of state sales taxes (under the bill, revenue stolen at a value of less than \$1,000), and who has previously been convicted of such theft commits a first degree misdemeanor, or who has previously been convicted two or more times of such theft commits a third degree felony.⁶⁰

The CJIC estimated that “[n]o offenders should be impacted who are currently charged for a third or subsequent offense below the \$300 threshold, but a proportion between \$300 and \$1,000, which currently face a 3rd degree felony, would not be charged with a felony until their third offense.”

Per the Department of Corrections (DOC), in Fiscal Year 2015-2016, one offender was sentenced for a third or subsequent offense under the \$300 threshold, and that offender did not receive a prison sentence. For those committing an offense between \$300 and \$20,000, 25⁶¹ offenders were sentenced, and none of these offenders received a prison sentence. The number of offenders that currently fall within the proposed changes to this threshold cannot be differentiated from the current thresholds.

The CJIC estimated that prison bed impact of section 1 would be “negative insignificant” (result in a decrease of 10 or fewer prison beds).

Property Theft (Section 2)

Per the DOC, in Fiscal Year 2015-2016, no offenders were sentenced for the offenses in ss. 812.014(2)(b)3. (stealing certain emergency medical equipment) and (2)(b)4., F.S. (stealing certain law enforcement equipment). The CJIC estimated that prison bed impact of these provisions of section 2 would be negative insignificant (result in a decrease of 10 or fewer prison beds).

⁵⁹ Criminal Justice Impact Conference, Office of Economic and Demographic Research, *Narrative Analysis of Adopted Impacts: HB 693 – Criminal Offenses (Identical to SB 1102)*, March 2, 2017, available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB693.pdf> (last visited March 23, 2017). All further CJIC estimate information is from this source.

⁶⁰ Section 812.15(2)(a), F.S.

⁶¹ The abbreviation “adj.” means “adjusted.” The abbreviation “unadj.” means “unadjusted.” Sentencing data from the DOC is incomplete, which means that the numbers the EDR receives are potentially lower than what the actual numbers are. The EDR adjusts these numbers by the percentage of scoresheets received for the applicable fiscal year.

A person who commits petit theft (under the bill, property stolen at a value of less than \$1,000), and who has previously been convicted of any theft commits a first degree misdemeanor, or who has previously been convicted two or more times of any theft commits a third degree felony.⁶²

Per the DOC, in Fiscal Year 2015-2016, there were:

- 11,028 offenders sentenced under s. 812.014(2)(c)1., F.S., (third degree grand theft) with 1,273 of these offenders sentenced to prison (mean sentence length = 25.9 months, incarceration rate: 11.5%).
- 174 offenders sentenced under s. 812.014(2)(d), F.S., (third degree grand theft from a dwelling or its curtilage) with 36 of these offenders sentenced to prison (mean sentence length = 23.7 months, incarceration rate: 20.7%).
- 3,951 offenders sentenced under s. 812.014(3)(c), F.S., (convicted of petit theft two or more times previously) with 547 of these offenders sentenced to prison (mean sentence length = 24.7 months, incarceration rate: 13.8%).

The number of offenders that currently fall within the proposed changes to the s. 812.014(2)(c)(1), F.S., thresholds cannot be differentiated from the current thresholds. However, 36 offenders were sentenced to prison under s. 812.014(2)(d), F.S., and 547 offenders were sentenced to prison under s. 812.014(3)(c), F.S. (\$100 to \$300), which would not include these offenders within the parameters of the current bill (\$300 to \$1,000). That change alone would be a significant effect. However, a certain number of offenders currently charged with third degree grand theft will now fall into the new thresholds for these two penalties. Although that number cannot be quantified, there is expected to be a significant overall effect on prison beds.

The CJIC estimated that prison bed impact of these provisions of section 2 would be “negative significant” (result in an increase of more than 25 prison beds).

Retail Theft (Section 3)

Per the DOC, in Fiscal Year 2015-2016, there were 394 offenders sentenced under s. 812.015(8), F.S., with 84 of these offenders sentenced to prison (mean sentence length = 28.3 months, incarceration rate: 21.3%). It is unknown how many of these offenders committed retail theft in the range between \$300 and \$500.

The CJIC estimated that prison bed impact of section 3 would be “negative indeterminate” (result in an unquantifiable increase in prison beds).

Dealing in Stolen Property Over the Internet (Section 4)

Per the DOC, in Fiscal Year 2015-2016, there were 4 offenders sentenced under s. 812.0195, F.S., with 1 offender sentenced to prison (mean sentence length = 15.0

⁶² Section 812.014(3)(b) and (c), F.S.

months, incarceration rate: 25.0%). It is unknown how many of the offenders who committed this offense were in the range between \$300 and \$500.

The CJIC estimated that prison bed impact of section 4 would be “negative insignificant” (result in a decrease of 10 or fewer prison beds).

Checks Fraud

Stopping Payment on a Check with Intent to Defraud Any Person for Goods or Services (Section 6)

Per the DOC, in Fiscal Year 2015-2016, there were no offenders sentenced under s. 832.041, F.S.

The CJIC estimated that prison bed impact of section 6 would be “negative insignificant” (result in a decrease of 10 or fewer prison beds).

Worthless Checks, Drafts, or Debit Card Orders (Section 7)

Per the DOC, in Fiscal Year 2015-2016, there were 157 offenders sentenced for offenses related to worthless checks, with 11 offenders sentenced to prison (mean sentence length = 29.3 months, incarceration rate: 7.0%). The number of offenders who committed offenses under these particular subsections is unknown because the DOC does not have specific codes for these offenses. Additionally, how many of the offenders who committed this offense were in the range between \$150 and \$500 is unknown.

The CJIC estimated that prison bed impact of section 7 would be “negative insignificant” (result in a decrease of 10 or fewer prison beds).

Worthless Checks, Drafts, or Debit Card Orders or Electronic Funds Transfers to Remit Taxes (Section 8)

Per the DOC, in Fiscal Year 2015-2016, there were no offenders sentenced under s. 832.062, F.S.

The CJIC estimated that prison bed impact of section 8 would be “negative insignificant” (result in a decrease of 10 or fewer prison beds).

VI. Technical Deficiencies:

Section 2 of the bill amends the provision for third degree grand theft to apply to property valued *at \$750 or more*, instead of \$300 or more, but less than \$20,000. However, the bill amends the other provisions in the theft statute, s. 812.014, F.S., to be based upon property valued at \$1,000:

- First degree petit theft of property valued at \$300 or more, *but less than \$1,000*, instead of \$100 or more, but less than \$300.
- Third degree grand theft of property from a dwelling or its unenclosed curtilage if the property is valued at \$300 or more, *but less than \$1,000*, instead of \$100 or more, but less than \$300.

- Second degree grand theft of emergency medical equipment or law enforcement equipment valued at \$1,000 or more, instead of \$300 or more, in specified circumstances.

The bill needs to amend the other property value ranges to be consistent with the change to the third degree grand theft property value range.

VII. Related Issues:

A study by the Pew Charitable Trusts evaluated 23 states that had changed their felony theft thresholds between 2001 and 2011 and made the following findings:

- Raising the felony theft threshold had no impact on the states' overall property crime or larceny rates.
- States that increased their thresholds reported roughly the same average decrease in crime as the 27 states that did not change their theft laws.
- The amount of a state's felony theft threshold was not correlated with the state's property crime and larceny rates.⁶³

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 212.15, 812.014, 812.015, 812.0195, 832.04, 832.041, 832.05, 832.062, and 921.0022.

This bill reenacts the following sections of the Florida Statutes: 634.319, 634.421, 636.238, 642.038, 705.102, 812.0155, 985.11, and 985.557.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial 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 13, 2017:

The committee substitute changes the following property value ranges for two theft crimes:

- Third degree felony theft applies to property valued at \$750 or more, instead of \$1,000 or more under the original bill.
- Retail theft applies to property valued at \$400 or more, instead of \$500 or more under the original bill.

- B. **Amendments:**

None.

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

⁶³ Pew Charitable Trusts, *The Effects of Changing State Theft Penalties* (February 2016), available at http://www.pewtrusts.org/~media/assets/2016/02/the_effects_of_changing_state_theft_penalties.pdf?la=en (last visited March 22, 2017).



865206

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/14/2017	.	
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Appropriations Subcommittee on Criminal and Civil Justice
(Rouson) recommended the following:

Senate Amendment

Delete line 118

and insert:

1. Valued at \$750 ~~\$300~~ or more, but less than \$5,000.



574046

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/14/2017	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 184
and insert:
if the property stolen is valued at \$400 ~~\$300~~ or more, and the

By Senator Rouson

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1 A bill to be entitled
 2 An act relating to criminal offenses; amending s.
 3 212.15, F.S.; revising threshold amounts for failure
 4 to remit taxes offenses; amending s. 812.014, F.S.;
 5 revising threshold amounts for theft offenses;
 6 amending s. 812.015, F.S.; revising threshold amounts
 7 for retail theft; amending s. 812.0195, F.S.; revising
 8 threshold amounts for dealing in stolen property by
 9 use of the Internet offenses; amending ss. 832.04 and
 10 832.041, F.S.; revising threshold amounts for stopping
 11 payment offenses; amending s. 832.05, F.S.; revising
 12 threshold amounts for offenses involving giving
 13 worthless checks, drafts, and debit card orders;
 14 amending s. 832.062, F.S.; revising threshold amounts
 15 for offenses involving payments to the Department of
 16 Revenue; amending s. 921.0022, F.S.; conforming
 17 provisions to changes made by the act; reenacting ss.
 18 634.319, 634.421, 636.238(3), 642.038(2), 705.102(4),
 19 812.0155(1), 985.11(1)(b), and 985.557(1)(a), F.S.,
 20 relating to reporting and accounting for funds by
 21 insurance sales representatives, reporting and
 22 accounting for funds by insurance sales
 23 representatives or agents, penalties for certain
 24 violations involving discount medical plans, reporting
 25 and accounting for funds, reporting lost or abandoned
 26 property, suspension of a driver license following an
 27 adjudication of guilt for theft, fingerprinting and
 28 photographing of juveniles, and direct filing of an
 29 information against a juvenile, respectively, to

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30 incorporate the amendments made by the act in cross-
 31 references to amended provisions; providing an
 32 effective date.
 33

34 Be It Enacted by the Legislature of the State of Florida:
 35

36 Section 1. Paragraphs (a) and (b) of subsection (2) of
 37 section 212.15, Florida Statutes, are amended to read:

38 212.15 Taxes declared state funds; penalties for failure to
 39 remit taxes; due and delinquent dates; judicial review.—

40 (2) Any person who, with intent to unlawfully deprive or
 41 defraud the state of its moneys or the use or benefit thereof,
 42 fails to remit taxes collected under this chapter commits ~~is~~
 43 ~~guilty of~~ theft of state funds, punishable as follows:

44 (a) If the total amount of stolen revenue is less than
 45 \$1,000 ~~\$300~~, the offense is a misdemeanor of the second degree,
 46 punishable as provided in s. 775.082 or s. 775.083. Upon a
 47 second conviction, the offender commits ~~is guilty of~~ a
 48 misdemeanor of the first degree, punishable as provided in s.
 49 775.082 or s. 775.083. Upon a third or subsequent conviction,
 50 the offender commits ~~is guilty of~~ a felony of the third degree,
 51 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

52 (b) If the total amount of stolen revenue is \$1,000 ~~\$300~~ or
 53 more, but less than \$20,000, the offense is a felony of the
 54 third degree, punishable as provided in s. 775.082, s. 775.083,
 55 or s. 775.084.

56 Section 2. Subsection (2) of section 812.014, Florida
 57 Statutes, is amended to read:

58 812.014 Theft.—

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59 (2) (a) 1. If the property stolen is valued at \$100,000 or
 60 more or is a semitrailer that was deployed by a law enforcement
 61 officer; or
 62 2. If the property stolen is cargo valued at \$50,000 or
 63 more that has entered the stream of interstate or intrastate
 64 commerce from the shipper's loading platform to the consignee's
 65 receiving dock; or
 66 3. If the offender commits any grand theft and:
 67 a. In the course of committing the offense the offender
 68 uses a motor vehicle as an instrumentality, other than merely as
 69 a getaway vehicle, to assist in committing the offense and
 70 thereby damages the real property of another; or
 71 b. In the course of committing the offense the offender
 72 causes damage to the real or personal property of another in
 73 excess of \$1,000,
 74
 75 the offender commits grand theft in the first degree, punishable
 76 as a felony of the first degree, as provided in s. 775.082, s.
 77 775.083, or s. 775.084.
 78 (b) 1. If the property stolen is valued at \$20,000 or more,
 79 but less than \$100,000;
 80 2. The property stolen is cargo valued at less than \$50,000
 81 that has entered the stream of interstate or intrastate commerce
 82 from the shipper's loading platform to the consignee's receiving
 83 dock;
 84 3. The property stolen is emergency medical equipment,
 85 valued at \$1,000 ~~\$300~~ or more, that is taken from a facility
 86 licensed under chapter 395 or from an aircraft or vehicle
 87 permitted under chapter 401; or

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88 4. The property stolen is law enforcement equipment, valued
 89 at \$1,000 ~~\$300~~ or more, that is taken from an authorized
 90 emergency vehicle, as defined in s. 316.003,
 91
 92 the offender commits grand theft in the second degree,
 93 punishable as a felony of the second degree, as provided in s.
 94 775.082, s. 775.083, or s. 775.084. Emergency medical equipment
 95 means mechanical or electronic apparatus used to provide
 96 emergency services and care as defined in s. 395.002(9) or to
 97 treat medical emergencies. Law enforcement equipment means any
 98 property, device, or apparatus used by any law enforcement
 99 officer as defined in s. 943.10 in the officer's official
 100 business. However, if the property is stolen within a county
 101 that is subject to a state of emergency declared by the Governor
 102 under chapter 252, the theft is committed after the declaration
 103 of emergency is made, and the perpetration of the theft is
 104 facilitated by conditions arising from the emergency, the theft
 105 is a felony of the first degree, punishable as provided in s.
 106 775.082, s. 775.083, or s. 775.084. As used in this paragraph,
 107 the term "conditions arising from the emergency" means civil
 108 unrest, power outages, curfews, voluntary or mandatory
 109 evacuations, or a reduction in the presence of or response time
 110 for first responders or homeland security personnel. For
 111 purposes of sentencing under chapter 921, a felony offense that
 112 is reclassified under this paragraph is ranked one level above
 113 the ranking under s. 921.0022 or s. 921.0023 of the offense
 114 committed.
 115 (c) It is grand theft of the third degree and a felony of
 116 the third degree, punishable as provided in s. 775.082, s.

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117 775.083, or s. 775.084, if the property stolen is:

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

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

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

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

122 5. A firearm.

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

124 7. Any commercially farmed animal, including any animal of

125 the equine, bovine, or swine class or other grazing animal; a

126 bee colony of a registered beekeeper; and aquaculture species

127 raised at a certified aquaculture facility. If the property

128 stolen is aquaculture species raised at a certified aquaculture

129 facility, then a \$10,000 fine shall be imposed.

130 8. Any fire extinguisher.

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

132 individual pieces of fruit.

133 10. Taken from a designated construction site identified by

134 the posting of a sign as provided for in s. 810.09(2)(d).

135 11. Any stop sign.

136 12. Anhydrous ammonia.

137 13. Any amount of a controlled substance as defined in s.

138 893.02. Notwithstanding any other law, separate judgments and

139 sentences for theft of a controlled substance under this

140 subparagraph and for any applicable possession of controlled

141 substance offense under s. 893.13 or trafficking in controlled

142 substance offense under s. 893.135 may be imposed when all such

143 offenses involve the same amount or amounts of a controlled

144 substance.

145

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146 However, if the property is stolen within a county that is

147 subject to a state of emergency declared by the Governor under

148 chapter 252, the property is stolen after the declaration of

149 emergency is made, and the perpetration of the theft is

150 facilitated by conditions arising from the emergency, the

151 offender commits a felony of the second degree, punishable as

152 provided in s. 775.082, s. 775.083, or s. 775.084, if the

153 property is valued at \$5,000 or more, but less than \$10,000, as

154 provided under subparagraph 2., or if the property is valued at

155 \$10,000 or more, but less than \$20,000, as provided under

156 subparagraph 3. As used in this paragraph, the term "conditions

157 arising from the emergency" means civil unrest, power outages,

158 curfews, voluntary or mandatory evacuations, or a reduction in

159 the presence of or the response time for first responders or

160 homeland security personnel. For purposes of sentencing under

161 chapter 921, a felony offense that is reclassified under this

162 paragraph is ranked one level above the ranking under s.

163 921.0022 or s. 921.0023 of the offense committed.

164 (d) It is grand theft of the third degree and a felony of

165 the third degree, punishable as provided in s. 775.082, s.

166 775.083, or s. 775.084, if the property stolen is valued at \$300

167 ~~\$100~~ or more, but less than \$1,000 ~~300~~, and is taken from a

168 dwelling as defined in s. 810.011(2) or from the unenclosed

169 curtilage of a dwelling pursuant to s. 810.09(1).

170 (e) Except as provided in paragraph (d), if the property

171 stolen is valued at \$300 ~~\$100~~ or more, but less than \$1,000

172 ~~300~~, the offender commits petit theft of the first degree,

173 punishable as a misdemeanor of the first degree, as provided in

174 s. 775.082 or s. 775.083.

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175 Section 3. Subsection (8) of section 812.015, Florida
 176 Statutes, is amended to read:
 177 812.015 Retail and farm theft; transit fare evasion;
 178 mandatory fine; alternative punishment; detention and arrest;
 179 exemption from liability for false arrest; resisting arrest;
 180 penalties.—
 181 (8) Except as provided in subsection (9), a person who
 182 commits retail theft commits a felony of the third degree,
 183 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 184 if the property stolen is valued at \$500 ~~300~~ or more, and the
 185 person:
 186 (a) Individually, or in concert with one or more other
 187 persons, coordinates the activities of one or more individuals
 188 in committing the offense, in which case the amount of each
 189 individual theft is aggregated to determine the value of the
 190 property stolen;
 191 (b) Commits theft from more than one location within a 48-
 192 hour period, in which case the amount of each individual theft
 193 is aggregated to determine the value of the property stolen;
 194 (c) Acts in concert with one or more other individuals
 195 within one or more establishments to distract the merchant,
 196 merchant's employee, or law enforcement officer in order to
 197 carry out the offense, or acts in other ways to coordinate
 198 efforts to carry out the offense; or
 199 (d) Commits the offense through the purchase of merchandise
 200 in a package or box that contains merchandise other than, or in
 201 addition to, the merchandise purported to be contained in the
 202 package or box.
 203 Section 4. Section 812.0195, Florida Statutes, is amended

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204 to read:
 205 812.0195 Dealing in stolen property by use of the
 206 Internet.—Any person in this state who uses the Internet to sell
 207 or offer for sale any merchandise or other property that the
 208 person knows, or has reasonable cause to believe, is stolen
 209 commits:
 210 (1) A misdemeanor of the second degree, punishable as
 211 provided in s. 775.082 or s. 775.083, if the value of the
 212 property is less than \$500 ~~300~~; or
 213 (2) A felony of the third degree, punishable as provided in
 214 s. 775.082, s. 775.083, or s. 775.084, if the value of the
 215 property is \$500 ~~300~~ or more.
 216 Section 5. Subsection (1) of section 832.04, Florida
 217 Statutes, is amended to read:
 218 832.04 Stopping payment; purchase of farm or grove
 219 products.—
 220 (1) Whoever, with intent to defraud any producer of farm or
 221 grove products or product of such products or product shall, in
 222 person or by agent, make, draw, utter, deliver, or give to such
 223 producer any check, draft, or written order for the payment of
 224 money upon any bank, person, or corporation and secure from such
 225 producer such products or product for or on account of such
 226 check, draft, or written order, whether such products or product
 227 are valued at the amount of such check, draft, or written order
 228 or at a greater or lesser value, and who shall, pursuant to and
 229 in furtherance of such intent to defraud, stop payment on such
 230 check, draft, or written order, commits ~~shall be deemed to be~~
 231 ~~guilty of~~ a misdemeanor of the first degree, punishable as
 232 provided in s. 775.082 or s. 775.083, if the value of the

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233 products or product secured for or on account of such check,
 234 draft, or written order is \$500 ~~\$150~~ or more; and if the value
 235 of the products or product secured for or on account of such
 236 check, draft, or written order is less than \$500 ~~\$150~~, he or she
 237 ~~commits shall be guilty of~~ a misdemeanor of the second degree,
 238 punishable as provided in s. 775.082 or s. 775.083.

239 Section 6. Subsection (1) of section 832.041, Florida
 240 Statutes, is amended to read:

241 832.041 Stopping payment with intent to defraud.—

242 (1) Whoever, with intent to defraud any person shall, in
 243 person or by agent, make, draw, utter, deliver, or give any
 244 check, draft, or written order for the payment of money upon any
 245 bank, person, or corporation and secure from such person goods
 246 or services for or on account of such check, draft, or written
 247 order, whether such goods or services are valued at the amount
 248 of such check, draft, or written order or at a greater or lesser
 249 value, and who shall, pursuant to and in furtherance of such
 250 intent to defraud, stop payment on such check, draft, or written
 251 order, ~~commits shall be deemed to be guilty of~~ a felony of the
 252 third degree, punishable as provided in s. 775.082, s. 775.083,
 253 or s. 775.084, if the value of the goods or services secured for
 254 or on account of such check, draft, or written order is \$500
 255 ~~\$150~~ or more; and if the value of the goods or services secured
 256 for or on account of such check, draft, or written order is less
 257 than \$500 ~~\$150~~, he or she ~~commits shall be guilty of~~ a
 258 misdemeanor of the second degree, punishable as provided in s.
 259 775.082 or s. 775.083.

260 Section 7. Paragraph (b) of subsection (2) and paragraph
 261 (c) of subsection (4) of section 832.05, Florida Statutes, are

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262 amended to read:

263 832.05 Giving worthless checks, drafts, and debit card
 264 orders; penalty; duty of drawee; evidence; costs; complaint
 265 form.—

266 (2) WORTHLESS CHECKS, DRAFTS, OR DEBIT CARD ORDERS;
 267 PENALTY.—

268 (b) A violation of the provisions of this subsection
 269 constitutes a misdemeanor of the first degree, punishable as
 270 provided in s. 775.082 or s. 775.083, unless the check, draft,
 271 debit card order, or other written order drawn, made, uttered,
 272 issued, or delivered is in the amount of \$500 ~~\$150~~, or its
 273 equivalent, or more and the payee or a subsequent holder thereof
 274 receives something of value therefor. In that event, the
 275 violation constitutes a felony of the third degree, punishable
 276 as provided in s. 775.082, s. 775.083, or s. 775.084.

277 (4) OBTAINING PROPERTY OR SERVICES IN RETURN FOR WORTHLESS
 278 CHECKS, DRAFTS, OR DEBIT CARD ORDERS; PENALTY.—

279 (c) A violation of the provisions of this subsection, if
 280 the check, draft, other written order, or debit card order is
 281 for an amount less than \$500 ~~\$150~~ or its equivalent, constitutes
 282 a misdemeanor of the first degree, punishable as provided in s.
 283 775.082 or s. 775.083. A violation of the provisions of this
 284 subsection, if the check, draft, other written order, or debit
 285 card order is in the amount of \$500 ~~\$150~~, or its equivalent, or
 286 more, constitutes a felony of the third degree, punishable as
 287 provided in s. 775.082, s. 775.083, or s. 775.084.

288 Section 8. Subsection (2) of section 832.062, Florida
 289 Statutes, is amended, and subsection (1) of that section is
 290 republished, to read:

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291 832.062 Prosecution for worthless checks, drafts, debit
 292 card orders, or electronic funds transfers made to pay any tax
 293 or associated amount administered by the Department of Revenue.-
 294 (1) It is unlawful for any person, firm, or corporation to
 295 draw, make, utter, issue, or deliver to the Department of
 296 Revenue any check, draft, or other written order on any bank or
 297 depository, to use a debit card, to make, send, instruct, order,
 298 or initiate any electronic funds transfer, or to cause or direct
 299 the making, sending, instructing, ordering, or initiating of any
 300 electronic funds transfer, for the payment of any taxes,
 301 penalties, interest, fees, or associated amounts administered by
 302 the Department of Revenue, knowing at the time of the drawing,
 303 making, uttering, issuing, or delivering such check, draft, or
 304 other written order, at the time of using such debit card, at
 305 the time of making, sending, instructing, ordering, or
 306 initiating any electronic funds transfer, or at the time of
 307 causing or directing the making, sending, instructing, ordering,
 308 initiating, or executing of any electronic funds transfer, that
 309 the maker, drawer, sender, or receiver thereof has not
 310 sufficient funds on deposit in or credit with such bank or
 311 depository with which to pay the same on presentation. This
 312 section does not apply to any check or electronic funds transfer
 313 when the Department of Revenue knows or has been expressly
 314 notified prior to the drawing or uttering of the check or the
 315 sending or initiating of the electronic funds transfer, or has
 316 reason to believe, that the drawer, sender, or receiver did not
 317 have on deposit or to the drawer's, sender's, or receiver's
 318 credit with the drawee or receiving bank or depository
 319 sufficient funds to ensure payment as aforesaid, and this

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320 section does not apply to any postdated check.
 321 (2) A violation of this section constitutes a misdemeanor
 322 of the second degree, punishable as provided in s. 775.082 or s.
 323 775.083, unless the check, draft, debit card order, or other
 324 written order drawn, made, uttered, issued, or delivered, or
 325 electronic funds transfer made, sent, instructed, ordered, or
 326 initiated, or caused or directed to be made, sent, instructed,
 327 ordered, or initiated is in the amount of \$500 ~~\$150~~ or more. In
 328 that event, the violation constitutes a felony of the third
 329 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 330 775.084.
 331 Section 9. Paragraphs (a), (b), (d), and (e) of subsection
 332 (3) of section 921.0022, Florida Statutes, are amended to read:
 333 921.0022 Criminal Punishment Code; offense severity ranking
 334 chart.-
 335 (3) OFFENSE SEVERITY RANKING CHART
 336 (a) LEVEL 1
 337
 338

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.

339
 340
 341

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	212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than <u>\$1,000</u> \$300 but less than \$20,000.
342			
	316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
343			
	319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
344			
	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
345			
	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
346			
	322.212 (1)(a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.
347			
	322.212(4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.
348			
	322.212(5)(a)	3rd	False application for driver

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			license or identification card.
349			
	414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
350			
	443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
351			
	509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.
352			
	517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
353			
	562.27(1)	3rd	Possess still or still apparatus.
354			
	713.69	3rd	Tenant removes property upon which lien has accrued, value more than \$50.
355			
	812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not

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 specified in subsection (2).
 356 812.081(2) 3rd Unlawfully makes or causes to
 be made a reproduction of a
 trade secret.
 357 815.04(5)(a) 3rd Offense against intellectual
 property (i.e., computer
 programs, data).
 358 817.52(2) 3rd Hiring with intent to defraud,
 motor vehicle services.
 359 817.569(2) 3rd Use of public record or public
 records information or
 providing false information to
 facilitate commission of a
 felony.
 360 826.01 3rd Bigamy.
 361 828.122(3) 3rd Fighting or baiting animals.
 362 831.04(1) 3rd Any erasure, alteration, etc.,
 of any replacement deed, map,
 plat, or other document listed
 in s. 92.28.
 363 831.31(1)(a) 3rd Sell, deliver, or possess

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 counterfeit controlled
 substances, all but s.
 893.03(5) drugs.
 364 832.041(1) 3rd Stopping payment with intent to
 defraud \$500 ~~\$150~~ or more.
 365 832.05(2)(b) & 3rd Knowing, making, issuing
 (4)(c) worthless checks \$500 ~~\$150~~ or
 more or obtaining property in
 return for worthless check \$500
~~\$150~~ or more.
 366 838.15(2) 3rd Commercial bribe receiving.
 367 838.16 3rd Commercial bribery.
 368 843.18 3rd Fleeing by boat to elude a law
 enforcement officer.
 369 847.011(1)(a) 3rd Sell, distribute, etc.,
 obscene, lewd, etc., material
 (2nd conviction).
 370 849.01 3rd Keeping gambling house.
 371 849.09(1)(a)-(d) 3rd Lottery; set up, promote, etc.,
 or assist therein, conduct or
 advertise drawing for prizes,

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				or dispose of property or money by means of lottery.
372	849.23	3rd		Gambling-related machines; "common offender" as to property rights.
373	849.25(2)	3rd		Engaging in bookmaking.
374	860.08	3rd		Interfere with a railroad signal.
375	860.13(1) (a)	3rd		Operate aircraft while under the influence.
376	893.13(2) (a)2.	3rd		Purchase of cannabis.
377	893.13(6) (a)	3rd		Possession of cannabis (more than 20 grams).
378	934.03(1) (a)	3rd		Intercepts, or procures any other person to intercept, any wire or oral communication.
379				
380	(b) LEVEL 2			
381				
382				
	Florida Statute	Felony Degree		Description

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383	379.2431 (1) (e)3.	3rd		Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
384	379.2431 (1) (e)4.	3rd		Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
385	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.
386	517.07(2)	3rd		Failure to furnish a prospectus meeting requirements.
387	590.28(1)	3rd		Intentional burning of lands.
388	784.05(3)	3rd		Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
389	787.04(1)	3rd		In violation of court order, take, entice, etc., minor

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beyond state limits.

390 806.13(1)(b)3. 3rd Criminal mischief; damage
\$1,000 or more to public
communication or any other
public service.

391 810.061(2) 3rd Impairing or impeding telephone
or power to a dwelling;
facilitating or furthering
burglary.

392 810.09(2)(e) 3rd Trespassing on posted
commercial horticulture
property.

393 812.014(2)(c)1. 3rd Grand theft, 3rd degree; \$1,000
~~300~~ or more but less than
\$5,000.

394 812.014(2)(d) 3rd Grand theft, 3rd degree; \$300
~~100~~ or more but less than
\$1,000 ~~300~~, taken from
unenclosed curtilage of
dwelling.

395 812.015(7) 3rd Possession, use, or attempted
use of an antishoplifting or
inventory control device

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countermeasure.

396 817.234(1)(a)2. 3rd False statement in support of
insurance claim.

397 817.481(3)(a) 3rd Obtain credit or purchase with
false, expired, counterfeit,
etc., credit card, value over
\$300.

398 817.52(3) 3rd Failure to redeliver hired
vehicle.

399 817.54 3rd With intent to defraud, obtain
mortgage note, etc., by false
representation.

400 817.60(5) 3rd Dealing in credit cards of
another.

401 817.60(6)(a) 3rd Forgery; purchase goods,
services with false card.

402 817.61 3rd Fraudulent use of credit cards
over \$100 or more within 6
months.

403 826.04 3rd Knowingly marries or has sexual
intercourse with person to whom

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related.

404 831.01 3rd Forgery.

405 831.02 3rd Uttering forged instrument;
utters or publishes alteration
with intent to defraud.

406 831.07 3rd Forging bank bills, checks,
drafts, or promissory notes.

407 831.08 3rd Possessing 10 or more forged
notes, bills, checks, or
drafts.

408 831.09 3rd Uttering forged notes, bills,
checks, drafts, or promissory
notes.

409 831.11 3rd Bringing into the state forged
bank bills, checks, drafts, or
notes.

410 832.05(3) (a) 3rd Cashing or depositing item with
intent to defraud.

411 843.08 3rd False personation.

412 893.13(2) (a)2. 3rd Purchase of any s.

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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.

413 893.147(2) 3rd Manufacture or delivery of drug
paraphernalia.

414 (d) LEVEL 4

415

416

417

Florida Statute	Felony Degree	Description
418 316.1935(3) (a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
419 499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
420 499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell,

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				contraband prescription drugs.
421	517.07(1)	3rd		Failure to register securities.
422	517.12(1)	3rd		Failure of dealer, associated person, or issuer of securities to register.
423	784.07(2)(b)	3rd		Battery of law enforcement officer, firefighter, etc.
424	784.074(1)(c)	3rd		Battery of sexually violent predators facility staff.
425	784.075	3rd		Battery on detention or commitment facility staff.
426	784.078	3rd		Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
427	784.08(2)(c)	3rd		Battery on a person 65 years of age or older.
428	784.081(3)	3rd		Battery on specified official or employee.
429	784.082(3)	3rd		Battery by detained person on visitor or other detainee.

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430	784.083(3)	3rd		Battery on code inspector.
431	784.085	3rd		Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
432	787.03(1)	3rd		Interference with custody; wrongly takes minor from appointed guardian.
433	787.04(2)	3rd		Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
434	787.04(3)	3rd		Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
435	787.07	3rd		Human smuggling.
436	790.115(1)	3rd		Exhibiting firearm or weapon within 1,000 feet of a school.
437	790.115(2)(b)	3rd		Possessing electric weapon or

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 device, destructive device, or
 other weapon on school
 property.

438 790.115(2)(c) 3rd Possessing firearm on school
 property.

439 800.04(7)(c) 3rd Lewd or lascivious exhibition;
 offender less than 18 years.

440 810.02(4)(a) 3rd Burglary, or attempted
 burglary, of an unoccupied
 structure; unarmed; no assault
 or battery.

441 810.02(4)(b) 3rd Burglary, or attempted
 burglary, of an unoccupied
 conveyance; unarmed; no assault
 or battery.

442 810.06 3rd Burglary; possession of tools.

443 810.08(2)(c) 3rd Trespass on property, armed
 with firearm or dangerous
 weapon.

444 812.014(2)(c)3. 3rd Grand theft, 3rd degree \$10,000
 or more but less than \$20,000.

445

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 812.014 3rd Grand theft, 3rd degree, a
 will, firearm, motor vehicle,
 (2)(c)4.-10. livestock, etc.

446 812.0195(2) 3rd Dealing in stolen property by
 use of the Internet; property
 stolen \$500 ~~\$300~~ or more.

447 817.563(1) 3rd Sell or deliver substance other
 than controlled substance
 agreed upon, excluding s.
 893.03(5) drugs.

448 817.568(2)(a) 3rd Fraudulent use of personal
 identification information.

449 817.625(2)(a) 3rd Fraudulent use of scanning
 device or reencoder.

450 828.125(1) 2nd Kill, maim, or cause great
 bodily harm or permanent
 breeding disability to any
 registered horse or cattle.

451 837.02(1) 3rd Perjury in official
 proceedings.

452 837.021(1) 3rd Make contradictory statements
 in official proceedings.

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	19-01126-17		20171102__
453	838.022	3rd	Official misconduct.
454	839.13(2) (a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
455	839.13(2) (c)	3rd	Falsifying records of the Department of Children and Families.
456	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
457	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
458	843.15(1) (a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
459	847.0135(5) (c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
460	874.05(1) (a)	3rd	Encouraging or recruiting

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			another to join a criminal gang.
461	893.13(2) (a)1.	2nd	Purchase of cocaine (or other s. 893.03(1) (a), (b), or (d), (2) (a), (2) (b), or (2) (c)4. drugs).
462	914.14(2)	3rd	Witnesses accepting bribes.
463	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
464	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
465	918.12	3rd	Tampering with jurors.
466	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
467			
468	(e) LEVEL 5		
469			
470	Florida	Felony	Description
	Statute	Degree	
471			

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	316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
472			
	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
473			
	316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
474			
	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
475			
	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
476			
	379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or

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			reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.
477			
	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
478			
	379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.
479			
	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
480			
	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
481			
	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
482			
	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers'

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 compensation premiums.

483 624.401(4)(b)2. 2nd Transacting insurance without a
 certificate or authority;
 premium collected \$20,000 or
 484 more but less than \$100,000.

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

790.01(2) 3rd Carrying a concealed firearm.

486 790.162 2nd Threat to throw or discharge
 destructive device.

487 790.163(1) 2nd False report of bomb,
 explosive, weapon of mass
 488 destruction, or use of firearms
 in violent manner.

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

790.23 2nd Felons in possession of
 firearms, ammunition, or
 490 electronic weapons or devices.

796.05(1) 2nd Live on earnings of a
 prostitute; 1st offense.

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491 800.04(6)(c) 3rd Lewd or lascivious conduct;
 offender less than 18 years of
 age.

492 800.04(7)(b) 2nd Lewd or lascivious exhibition;
 offender 18 years of age or
 493 older.

806.111(1) 3rd Possess, manufacture, or
 dispense fire bomb with intent
 to damage any structure or
 494 property.

812.0145(2)(b) 2nd Theft from person 65 years of
 age or older; \$10,000 or more
 but less than \$50,000.

495 812.015(8) 3rd Retail theft; property stolen
 is valued at \$500 ~~\$300~~ or more
 and one or more specified acts.

496 812.019(1) 2nd Stolen property; dealing in or
 trafficking in.

497 812.131(2)(b) 3rd Robbery by sudden snatching.

498 812.16(2) 3rd Owning, operating, or
 conducting a chop shop.

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499	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
500	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
501	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.
502	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.
503	817.611(2)(a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
504			

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

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	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
505	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
506	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
507	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
508	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.
509	843.01	3rd	Resist officer with violence to person; resist arrest with violence.

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510 847.0135(5)(b) 2nd Lewd or lascivious exhibition
using computer; offender 18
years or older.

511 847.0137 3rd Transmission of pornography by
(2) & (3) electronic device or equipment.

512 847.0138 3rd Transmission of material
(2) & (3) harmful to minors to a minor by
electronic device or equipment.

513 874.05(1)(b) 2nd Encouraging or recruiting
another to join a criminal
gang; second or subsequent
offense.

514 874.05(2)(a) 2nd Encouraging or recruiting
person under 13 years of age to
join a criminal gang.

515 893.13(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).

516 893.13(1)(c)2. 2nd Sell, manufacture, or deliver
cannabis (or other s.

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

517 893.13(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.

518 893.13(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.

519

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893.13(1)(f)1. 1st Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.

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

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

Section 10. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, section 634.319, Florida Statutes, is reenacted to read:

634.319 Reporting and accounting for funds.—

(1) All funds belonging to insurers, home warranty associations, or others received by a sales representative in transactions under her or his license and appointment are trust funds so received by the sales representative in a fiduciary capacity; and the sales representative, in the applicable regular course of business, shall account for and pay such funds to the insurer, association, warranty holder, or other person entitled thereto.

(2) Any sales representative who, not being entitled

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thereto, diverts or appropriates such funds or any portion thereof to her or his own use is, upon conviction, guilty of theft, punishable as provided in s. 812.014.

Section 11. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, section 634.421, Florida Statutes, is reenacted to read:

634.421 Reporting and accounting for funds.—

(1) All funds belonging to insurers, service warranty associations, or others received by a sales representative in transactions under her or his license or appointment are trust funds so received by the sales representative or agent in a fiduciary capacity; and the sales representative or agent, in the applicable regular course of business, shall account for and pay such funds to the insurer, association, warranty holder, or other person entitled thereto.

(2) Any sales representative who, not being entitled thereto, diverts or appropriates funds or any portion thereof to her or his own use commits theft as provided in s. 812.014.

Section 12. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, subsection (3) of section 636.238, Florida Statutes, is reenacted to read:

636.238 Penalties for violation of this part.—

(3) A person who collects fees for purported membership in a discount medical plan but purposefully fails to provide the promised benefits commits a theft, punishable as provided in s. 812.014.

Section 13. For the purpose of incorporating the amendment

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566 made by this act to section 812.014, Florida Statutes, in a
 567 reference thereto, subsection (2) of section 642.038, Florida
 568 Statutes, is reenacted to read:
 569 642.038 Reporting and accounting for funds.—
 570 (2) Any sales representative who, not being entitled
 571 thereto, diverts or appropriates such funds or any portion
 572 thereof to his or her own use commits theft as provided in s.
 573 812.014.

574 Section 14. For the purpose of incorporating the amendment
 575 made by this act to section 812.014, Florida Statutes, in a
 576 reference thereto, subsection (4) of section 705.102, Florida
 577 Statutes, is reenacted to read:
 578 705.102 Reporting lost or abandoned property.—
 579 (4) Any person who unlawfully appropriates such lost or
 580 abandoned property to his or her own use or refuses to deliver
 581 such property when required commits theft as defined in s.
 582 812.014, punishable as provided in s. 775.082, s. 775.083, or s.
 583 775.084.

584 Section 15. For the purpose of incorporating the amendment
 585 made by this act to section 812.014, Florida Statutes, in a
 586 reference thereto, subsection (1) of section 812.0155, Florida
 587 Statutes, is reenacted to read:
 588 812.0155 Suspension of driver license following an
 589 adjudication of guilt for theft.—
 590 (1) Except as provided in subsections (2) and (3), the
 591 court may order the suspension of the driver license of each
 592 person adjudicated guilty of any misdemeanor violation of s.
 593 812.014 or s. 812.015, regardless of the value of the property
 594 stolen. Upon ordering the suspension of the driver license of

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595 the person adjudicated guilty, the court shall forward the
 596 driver license of the person adjudicated guilty to the
 597 Department of Highway Safety and Motor Vehicles in accordance
 598 with s. 322.25.

599 (a) The first suspension of a driver license under this
 600 subsection shall be for a period of up to 6 months.

601 (b) A second or subsequent suspension of a driver license
 602 under this subsection shall be for 1 year.

603 Section 16. For the purpose of incorporating the amendment
 604 made by this act to section 812.014, Florida Statutes, in a
 605 reference thereto, paragraph (b) of subsection (1) of section
 606 985.11, Florida Statutes, is reenacted to read:
 607 985.11 Fingerprinting and photographing.—
 608 (1)
 609 (b) Unless the child is issued a civil citation or is
 610 participating in a similar diversion program pursuant to s.
 611 985.12, a child who is charged with or found to have committed
 612 one of the following offenses shall be fingerprinted, and the
 613 fingerprints shall be submitted to the Department of Law
 614 Enforcement as provided in s. 943.051(3)(b):

- 615 1. Assault, as defined in s. 784.011.
- 616 2. Battery, as defined in s. 784.03.
- 617 3. Carrying a concealed weapon, as defined in s. 790.01(1).
- 618 4. Unlawful use of destructive devices or bombs, as defined
 619 in s. 790.1615(1).
- 620 5. Neglect of a child, as defined in s. 827.03(1)(e).
- 621 6. Assault on a law enforcement officer, a firefighter, or
 622 other specified officers, as defined in s. 784.07(2)(a).
- 623 7. Open carrying of a weapon, as defined in s. 790.053.

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624 8. Exposure of sexual organs, as defined in s. 800.03.
 625 9. Unlawful possession of a firearm, as defined in s.
 626 790.22(5).
 627 10. Petit theft, as defined in s. 812.014.
 628 11. Cruelty to animals, as defined in s. 828.12(1).
 629 12. Arson, resulting in bodily harm to a firefighter, as
 630 defined in s. 806.031(1).
 631 13. Unlawful possession or discharge of a weapon or firearm
 632 at a school-sponsored event or on school property as defined in
 633 s. 790.115.
 634
 635 A law enforcement agency may fingerprint and photograph a child
 636 taken into custody upon probable cause that such child has
 637 committed any other violation of law, as the agency deems
 638 appropriate. Such fingerprint records and photographs shall be
 639 retained by the law enforcement agency in a separate file, and
 640 these records and all copies thereof must be marked "Juvenile
 641 Confidential." These records are not available for public
 642 disclosure and inspection under s. 119.07(1) except as provided
 643 in ss. 943.053 and 985.04(2), but shall be available to other
 644 law enforcement agencies, criminal justice agencies, state
 645 attorneys, the courts, the child, the parents or legal
 646 custodians of the child, their attorneys, and any other person
 647 authorized by the court to have access to such records. In
 648 addition, such records may be submitted to the Department of Law
 649 Enforcement for inclusion in the state criminal history records
 650 and used by criminal justice agencies for criminal justice
 651 purposes. These records may, in the discretion of the court, be
 652 open to inspection by anyone upon a showing of cause. The

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653 fingerprint and photograph records shall be produced in the
 654 court whenever directed by the court. Any photograph taken
 655 pursuant to this section may be shown by a law enforcement
 656 officer to any victim or witness of a crime for the purpose of
 657 identifying the person who committed such crime.
 658 Section 17. For the purpose of incorporating the amendment
 659 made by this act to section 812.014, Florida Statutes, in a
 660 reference thereto, paragraph (a) of subsection (1) of section
 661 985.557, Florida Statutes, is reenacted to read:
 662 985.557 Direct filing of an information; discretionary and
 663 mandatory criteria.—
 664 (1) DISCRETIONARY DIRECT FILE.—
 665 (a) With respect to any child who was 14 or 15 years of age
 666 at the time the alleged offense was committed, the state
 667 attorney may file an information when in the state attorney's
 668 judgment and discretion the public interest requires that adult
 669 sanctions be considered or imposed and when the offense charged
 670 is for the commission of, attempt to commit, or conspiracy to
 671 commit:
 672 1. Arson;
 673 2. Sexual battery;
 674 3. Robbery;
 675 4. Kidnapping;
 676 5. Aggravated child abuse;
 677 6. Aggravated assault;
 678 7. Aggravated stalking;
 679 8. Murder;
 680 9. Manslaughter;
 681 10. Unlawful throwing, placing, or discharging of a

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682 destructive device or bomb;

683 11. Armed burglary in violation of s. 810.02(2)(b) or

684 specified burglary of a dwelling or structure in violation of s.

685 810.02(2)(c), or burglary with an assault or battery in

686 violation of s. 810.02(2)(a);

687 12. Aggravated battery;

688 13. Any lewd or lascivious offense committed upon or in the

689 presence of a person less than 16 years of age;

690 14. Carrying, displaying, using, threatening, or attempting

691 to use a weapon or firearm during the commission of a felony;

692 15. Grand theft in violation of s. 812.014(2)(a);

693 16. Possessing or discharging any weapon or firearm on

694 school property in violation of s. 790.115;

695 17. Home invasion robbery;

696 18. Carjacking; or

697 19. Grand theft of a motor vehicle in violation of s.

698 812.014(2)(c)6. or grand theft of a motor vehicle valued at

699 \$20,000 or more in violation of s. 812.014(2)(b) if the child

700 has a previous adjudication for grand theft of a motor vehicle

701 in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

702 Section 18. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Aaron Bean, Chair
Appropriations Subcommittee on Criminal and Civil Justice

Subject: Committee Agenda Request

Date: March 23, 2017

I respectfully request that **Senate Bill #1102**, relating to Criminal Offenses, be placed on the:

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

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

Senator Darryl Rouson
Florida Senate, District 19

Cc: Randolph Bracy, VC; Tim Sadberry, SD; Lisa Roberts, AA

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/13/17

Meeting Date

1102

Bill Number (if applicable)

Topic Criminal Offenses

Amendment Barcode (if applicable)

Name Melissa Ramba

Job Title VP of Government Affairs

Address 227 S Adams St.

Phone 850-570-0269

Street

Tallahassee

City

FL

State

32301

Zip

Email Melissa@FRF.org

Speaking: For Against Information

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

Representing Florida Retail Federation

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 13, 2017

Meeting Date

CS/SB 1102

Bill Number (if applicable)

Topic Criminal Offenses

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 N. Gadsden Street

Phone 850-488-6850

Street

Tallahassee

FL

32301

Email ndaniels@flpda.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
APPEARANCE RECORD

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

13 Apr 17

Meeting Date

1102

Bill Number (if applicable)

Topic Criminal Offenses

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone 850.510.9922

Tall FL 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 13, 2017

Meeting Date

CS/SB 1102

Bill Number (if applicable)

Topic Criminal Offenses

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 N. Gadsden Street

Phone 850-488-6850

Street

Tallahassee

FL

32301

Email ndaniels@flpda.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.

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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)

4/13/2017
Meeting Date

1102
Bill Number (if applicable)

Topic SB 1102

Amendment Barcode (if applicable)

Name Sal Nuzzo

Job Title _____

Address _____
Street

Phone _____

City _____ State _____ Zip _____

Email _____

Speaking: For Against Information

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

Representing James Madison Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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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)

4/13/2017

Meeting Date

1102

Bill Number (if applicable)

SR 4011

Amendment Barcode (if applicable)

Topic SB 1102

Name Natalie Kato

Job Title _____

Address _____

Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Campaign for Criminal Justice 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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THE FLORIDA SENATE
APPEARANCE RECORD

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

4/13/17

Meeting Date

1102
Bill Number (if applicable)

Topic SB 1102

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title _____

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Right on Crime

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)

4/13/17

Meeting Date

1102
Bill Number (if applicable)

Topic SB 1102

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title _____

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Florida Association of Criminal Defense Lawyers

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

4/13/17
Meeting Date

SB 1107
Bill Number (if applicable)

Topic CRIM. OFFENSES - THRESHOLD

Amendment Barcode (if applicable)

Name KARA GROSS

Job Title LEGISLATIVE COUNSEL

Address 4500 BISCAYNE BLVD
Street

Phone 782-363-4436

MIAMI FL 33137
City State Zip

Email KGROSS@ACLUFL.ORG

Speaking: For Against Information

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

Representing ACLU OF FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

4/13/17

Meeting Date

1102

Bill Number (if applicable)

Topic Criminal Offenses

Amendment Barcode (if applicable)

Name Carla Laroche

Job Title Law Fellow

Address PO Box 10788

Phone 850-521-3003

Street

Tallahassee

FL

32302

Email carla.laroche@splcenter.org

City

State

Zip

Speaking: For Against Information

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

Representing Southern Poverty Law Center

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

April 13-2017

Meeting Date

1102

Bill Number (if applicable)

Topic Criminal Offenses

Amendment Barcode (if applicable)

Name Colleen Mackin

Job Title Constituency Services

Address 491 S. Magnolia DR

Phone 727 244 1032

Street

Tallahassee FL

City

State

Zip

Email cmackin@iamforkids.org

Speaking: For Against Information

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

Representing The Children's Campaign

Appearing at request of Chair: Yes 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 1626

INTRODUCER: Criminal Justice Committee and Senator Bradley

SUBJECT: Department of Legal Affairs

DATE: April 12, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Hrdlicka</u>	<u>CJ</u>	Fav/CS
2.	<u>McAuliffe</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 1626 amends current law with respect to the Attorney General’s duties and responsibilities.

The bill:

- Gives the Statewide Council on Human Trafficking the authority to apply for and accept grants, funds, gifts, and services from the state, the federal government, and other sources for the purpose of defraying the cost of the council’s annual summit;
- Provides that the Attorney General may request the assignment of one or more Florida Highway Patrol officers to the Office of the Attorney General (OAG) for security services;
- Amends dates to keep Florida’s Deceptive and Unfair Trade Practices Act current with applicable federal law and rules;
- Provides a definition of “virtual currency” and amends the term “monetary instruments” to include “virtual currency” in the Money Laundering Act;
- Amends the Trust Code related to charitable trusts to allow the Attorney General to take over for the 20 state attorneys in matters involving oversight of charitable trusts, to require delivery of notice, and to give legal standing to the Attorney General under circumstances where a trustee of a charitable trust seeks to modify the status of the trust or its beneficiaries; and;
- Creates s. 960.201, F.S., providing for compensation awards for loss of support to surviving family members of an emergency responder who dies in the line of duty while answering a call for service.

The bill will have a positive fiscal impact on the Statewide Council on Human Trafficking and surviving family members of first responders. The Department of Highway Safety and Motor Vehicles have been providing security services for the Attorney General and should be able to continue to absorb the costs with existing resources. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2017.

II. Present Situation:

The Attorney General is charged with all common law powers and duties pertaining to the office unless they have been expressly restricted or modified by statute or the state constitution.¹

The Attorney General is the chief law officer of the state and, absent express legislative restriction, may exercise such power and authority as the public interest may require.² As chief legal officer of the state, the Attorney General must be noticed in certain proceedings under Florida law and may bring actions on behalf of citizens of the state as provided for by law.³

The Attorney General is also the head of the Department of Legal Affairs.⁴ The Department of Legal Affairs (DLA) is responsible for providing all legal services required by any executive department unless otherwise provided by law. Additionally, DLA administers certain trust funds and related programs that support crime victim services, criminal investigations,⁵ and crime prevention.⁶

The Office of the Statewide Prosecution prosecutes crimes that impact two or more judicial circuits in the state. The Statewide Prosecutor is appointed by the Attorney General and serves a term of four years.⁷ The office focuses on complex, often large scale, organized criminal activity, including violations of the Florida Money Laundering Act.⁸

III. Effect of Proposed Changes:

This bill makes changes and updates in many subject areas of the Office of the Attorney General's jurisdiction and duties.

Statewide Council on Human Trafficking

The Statewide Council on Human Trafficking resides within DLA "for the purpose of enhancing the development and coordination of state and local law enforcement and social services responses to fight commercial sexual exploitation as a form of human trafficking and to support

¹ Section 16.01, F.S., *State ex rel. Shevin v. Exxon Corp.*, 526 F.2d 266 (5th Cir. 1976).

² *State ex rel. Shevin v. Exxon Corp.*, 526 F.2d 266 (5th Cir. 1976).

³ *State ex rel. Landis v. S.H. Kress & Co.*, 115 Fla. 189 (Fla. 1934).

⁴ Section 16.015, F.S.

⁵ Sections 16.555 and 16.556, F.S.

⁶ Section 16.54, F.S.

⁷ Section 16.56, F.S.; see also, DLA, "Office of Statewide Prosecution," available at

<http://www.myfloridalegal.com/pages.nsf/Main/D243EF87774E965185256CC600785693> (last visited March 23, 2017).

⁸ Sections 896.101 and 16.56(1)(a)13., F.S.

victims.”⁹ One of the duties of the council is to hold an annual statewide policy summit, but there is no dedicated funding source for the council to spend on the annual policy summit. **Section 1** amends s. 16.617, F.S., to give the council the authority to apply for and accept grants, funds, gifts, and services from the state, the federal government, and other sources for the purpose of defraying the cost of the annual summit.

Security Detail

The Department of Highway Safety and Motor Vehicles assigns one Florida Highway Patrol officer as security detail for the Governor. The implementing bill for the 2016 General Appropriations Act provided for assignment of a patrol officer to each member of the Cabinet for the 2015-2016 and 2016-2017 fiscal years, as deemed appropriate by the Department of Highway Safety and Motor Vehicles or upon written request of the Cabinet member.¹⁰ **Section 2** amends s. 321.04, F.S., to allow the Attorney General to request the assignment of one or more Florida Highway Patrol officers to the Office of the Attorney General for security services.

Florida Deceptive and Unfair Trade Practices Act

The Attorney General is largely responsible, through the DLA, for enforcing the “Florida Deceptive and Unfair Trade Practices Act” (FDUPTA).¹¹

A violation of the FDUPTA or related rules is statutorily defined as being tied to federal law relating to consumer protection.¹² In order to adopt any changes in the rules of the Federal Trade Commission Act, and therefore keep the Florida Statutes current, the date appearing in ss. 501.203(3) and 501.204(2), F.S., is amended in **Sections 3 and 4** of the bill to read “July 1, 2017.”

Charitable Trusts

The Florida Trust Code appears in ch. 736, F.S. The Attorney General currently has the authority under s. 736.0100, F.S., to assert the rights of a qualified beneficiary of certain charitable trusts.¹³

Sections 5-11 of the bill amend the Trust Code related to charitable trusts in numerous sections to accomplish two purposes. The first is to provide for the Attorney General to fulfill the role of the local state attorney in matters involving oversight of charitable trusts if it becomes necessary. The other purpose is to require delivery of notice to and give legal standing to the Attorney General under circumstances where a trustee of a charitable trust seeks to modify the status of

⁹ Section 16.617, F.S.

¹⁰ Current subsection (4) of s. 321.04, F.S., will expire on July 1, 2017. It was enacted “[i]n order to implement Specific Appropriation 2580 and section 85 of the 2016-2017 General Appropriations Act.”

¹¹ Part II of ch. 501, F.S., (Florida Deceptive and Unfair Trade Practices Act). If a violation occurs in a particular judicial circuit, the state attorney has the authority to enforce the act; however, the state attorney may defer to the DLA, or if the violation occurs in more than one judicial circuit, the DLA is the “enforcing authority.” s. 501.203(2), F.S.

¹² Sections 501.202(3), 501.203(3), and 501.204(2), F.S.

¹³ Section 736.0110(3), F.S.

the trust or its beneficiaries.¹⁴ These revisions in current law will allow the Attorney General to carry out the responsibilities set forth in s. 736.0110, F.S., in a more consistent and effective manner.

Virtual Currency

Section 12 of the bill creates a definition that recognizes the existence of “virtual currency” in the realm of finances.¹⁵ In s. 896.101, F.S., of the Money Laundering Act, the new definition provides that virtual currency means “a medium of exchange in electronic or digital format which is not a coin or currency of the United States or another country.”¹⁶ The term “monetary instruments” is amended to include the term “virtual currency.”¹⁷ These changes will update the Money Laundering Act to account for emerging and new types of currency used in transactions.

Crimes Compensation Act

The Crimes Compensation Act exists in ss. 960.01-960.28, F.S., and conveys many duties and responsibilities upon the Attorney General’s Victims’ Services Office. Under this Act, claims are filed and payment is made to crime victims according to the criteria set forth in ss. 960.065, 960.07, 960.12, and 960.13, F.S.

Sections 13-15 of the bill amend the Crimes Compensation Act to create s. 960.201, F.S., specifically providing for compensation awards for loss of support to surviving family members of an emergency responder who dies in the line of duty while answering a call for service.

The bill defines “crime” in s. 960.03(3)(f), F.S., as “a felony or misdemeanor that results in the death of an emergency responder, as defined in and solely for the purposes of s. 960.201, F.S., while answering a call for service in the line of duty.” “Emergency responder” means a law enforcement officer, a firefighter, or an emergency medical technician or paramedic.

The bill amends s. 960.16, F.S., to waive the state’s subrogation rights for awards made under s. 960.201, F.S.

¹⁴ See ss. 736.0110, 736.1201, 736.1205, 736.1206, 736.1207, 736.1208, and 736.1209, F.S. See also, *Delaware. ex rel. Gebelein v. Florida First National Bank*, 381 So.2d 1075 (Fla. 1st DCA 1979) and *Biden v. Lord*, 147 So.3d 632 (Fla. 1st DCA 2014).

¹⁵ Virtual currency is a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value. Virtual currency that has an equivalent value in real currency, or that acts as a substitute for real currency, is referred to as “convertible” virtual currency. Bitcoin is one example of a convertible virtual currency. Bitcoin can be digitally traded between users and can be purchased for, or exchanged into, U.S. dollars, Euros, and other real or virtual currencies. Notice 2014-21, “IRS Virtual Currency Guidance: Virtual Currency Is Treated as Property for U.S. Federal Tax Purposes; General Rules for Property Transactions Apply,” IR-2014-36, March 25, 2014, available at <https://www.irs.gov/uac/newsroom/irs-virtual-currency-guidance> (last visited March 23, 2017).

¹⁶ A recent ruling by a Miami trial court dismissed a case in which the defendant was charged with a violation of s. 560.125(5)(a), F.S. (money service business), and money laundering (s. 896.101 (5)(a) and (5)(b), F.S.). Although the ruling was based in large part on other facts in the case, the court included the finding that “...Bitcoin has a long way to go before it is the equivalent of money. The Florida Legislature may choose to adopt statutes regulating virtual currency in the future. At this time, however, attempting to fit the sale of Bitcoin into a statutory scheme regulating money services is like fitting a square peg in a round hole.” *State v. Espinoza*, Case No. F14-2923, 11th Judicial Circuit, Miami-Dade County, Florida, order dated July 22, 2016.

¹⁷ Section 896.101(e), F.S.

The DLA may award one claim, up to a maximum of \$50,000, to the emergency responder's surviving family members. If two or more persons are entitled to an award, then the award may be apportioned among the claimants at the discretion of the DLA. An award will be reduced or denied if the DLA has previously paid or approved a claim to the same victim or applicant regarding the same incident.

In evaluating the claim, the DLA must determine if the emergency responder had any contribution to his or her death due to his or her conduct, but may disregard such contribution if the record shows that the conduct occurred when he or she was acting as an intervener. The award amount may be reduced or denied by the DLA based on the outcome of the determination.

The DLA is authorized to adopt rules to implement these provisions.

Effective Date

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Surviving family members of an emergency responder who dies in the line of duty while answering a call for service may be entitled to claims under the Crimes Compensation Act.

C. Government Sector Impact:

To the extent there is a fiscal impact related to Sections 13-15 of CS/SB 1626 (emergency responder death benefits), the Attorney General's Office reports that it can be absorbed by the Victims Compensation Trust Fund.

The Department of Highway Safety and Motor Vehicles have been providing security services for the Attorney General and should be able to continue to absorb the costs with existing resources.¹⁸

The Statewide Council on Human Trafficking will be able to apply for and accept grants, funds, gifts, and services from the state, the federal government, and other sources for the purpose of defraying the cost of the annual summit, as provided in Section 1.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Legal Affairs (DLA) is authorized to adopt rules to implement the emergency responder death benefits in the Crimes Compensation Act.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 16.617, 321.04, 501.203, 501.204, 736.0110, 736.1201, 736.1205, 736.1206, 736.1207, 736.1208, 736.1209, 896.101, 960.03, 960.16, and 960.201.

IX. Additional Information:

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

CS by Criminal Justice on March 27, 2017:

The committee substitute:

- Removed the amendment to s. 560.103, F.S., that added the term “virtual currency” to the Money Services Business chapter.
- Removed the amendment to s. 741.403, F.S., that added family to the address confidentiality program for victims of domestic violence.
- Amended s. 896.101(2)(e), F.S., to include the term “virtual currency” within the definition of “monetary instruments” in the Money Laundering Act.

- B. **Amendments:**

None. This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹⁸ Ch. 2016-16, s. 109, Laws of Florida.

By the Committee on Criminal Justice; and Senator Bradley

591-02919-17

20171626c1

1 A bill to be entitled
 2 An act relating to the Department of Legal Affairs;
 3 amending s. 16.617, F.S.; authorizing the Statewide
 4 Council on Human Trafficking to apply for and accept
 5 funds, grants, gifts, and services from various
 6 governmental entities or any other public or private
 7 source for a specified purpose; amending s. 321.04,
 8 F.S.; requiring the Department of Highway Safety and
 9 Motor Vehicles to assign one or more patrol officers
 10 to the Office of the Attorney General for security
 11 services upon request of the Attorney General;
 12 amending s. 501.203, F.S.; redefining the term
 13 "violation of this part"; amending s. 501.204, F.S.;
 14 revising legislative intent; amending s. 736.0110,
 15 F.S.; providing that the Attorney General has standing
 16 to assert the rights of certain qualified
 17 beneficiaries in judicial proceedings; amending s.
 18 736.1201, F.S.; defining the term "delivery of
 19 notice"; deleting the term "state attorney"; amending
 20 s. 736.1205, F.S.; requiring a trustee to provide a
 21 specified notice to the Attorney General rather than
 22 the state attorney; amending s. 736.1206, F.S.;
 23 revising the conditions under which a trustee may
 24 amend the governing instrument of a specified
 25 charitable trust to comply with specified provisions
 26 of ch. 736, F.S.; amending s. 736.1207, F.S.;
 27 conforming a term; amending s. 736.1208, F.S.;
 28 revising the manner in which delivery of a release is
 29 accomplished; conforming provisions to changes made by

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

591-02919-17

20171626c1

30 the act; amending s. 736.1209, F.S.; revising
 31 requirements for a trustee of a specified trust who
 32 elects to be operated exclusively for the benefit of,
 33 and be supervised by, the specified public charitable
 34 organization or organizations; amending s. 896.101,
 35 F.S.; amending the term "monetary instruments";
 36 defining the term "virtual currency"; amending s.
 37 960.03, F.S.; revising definitions; amending s.
 38 960.16, F.S.; providing an exception to a subrogation
 39 requirement for awards; creating s. 960.201, F.S.;
 40 defining terms; authorizing the Department of Legal
 41 Affairs to award the surviving family of members of an
 42 emergency responder who is killed under specified
 43 circumstances up to a specified amount; specifying
 44 requirements to determine the award amount; requiring
 45 apportionment of the award among several claimants
 46 under certain circumstances; requiring an award to be
 47 reduced or denied by the department under certain
 48 circumstances; authorizing rulemaking; providing an
 49 effective date.

50
 51 Be It Enacted by the Legislature of the State of Florida:

52
 53 Section 1. Paragraph (d) is added to subsection (3) of
 54 section 16.617, Florida Statutes, to read:
 55 16.617 Statewide Council on Human Trafficking; creation;
 56 membership; duties.—
 57 (3) ORGANIZATION AND SUPPORT.—
 58 (d) The council may apply for and accept funds, grants,

Page 2 of 9

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

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59 gifts, and services from the state, the Federal Government or
 60 any of its agencies, or any other public or private source for
 61 the purpose of defraying costs associated with the annual
 62 statewide policy summit.

63 Section 2. Present subsection (4) of section 321.04,
 64 Florida Statutes, is redesignated as subsection (5), and a new
 65 subsection (4) is added to that section, to read:

66 321.04 Personnel of the highway patrol; rank
 67 classifications; probationary status of new patrol officers;
 68 subsistence; special assignments.—

69 (4) Upon request of the Attorney General, the Department of
 70 Highway Safety and Motor Vehicles shall assign one or more
 71 patrol officers to the Office of the Attorney General for
 72 security services.

73 Section 3. Subsection (3) of section 501.203, Florida
 74 Statutes, is amended to read:

75 501.203 Definitions.—As used in this chapter, unless the
 76 context otherwise requires, the term:

77 (3) "Violation of this part" means any violation of this
 78 act or the rules adopted under this act and may be based upon
 79 any of the following as of July 1, 2017 ~~2015~~:

80 (a) Any rules promulgated pursuant to the Federal Trade
 81 Commission Act, 15 U.S.C. ss. 41 et seq.;

82 (b) The standards of unfairness and deception set forth and
 83 interpreted by the Federal Trade Commission or the federal
 84 courts; or

85 (c) Any law, statute, rule, regulation, or ordinance which
 86 proscribes unfair methods of competition, or unfair, deceptive,
 87 or unconscionable acts or practices.

591-02919-17 20171626c1

88 Section 4. Subsection (2) of section 501.204, Florida
 89 Statutes, is amended to read:

90 501.204 Unlawful acts and practices.—

91 (2) It is the intent of the Legislature that, in construing
 92 subsection (1), due consideration and great weight shall be
 93 given to the interpretations of the Federal Trade Commission and
 94 the federal courts relating to s. 5(a)(1) of the Federal Trade
 95 Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2017 ~~2015~~.

96 Section 5. Subsection (3) of section 736.0110, Florida
 97 Statutes, is amended to read:

98 736.0110 Others treated as qualified beneficiaries.—

99 (3) The Attorney General may assert the rights of a
 100 qualified beneficiary with respect to a charitable trust having
 101 its principal place of administration in this state. The
 102 Attorney General has standing to assert such rights in any
 103 judicial proceeding.

104 Section 6. Present subsections (2), (3), and (4) of section
 105 736.1201, Florida Statutes, are redesignated as subsections (3),
 106 (4), and (5), respectively, a new subsection (2) is added to
 107 that section, and present subsection (5) of that section is
 108 amended, to read:

109 736.1201 Definitions.—As used in this part:

110 (2) "Delivery of notice" means delivery of a written notice
 111 required under this part by sending a copy by any commercial
 112 delivery service requiring a signed receipt or by any form of
 113 mail requiring a signed receipt.

114 ~~(5) "State attorney" means the state attorney for the~~
 115 ~~judicial circuit of the principal place of administration of the~~
 116 ~~trust pursuant to s. 736.0108.~~

591-02919-17 20171626c1

117 Section 7. Section 736.1205, Florida Statutes, is amended
118 to read:

119 736.1205 Notice that this part does not apply.—In the case
120 of a power to make distributions, if the trustee determines that
121 the governing instrument contains provisions that are more
122 restrictive than s. 736.1204(2), or if the trust contains other
123 powers, inconsistent with the provisions of s. 736.1204(3) that
124 specifically direct acts by the trustee, the trustee shall
125 notify the ~~state~~ Attorney General when the trust becomes subject
126 to this part. Section 736.1204 does not apply to any trust for
127 which notice has been given pursuant to this section unless the
128 trust is amended to comply with the terms of this part.

129 Section 8. Subsection (2) of section 736.1206, Florida
130 Statutes, is amended to read:

131 736.1206 Power to amend trust instrument.—

132 (2) In the case of a charitable trust that is not subject
133 to ~~the provisions of~~ subsection (1), the trustee may amend the
134 governing instrument to comply with ~~the provisions of~~ s.
135 736.1204(2) after delivery of notice to, and with the consent
136 of, the ~~state~~ Attorney General.

137 Section 9. Section 736.1207, Florida Statutes, is amended
138 to read:

139 736.1207 Power of court to permit deviation.—This part does
140 not affect the power of a court to relieve a trustee from any
141 restrictions on the powers and duties that are placed on the
142 trustee by the governing instrument or applicable law for cause
143 shown and on complaint of the trustee, ~~state~~ Attorney General,
144 or an affected beneficiary and notice to the affected parties.

145 Section 10. Paragraph (b) of subsection (4) of section

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146 736.1208, Florida Statutes, is amended to read:

147 736.1208 Release; property and persons affected; manner of
148 effecting.—

149 (4) Delivery of a release shall be accomplished as follows:

150 (b) If the release is accomplished by reducing the class of
151 permissible charitable organizations, by delivery of notice a
152 copy of the release to the ~~state~~ Attorney General including a
153 copy of the release.

154 Section 11. Section 736.1209, Florida Statutes, is amended
155 to read:

156 736.1209 Election to come under this part.—With the consent
157 of that organization or organizations, a trustee of a trust for
158 the benefit of a public charitable organization or organizations
159 may come under s. 736.1208(5) by delivery of notice to ~~filing~~
160 with the ~~state~~ Attorney General of the ~~an~~ election, accompanied
161 by the proof of required consent. Thereafter the trust shall be
162 subject to s. 736.1208(5).

163 Section 12. Paragraph (e) of subsection (2) of section
164 896.101, Florida Statutes, is amended, and paragraph (j) is
165 added to that subsection, to read:

166 896.101 Florida Money Laundering Act; definitions;
167 penalties; injunctions; seizure warrants; immunity.—

168 (2) As used in this section, the term:

169 (e) "Monetary instruments" means coin or currency of the
170 United States or of any other country, virtual currency,
171 travelers' checks, personal checks, bank checks, money orders,
172 investment securities in bearer form or otherwise in such form
173 that title thereto passes upon delivery, and negotiable
174 instruments in bearer form or otherwise in such form that title

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175 thereto passes upon delivery.

176 (j) "Virtual currency" means a medium of exchange in
 177 electronic or digital format which is not a coin or currency of
 178 the United States or another country.

179 Section 13. Paragraph (f) is added to subsection (3) of
 180 section 960.03, Florida Statutes, and paragraph (e) is added to
 181 subsection (14) of that section, to read:

182 960.03 Definitions; ss. 960.01-960.28.—As used in ss.
 183 960.01-960.28, unless the context otherwise requires, the term:

184 (3) "Crime" means:

185 (f) A felony or misdemeanor that results in the death of an
 186 emergency responder, as defined in and solely for the purposes
 187 of s. 960.201, while answering a call for service in the line of
 188 duty, notwithstanding paragraph (c).

189 (14) "Victim" means:

190 (e) An emergency responder, as defined in and solely for
 191 the purposes of s. 960.201, who is killed while answering a call
 192 for service in the line of duty.

193 Section 14. Section 960.16, Florida Statutes, is amended to
 194 read:

195 960.16 Subrogation.—Except for an award made under s.
 196 960.201, payment of an award pursuant to this chapter shall
 197 subrogate the state, to the extent of such payment, to any right
 198 of action accruing to the claimant or to the victim or
 199 intervenor to recover losses directly or indirectly resulting
 200 from the crime with respect to which the award is made. Causes
 201 of action which shall be subrogated under this section include,
 202 but are not limited to, any claim for compensation under any
 203 insurance provision, including an uninsured motorist provision,

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204 when such claim seeks to recover losses directly or indirectly
 205 resulting from the crime with respect to which the award is
 206 made.

207 Section 15. Section 960.201, Florida Statutes, is created
 208 to read:

209 960.201 Emergency responder death benefits.—

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

211 (a) "Answering a call for service" means actively
 212 performing official duties that include the identification,
 213 prevention, or enforcement of the penal, traffic, or highway
 214 laws of this state; and include traveling to the scene of an
 215 emergency situation and upon arrival performing those functions
 216 that the emergency responder has been trained and certified to
 217 perform.

218 (b) "Emergency medical technician" has the same meaning as
 219 in s. 401.23(11).

220 (c) "Emergency responder" means a law enforcement officer,
 221 a firefighter, or an emergency medical technician or paramedic.

222 (d) "Firefighter" has the same meaning as in s. 633.102(9).

223 (e) "Law enforcement officer" has the same meaning as in s.
 224 943.10(1).

225 (f) "Paramedic" has the same meaning as in s. 401.23(17).

226 (g) "Surviving family members of an emergency responder"
 227 means the surviving spouse, children, parents or guardian, or
 228 siblings of a deceased emergency responder.

229 (2) Notwithstanding ss. 960.065(1) and 960.13 for crime
 230 victim compensation awards, the department may award for any one
 231 claim up to a maximum of \$50,000 to the surviving family members
 232 of an emergency responder who, as a result of a crime, is killed

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233 answering a call for service in the line of duty.

234 (3) In determining the amount of an award:

235 (a) The department shall determine whether, because of his
236 or her conduct, the emergency responder contributed to his or
237 her death, and shall reduce the amount of the award or reject
238 the claim altogether in accordance with such determination.

239 (b) The department may disregard the contribution of the
240 emergency responder to his or her own death, as determined under
241 paragraph (a), when the record shows that such conduct occurred
242 in connection with the efforts of the emergency responder acting
243 as an intervenor as defined in s. 960.03.

244 (4) If two or more persons are entitled to an award under
245 this section, the award shall be apportioned among the claimants
246 at the discretion and direction of the department.

247 (5) An award under this section shall be reduced or denied
248 if the department has previously approved or paid out a claim
249 under s. 960.13 to the same victim or applicant regarding the
250 same incident. An award for victim compensation under s. 960.13
251 shall be denied if the department has previously approved or
252 paid out an emergency responder death benefits claim under this
253 section.

254 (6) The department may adopt rules that establish limits
255 below the amount set forth in subsection (2) and that establish
256 criteria governing awards pursuant to this section.

257 Section 16. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Aaron Bean, Chair
Appropriations Subcommittee on Criminal and Civil Justice

Subject: Committee Agenda Request

Date: March 29, 2017

I respectfully request that **Senate Bill # 1626**, relating to Department of Legal Affairs, 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", written over a horizontal line.

Senator Rob Bradley
Florida Senate, District 5

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: PCS/SB 1670 (370410)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice and Senator Latvala

SUBJECT: Juvenile Justice

DATE: April 14, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Hrdlicka	CJ	Favorable
2.	Sadberry	Sadberry	ACJ	Recommend: Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1670 makes numerous changes that increase the use of secure detention.

Specifically, the bill:

- Creates the designation of a “prolific juvenile offender;”
- Requires that children who meet the criteria for the designation of “prolific juvenile offender” be held in detention until disposition;
- Requires the court to place a child who is adjudicated and awaiting placement in a commitment program in secure detention until the child is placed in a commitment program;
- Requires that the period for detention be tolled on the date the Department of Juvenile Justice (DJJ) alleges the child has violated a condition of his or her detention until the court enters a ruling on the violation;
- Requires a “prolific juvenile offender’s” adjudicatory hearing be held within 45 days after the child is taken into custody; and
- Waives the fees the Department of Health charges for certified birth certificates for juvenile offenders in the custody of the Department of Juvenile Justice.

The bill appropriates for Fiscal Year 2017-2018 of \$2,978,012 in recurring funds and \$2,978,012 in nonrecurring funds from the General Revenue Fund to the DJJ.

The bill is effective October 1, 2017.

II. Present Situation:

Detention of Juveniles

The Department of Juvenile Justice (DJJ) provides detention care to supervise juveniles charged with committing a crime or who are held pursuant to a court order. There are two types of detention care, secure and nonsecure detention. Secure detention is the temporary custody of a child while under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.¹

Nonsecure detention is the temporary, nonsecure custody of a child while the child is released to the custody of the parent, guardian, or custodian under the supervision of the DJJ staff pending adjudication, disposition, or placement. There are numerous forms of nonsecure detention; they include home detention, electronic monitoring, and nonsecure shelters.²

The DJJ operates 21 secure detention facilities with 1,302 beds in 21 counties. During Fiscal Year 2015-16, a total of 15,142 children were served through secure detention, 11,463 were served through home detention, and 2,803 were served through electronic monitoring. There are three county-operated detention centers in Marion, Polk, and Seminole counties.³

During Fiscal Year 2015-16, 2,437 children were committed to nonsecure residential commitment programs. These committed children awaiting placement in the community committed 4,308 new charges, including felonies, misdemeanors, and technical offenses. For that same period, 149 committed youth awaiting placement absconded during their time pending placement.⁴

Pre-Adjudication Detention

Section 985.255, F.S., requires a child to have a detention hearing within 24 hours of being taken into custody and placed in detention. The purpose of the detention hearing is to determine the existence of probable cause that the child has committed the delinquent act or violation of law that he or she is charged with and the need for continued detention.⁵

During the period of time between when a child is taken into custody and the detention hearing, the DJJ makes the determination of whether a child should be placed in detention. The DJJ must make its decision on a risk assessment of the child.⁶ The child must be placed in secure detention until the detention hearing if the child:

- Is charged with possessing or discharging a firearm on school property.

¹ Section 985.03(18), F.S.

² *Id.*

³ Department of Juvenile Justice, *2017 Agency Bill Analysis for SB 1670*, March 10, 2017, (on file with the Senate Criminal Justice Committee).

⁴ *Id.*

⁵ Section 985.255(3)(a), F.S.

⁶ A risk assessment must take into consideration the child's prior history of failure to appear, prior offenses, offenses committed pending adjudication, any unlawful possession of a firearm, theft of a motor vehicle or possession of a stolen motor vehicle, and probation status at the time the child is taken into custody. Section 985.245(2), F.S.

- Has been taken into custody on three or more separate occasions within a 60-day period.⁷

Section 985.24, F.S., requires that all determinations and court orders regarding the use of detention care must be based upon findings that the child:

- Presents a substantial risk of not appearing at a subsequent hearing;
- Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior, including the illegal possession of a firearm;
- Presents a history of committing a property offense prior to adjudication, disposition, or placement;
- Has committed contempt of court by:
 - Intentionally disrupting the administration of the court;
 - Intentionally disobeying a court order; or
 - Engaging in a punishable act or speech in the court's presence which shows disrespect for the authority and dignity of the court; or
- Requests protection from imminent bodily harm.⁸

At a detention hearing, the court must determine the need for continued detention and use the results of the DJJ's risk assessment.⁹ The court may order a child to stay in detention, if the child is:

- Alleged to be an escapee from a residential commitment program; or an absconder from a nonresidential commitment program, a probation program, or conditional release supervision; or is alleged to have escaped while being lawfully transported to or from a residential commitment program.
- Wanted in another jurisdiction for a felony offense.
- Charged with a delinquent act or violation of law and requests to be detained for protection from an imminent physical threat to his or her personal safety.
- Charged with committing an offense of domestic violence¹⁰ and is detained.¹¹
- Charged with possession of or discharging a firearm on school property or the illegal possession of a firearm.
- Charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree that does not involve a violation of ch. 893, F.S., (drug offenses) or a felony of the third degree that is also a crime of violence, including any such offense involving the use or possession of a firearm.

⁷ Section 985.25, F.S.

⁸ Section 985.24(1), F.S.

⁹ Section 985.255(3)(a), F.S., provides that a court does not have to use the DJJ's risk assessment in making its determination of detention if the child is detained because he or she is charged with a domestic violence offense, possession of or discharging a firearm on school property, or the illegal possession of a firearm.

¹⁰ Section 741.28(2), F.S., defines domestic violence as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. A family or household member includes: spouses; former spouses; persons related by blood or marriage; persons who are presently residing together as if a family or who have resided together in the past as if a family in the same single family dwelling unit; and persons who are parents of a child in common, regardless of whether they have been married.

¹¹ Section 985.255(2), F.S., allows a child to be held in secure detention if the court finds that respite care is not available and it is necessary to place the child in secure detention to protect the victim from injury.

- Charged with any second degree or third degree felony involving a violation of ch. 893, F.S., or any third degree felony that is not also a crime of violence, and the child:
 - Has a record of failure to appear at court hearings;
 - Has a record of law violations prior to court hearings;
 - Has already been detained or has been released and is awaiting final disposition of the case;
 - Has a record of violent conduct resulting in physical injury to others; or
 - Is found to have been in possession of a firearm.
- Alleged to have violated the conditions of the child's probation or conditional release supervision.
- Detained on a judicial order for failure to appear and has previously willfully failed to appear:
 - For an adjudicatory hearing on the same case regardless of the results of the risk assessment instrument; or
 - At two or more court hearings of any nature on the same case regardless of the results of the risk assessment instrument.¹²

If the court orders a placement more restrictive than indicated by the results of the risk assessment instrument, the court must state, in writing, clear and convincing reasons for such placement.¹³

Length of Detention

Once a detention hearing has been held and the state has filed a petition alleging a child committed a delinquent act or a violation of law, an adjudicatory hearing must be held as soon as practicable.¹⁴ A child cannot be held in detention for more than 21 days unless an adjudicatory hearing is held.¹⁵ The court may extend the length of the detention by nine days if more time is required for the prosecution or defense to prepare for cases involving certain serious crimes.¹⁶ Except as stated above, after the adjudicatory hearing, a child cannot be held in detention for more than 15 days.¹⁷

Post-Disposition Detention

After the court finds that a child has committed a delinquent act, it must conduct a disposition hearing to determine the appropriate sanction for the child.¹⁸ If the court places a child in a commitment program, the court must also place the child in detention care (secure or nonsecure) while awaiting placement in such commitment program.¹⁹

¹² Section 985.255(1), F.S.

¹³ Section 985.255(3)(b), F.S.

¹⁴ Section 985.35(1), F.S.

¹⁵ Section 985.26(2), F.S.

¹⁶ These serious crimes include capital felonies, life felonies, and first or second degree felonies. Section 985.26(2), F.S.

¹⁷ Section 985.26(3), F.S.

¹⁸ Section 985.433, F.S.

¹⁹ Section 985.27, F.S.

If the child is awaiting placement in a nonsecure residential program he or she can only be in secure or nonsecure detention for up to five days. The DJJ may seek an extension of the five-day period to hold the child in detention care until the commitment placement is made. However, if the child is in secure detention, the continued detention cannot exceed 15 days.²⁰

A child who violates his or her nonsecure detention or nonsecure detention with electronic monitoring can be placed in secure detention for five days for the first and each subsequent violation.²¹

If the placement for the child is a high- or maximum-risk residential program, the child must be held in secure detention until the placement is made.²²

III. Effect of Proposed Changes:

Pre-Adjudication Detention

Section 3 amends s. 985.255, F.S., to add to the criteria a court may consider at a detention hearing. The bill adds the criteria of whether the child is classified as a *prolific juvenile offender*.

A child is a *prolific juvenile offender* if the child:

- Is charged with a delinquent act that would be a felony if committed by an adult;
- Has been adjudicated or had adjudication withheld for a felony offense or delinquent act that would be a felony if committed by an adult, before the current charge; and
- Has 5 or more of any of the following, at least 3 of which must have been for felony offenses or delinquent acts that would have been felonies if committed by an adult:
 - An arrest event for which a disposition²³ has not been entered;
 - An adjudication; or
 - An adjudication withheld.

The term “arrest event” to mean an arrest or referral for one or more criminal offenses or delinquent acts arising out of the same episode, act, or transaction

The bill also specifies that court can only use the criteria in s. 985.255(1)-(2), F.S., and the risk assessment performed by the DJJ to determine whether a prolific juvenile offender should be held in secure detention.²⁴

Under current law, a child must be placed in secure detention until the detention hearing if he or she is charged with certain offenses. **Section 2** amends s. 985.25, F.S., to include a child who is designated as a prolific juvenile offender to this list.

²⁰ Section 985.27(1)(a), F.S.

²¹ *Id.*

²² Section 985.27(1)(b) and (c), F.S.

²³ The bill defines disposition to mean the entry of a nolle prosequi for the charges, a dismissal of the case, or the entry of a disposition order by the court.

²⁴ Section 985.255(2), F.S., allows a child who is charged with committing an offense that is also an act of domestic violence to be held in secure detention to protect the victim from injury.

Length of Detention

Section 4 amends s. 985.26, F.S., to require a prolific juvenile offender to be placed on nonsecure detention care with electronic monitoring or held in secure detention under a special detention order until the disposition of his or her case. If secure detention is ordered by the court, it may not exceed:

- 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court or extended by the court; or
- 15 days after the entry of an order of adjudication.

The term “disposition” means a declination to file under s. 985.15(1)(h), F.S.; the entry of a nolle prosequi for the charges; the filing of an indictment under s. 985.56, F.S.; or an information under s. 985.557, F.S. (direct file); a dismissal of the case; or an order of final disposition by the court.

This section also establishes a tolling period for juveniles who have violated a condition of nonsecure detention until the court enters a ruling on the violation. A court retains jurisdiction over a child for a violation of a condition of nonsecure detention care during the tolling period. If the court finds that a child has violated his or her nonsecure detention care, the number of days that the child served in any type of detention before commission of the violation is excluded from the above time limits.

Section 7 amends s. 985.35, F.S., relating to adjudicatory hearings, to require a prolific juvenile offender’s adjudicatory hearing be held within 45 days after the child is taken into custody, unless a delay is requested by the child.

Post-Disposition Detention

Section 6 amends s. 985.27, F.S., to require that all children who are adjudicated and awaiting placement in a nonsecure, high-risk, or maximum-risk residential commitment program be held in secure detention until placement or commitment.

Fees for Certified Birth Certificates

The Department of Health charges fees for a certified copy of a birth certificate. Currently, the department waives these fees for an inmate for is acquiring a state identification card before release.²⁵ **Section 1** amends s. 382.0255, F.S., to waive these fees for a juvenile offender who is in the custody of the DJJ and is receiving services under 985.461, F.S., (transition to adulthood services).

²⁵ Section 382.0255(3), F.S.

Other

Sections 5 and 8 amend ss. 985.265 and 985.514, F.S., respectively, to remove the reference of “secure” and “nonsecure” detention. The bill makes this change to consistently use “detention” care throughout ch. 985, F.S.

Sections 9-15 amend ss. 790.22, 985.115, 985.13, 985.245, 985.255, 985.275, and 985.319, F.S., respectively, to reenact provisions to incorporate changes made by the bill.

Section 16 of the bill provides an appropriation for Fiscal Year 2017-2018 of \$2,978,012 in recurring funds and \$2,978,012 in nonrecurring funds from the General Revenue Fund to the DJJ.

Section 17 of the bill provides the bill is effective October 1, 2017.

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

Subsection (a) of section 18, Art. VII of the Florida Constitution provides in pertinent part that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds . . . unless the legislature has determined that such law fulfills an important state interest and unless: . . . the expenditure is required to comply with a law that applies to all persons similarly situated.” Because this bill requires counties to pay more for juvenile detention costs than what was previously required, the mandate’s provision of section 18(a), Art. VII of the Florida Constitution, appears to apply. However, the bill requires both the counties and the state to pay their respective share of the additional detention costs. Thus, the bill applies to all persons similarly situated, including the state and local governments. The bill does not include a legislative finding that the bill fulfills an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill provides that children who meet the criteria for the designation of prolific juvenile offender be held in detention until disposition. Based on Fiscal Year 2015-2016, the DJJ determined 371 youth would meet the definition of prolific juvenile offender. Based on this, the DJJ assumes it would serve 371 youth once and 185.5 (half) of these youth a second time, totaling 557 cases annually. The current average time to disposition for these youth is 71 days. The bill provides that the adjudicatory hearing of a prolific juvenile offender must be held within 45 days.

The DJJ estimates the total cost impact of this bill to be \$5,956,025. (\$2,978,013 would be recurring General Revenue (GR) and \$2,978,012 nonrecurring GR for Fiscal Year 2017-2018). Following Fiscal Year 2017-2018, the nonrecurring would be replaced by Shared County Detention Trust Funds based on a 50/50 split of costs as required by statute. In accordance with s. 985.6865, F.S., the DJJ bills counties for shared detention costs based on “total shared detention costs for the prior fiscal year.” As such, changes that affect detention costs in Fiscal Year 2017-2018 would not be billed to counties until Fiscal Year 2018-2019. For that reason, the DJJ would need nonrecurring GR to cover the county’s portion for year one costs.²⁶

The cost to the Department of Health to waive the fees for certified copies of juveniles birth certificates is unknown at this time.

VI. Technical Deficiencies:

To address the constitutional mandates requirements, a finding that the bill fulfills an important state interest should be included in the bill.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 382.0255, 985.25, 985.255, 985.26, 985.265, 985.27, 985.35, and 985.514.

This bill reenacts the following sections of the Florida Statutes: 790.22, 985.115, 985.13, 985.245, 985.255, 985.275, and 985.319.

²⁶ Email from Fred Schukecht, Chief of Staff, Department of Juvenile Justice, to Tim Sadberry, Staff Director, Senate Appropriations Subcommittee on Criminal and Civil Justice, (April 10, 2017) (on file with Senate Appropriations Subcommittee on Criminal and Civil Justice).

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 13, 2017:

The committee substitute:

- Waives the fees the Department of Health charges for certified birth certificates for juvenile offenders in the custody of the DJJ.
- Allows a prolific juvenile offender to be placed on nonsecure detention with electronic monitoring or held in secure detention until the disposition of his or her case.
- Provides that an adjudicatory hearing must be held within 45 days after the child is taken into custody instead of after the petition is filed alleging that the child has committed a delinquent act.
- Removes the proposed changes to ss. 985.24 and 985.245, F.S.
- Provides an appropriation.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/14/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (3) of section 382.0255, Florida
Statutes, is amended to read:

382.0255 Fees.—

(3) Fees shall be established by rule. However, until rules
are adopted, the fees assessed pursuant to this section shall be
the minimum fees cited. The fees established by rule must be



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11 sufficient to meet the cost of providing the service. All fees
12 shall be paid by the person requesting the record, are due and
13 payable at the time services are requested, and are
14 nonrefundable, except that, when a search is conducted and no
15 vital record is found, any fees paid for additional certified
16 copies shall be refunded. The department may waive all or part
17 of the fees required under this section for any government
18 entity. The department shall waive all fees required under this
19 section for a certified copy of a birth certificate issued for
20 purposes of an inmate acquiring a state identification card
21 before release pursuant to s. 944.605(7) and for a juvenile
22 offender who is in the custody or under the supervision of the
23 Department of Juvenile Justice and receiving services under s.
24 985.461.

25 Section 2. Subsection (1) of section 985.25, Florida
26 Statutes, is amended to read:

27 985.25 Detention intake.—

28 (1) The department shall receive custody of a child who has
29 been taken into custody from the law enforcement agency or court
30 and shall review the facts in the law enforcement report or
31 probable cause affidavit and make such further inquiry as may be
32 necessary to determine whether detention care is appropriate.

33 (a) During the period of time from the taking of the child
34 into custody to the date of the detention hearing, the initial
35 decision as to the child's placement into ~~secure or nonsecure~~
36 detention care shall be made by the department under ss. 985.24
37 and 985.245(1).

38 (b) The department shall base the decision whether to place
39 the child into ~~secure or nonsecure~~ detention care on an



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40 assessment of risk in accordance with the risk assessment
41 instrument and procedures developed by the department under s.
42 985.245, except that. However, a child shall be placed in secure
43 detention care until the child's detention hearing if the child
44 meets the criteria specified in s. 985.255(1)(j), is charged
45 with possessing or discharging a firearm on school property in
46 violation of s. 790.115, or shall be placed in secure detention
47 care. A child who has been taken into custody on three or more
48 separate occasions within a 60-day period shall be placed in
49 secure detention care until the child's detention hearing.

50 (c) If the final score on the child's risk assessment
51 instrument indicates detention care is appropriate, but the
52 department otherwise determines the child should be released,
53 the department shall contact the state attorney, who may
54 authorize release.

55 (d) If the final score on the risk assessment instrument
56 indicates detention is not appropriate, the child may be
57 released by the department in accordance with ss. 985.115 and
58 985.13.

59
60 Under no circumstances shall the department or the state
61 attorney or law enforcement officer authorize the detention of
62 any child in a jail or other facility intended or used for the
63 detention of adults, without an order of the court.

64 Section 3. Subsections (1) and (3) of section 985.255,
65 Florida Statutes, are amended to read:

66 985.255 Detention criteria; detention hearing.—

67 (1) Subject to s. 985.25(1), a child taken into custody and
68 placed into ~~secure or nonsecure~~ detention care shall be given a



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69 hearing within 24 hours after being taken into custody. At the
70 hearing, the court may order continued detention if:

71 (a) The child is alleged to be an escapee from a
72 residential commitment program; or an absconder from a
73 nonresidential commitment program, a probation program, or
74 conditional release supervision; or is alleged to have escaped
75 while being lawfully transported to or from a residential
76 commitment program.

77 (b) The child is wanted in another jurisdiction for an
78 offense which, if committed by an adult, would be a felony.

79 (c) The child is charged with a delinquent act or violation
80 of law and requests in writing through legal counsel to be
81 detained for protection from an imminent physical threat to his
82 or her personal safety.

83 (d) The child is charged with committing an offense of
84 domestic violence as defined in s. 741.28 and is detained as
85 provided in subsection (2).

86 (e) The child is charged with possession of or discharging
87 a firearm on school property in violation of s. 790.115 or the
88 illegal possession of a firearm.

89 (f) The child is charged with a capital felony, a life
90 felony, a felony of the first degree, a felony of the second
91 degree that does not involve a violation of chapter 893, or a
92 felony of the third degree that is also a crime of violence,
93 including any such offense involving the use or possession of a
94 firearm.

95 (g) The child is charged with any second degree or third
96 degree felony involving a violation of chapter 893 or any third
97 degree felony that is not also a crime of violence, and the



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98 child:

99 1. Has a record of failure to appear at court hearings
100 after being properly notified in accordance with the Rules of
101 Juvenile Procedure;

102 2. Has a record of law violations prior to court hearings;

103 3. Has already been detained or has been released and is
104 awaiting final disposition of the case;

105 4. Has a record of violent conduct resulting in physical
106 injury to others; or

107 5. Is found to have been in possession of a firearm.

108 (h) The child is alleged to have violated the conditions of
109 the child's probation or conditional release supervision.

110 However, a child detained under this paragraph may be held only
111 in a consequence unit as provided in s. 985.439. If a
112 consequence unit is not available, the child shall be placed on
113 nonsecure detention with electronic monitoring.

114 (i) The child is detained on a judicial order for failure
115 to appear and has previously willfully failed to appear, after
116 proper notice:

117 1. For an adjudicatory hearing on the same case regardless
118 of the results of the risk assessment instrument; or

119 2. At two or more court hearings of any nature on the same
120 case regardless of the results of the risk assessment
121 instrument.

122

123 A child may be held in secure detention for up to 72 hours in
124 advance of the next scheduled court hearing pursuant to this
125 paragraph. The child's failure to keep the clerk of court and
126 defense counsel informed of a current and valid mailing address



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127 where the child will receive notice to appear at court
128 proceedings does not provide an adequate ground for excusal of
129 the child's nonappearance at the hearings.

130 (j) The child is a prolific juvenile offender. A child is a
131 prolific juvenile offender if the child:

132 1. Is charged with a delinquent act that would be a felony
133 if committed by an adult;

134 2. Has been adjudicated or had adjudication withheld for a
135 felony offense, or a delinquent act that would be a felony if
136 committed by an adult, before the charge under subparagraph 1.;
137 and

138 3. In addition to meeting the requirements of subparagraphs
139 1. and 2., has five or more of any of the following, at least
140 three of which must have been for felony offenses or delinquent
141 acts that would have been felonies if committed by an adult:

142 a. An arrest event for which a disposition, as defined in
143 s. 985.26, has not been entered;

144 b. An adjudication; or

145 c. An adjudication withheld.

146
147 As used in this subparagraph, the term "arrest event" means an
148 arrest or referral for one or more criminal offenses or
149 delinquent acts arising out of the same episode, act, or
150 transaction.

151 (3) (a) The purpose of the detention hearing required under
152 subsection (1) is to determine the existence of probable cause
153 that the child has committed the delinquent act or violation of
154 law that he or she is charged with and the need for continued
155 detention. Unless a child is detained under paragraph (1) (d) or



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156 paragraph (1)(e), the court shall use the results of the risk
157 assessment performed by the department and, based on the
158 criteria in subsection (1), shall determine the need for
159 continued detention. If a child is a prolific juvenile offender
160 who is detained under s. 985.26(2)(c), the court shall use the
161 results of the risk assessment performed by the department and
162 the criteria in subsection (1) or subsection (2) only to
163 determine whether the prolific juvenile offender should be held
164 in secure detention.

165 (b) If the court orders a placement more restrictive than
166 indicated by the results of the risk assessment instrument, the
167 court shall state, in writing, clear and convincing reasons for
168 such placement.

169 (c) Except as provided in s. 790.22(8) or ~~in~~ s. 985.27,
170 when a child is placed into ~~secure or nonsecure~~ detention care,
171 or into a respite home or other placement pursuant to a court
172 order following a hearing, the court order must include specific
173 instructions that direct the release of the child from such
174 placement no later than 5 p.m. on the last day of the detention
175 period specified in s. 985.26 or s. 985.27, whichever is
176 applicable, unless the requirements of such applicable provision
177 have been met or an order of continuance has been granted under
178 s. 985.26(4). If the court order does not include a release
179 date, the release date shall be requested from the court on the
180 same date that the child is placed in detention care. If a
181 subsequent hearing is needed to provide additional information
182 to the court for safety planning, the initial order placing the
183 child in detention care shall reflect the next detention review
184 hearing, which shall be held within 3 calendar days after the



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185 child's initial detention placement.

186 Section 4. Subsections (1) through (4) of section 985.26,
187 Florida Statutes, are amended to read:

188 985.26 Length of detention.—

189 (1) A child may not be placed into or held in ~~secure or~~
190 ~~nonsecure~~ detention care for longer than 24 hours unless the
191 court orders such detention care, and the order includes
192 specific instructions that direct the release of the child from
193 such detention care, in accordance with s. 985.255. The order
194 shall be a final order, reviewable by appeal under s. 985.534
195 and the Florida Rules of Appellate Procedure. Appeals of such
196 orders shall take precedence over other appeals and other
197 pending matters.

198 (2) (a) Except as provided in paragraph (b) or paragraph
199 (c), a child may not be held in ~~secure or nonsecure~~ detention
200 care under a special detention order for more than 21 days
201 unless an adjudicatory hearing for the case has been commenced
202 in good faith by the court.

203 (b) However, Upon good cause being shown that the nature of
204 the charge requires additional time for the prosecution or
205 defense of the case, the court may extend the length of
206 detention for an additional 9 days if the child is charged with
207 an offense that would be, if committed by an adult, a capital
208 felony, a life felony, a felony of the first degree, or a felony
209 of the second degree involving violence against any individual.

210 (c) A prolific juvenile offender under s. 985.255(1)(j)
211 shall be placed on nonsecure detention care with electronic
212 monitoring or in secure detention care under a special detention
213 order until disposition. If secure detention care is ordered by



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214 the court, it must be authorized under this part and may not
215 exceed:

216 1. Twenty-one days unless an adjudicatory hearing for the
217 case has been commenced in good faith by the court or the period
218 is extended by the court pursuant to paragraph (b); or

219 2. Fifteen days after the entry of an order of
220 adjudication.

221
222 As used in this paragraph, the term "disposition" means a
223 declination to file under s. 985.15(1)(h), the entry of nolle
224 prosequi for the charges, the filing of an indictment under s.
225 985.56 or an information under s. 985.557, a dismissal of the
226 case, or an order of final disposition by the court.

227 (3) Except as provided in subsection (2), a child may not
228 be held in ~~secure or nonsecure~~ detention care for more than 15
229 days following the entry of an order of adjudication.

230 (4) (a) The time limits in subsections (2) and (3) do not
231 include periods of delay resulting from a continuance granted by
232 the court for cause on motion of the child or his or her counsel
233 or of the state. Upon the issuance of an order granting a
234 continuance for cause on a motion by either the child, the
235 child's counsel, or the state, the court shall conduct a hearing
236 at the end of each 72-hour period, excluding Saturdays, Sundays,
237 and legal holidays, to determine the need for continued
238 detention of the child and the need for further continuance of
239 proceedings for the child or the state.

240 (b) The period for nonsecure detention care under this
241 section is tolled on the date that the department or a law
242 enforcement officer alleges that the child has violated a



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243 condition of the child's nonsecure detention care until the
244 court enters a ruling on the violation. Notwithstanding the
245 tolling of nonsecure detention care, the court retains
246 jurisdiction over the child for a violation of a condition of
247 nonsecure detention care during the tolling period. If the court
248 finds that a child has violated his or her nonsecure detention
249 care, the number of days that the child served in any type of
250 detention care before commission of the violation shall be
251 excluded from the time limits under subsections (2) and (3).

252 Section 5. Subsection (2) of section 985.265, Florida
253 Statutes, is amended to read:

254 985.265 Detention transfer and release; education; adult
255 jails.-

256 (2) If a child is on release status and not detained under
257 this part, the child may be placed into ~~secure or nonsecure~~
258 detention care only pursuant to a court hearing in which the
259 original risk assessment instrument and the newly discovered
260 evidence or changed circumstances are introduced into evidence
261 with a rescored risk assessment instrument.

262 Section 6. Section 985.27, Florida Statutes, is amended to
263 read:

264 985.27 Postdisposition detention while awaiting residential
265 commitment placement.-

266 ~~(1)~~ The court must place all children who are adjudicated
267 and awaiting placement in a nonsecure, high-risk, or maximum-
268 risk residential commitment program in secure detention care
269 until the placement or commitment is accomplished. ~~Children who~~
270 ~~are in nonsecure detention care may be placed on electronic~~
271 ~~monitoring~~.-



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272 ~~(a) A child who is awaiting placement in a nonsecure~~
273 ~~residential program must be removed from detention within 5~~
274 ~~days, excluding Saturdays, Sundays, and legal holidays. Any~~
275 ~~child held in secure detention during the 5 days must meet~~
276 ~~detention admission criteria under this part. The department may~~
277 ~~seek an order from the court authorizing continued detention for~~
278 ~~a specific period of time necessary for the appropriate~~
279 ~~residential placement of the child. However, such continued~~
280 ~~detention in secure detention care may not exceed 15 days after~~
281 ~~entry of the commitment order, excluding Saturdays, Sundays, and~~
282 ~~legal holidays, and except as otherwise provided in this~~
283 ~~section. A child who is placed in nonsecure detention care or~~
284 ~~nonsecure detention care with electronic monitoring, while~~
285 ~~awaiting placement in a nonsecure residential program, may be~~
286 ~~held in secure detention care for 5 days, if the child violates~~
287 ~~the conditions of the nonsecure detention care or the electronic~~
288 ~~monitoring agreement. For any subsequent violation, the court~~
289 ~~may impose an additional 5 days in secure detention care.~~

290 ~~(b) If the child is committed to a high-risk residential~~
291 ~~program, the child must be held in secure detention care until~~
292 ~~placement or commitment is accomplished.~~

293 ~~(c) If the child is committed to a maximum-risk residential~~
294 ~~program, the child must be held in secure detention care until~~
295 ~~placement or commitment is accomplished.~~

296 ~~(2) Regardless of detention status, a child being~~
297 ~~transported by the department to a residential commitment~~
298 ~~facility of the department may be placed in secure detention~~
299 ~~overnight, not to exceed a 24-hour period, for the specific~~
300 ~~purpose of ensuring the safe delivery of the child to his or her~~



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301 ~~residential commitment program, court, appointment, transfer, or~~
302 ~~release.~~

303 Section 7. Subsection (1) of section 985.35, Florida
304 Statutes, is amended to read:

305 985.35 Adjudicatory hearings; withheld adjudications;
306 orders of adjudication.—

307 (1) (a) Except as provided in paragraph (b), the
308 adjudicatory hearing must be held as soon as practicable after
309 the petition alleging that a child has committed a delinquent
310 act or violation of law is filed and in accordance with the
311 Florida Rules of Juvenile Procedure; but reasonable delay for
312 the purpose of investigation, discovery, or procuring counsel or
313 witnesses shall be granted. If the child is being detained, the
314 time limitations in s. 985.26(2) and (3) apply.

315 (b) If the child is a prolific juvenile offender under s.
316 985.255(1) (j), the adjudicatory hearing must be held within 45
317 days after the child is taken into custody unless a delay is
318 requested by the child.

319 Section 8. Subsection (1) of section 985.514, Florida
320 Statutes, is amended to read:

321 985.514 Responsibility for cost of care; fees.—

322 (1) When any child is placed into ~~secure or nonsecure~~
323 detention care or into other placement for the purpose of being
324 supervised by the department pursuant to a court order following
325 a detention hearing, the court shall order the child's parents
326 to pay fees to the department as provided in s. 985.039.

327 Section 9. For the purpose of incorporating the amendments
328 made by this act to sections 985.25, 985.255, and 985.26,
329 Florida Statutes, in references thereto, subsection (8) of



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330 section 790.22, Florida Statutes, is reenacted to read:
331 790.22 Use of BB guns, air or gas-operated guns, or
332 electric weapons or devices by minor under 16; limitation;
333 possession of firearms by minor under 18 prohibited; penalties.-
334 (8) Notwithstanding s. 985.24 or s. 985.25(1), if a minor
335 is charged with an offense that involves the use or possession
336 of a firearm, including a violation of subsection (3), or is
337 charged for any offense during the commission of which the minor
338 possessed a firearm, the minor shall be detained in secure
339 detention, unless the state attorney authorizes the release of
340 the minor, and shall be given a hearing within 24 hours after
341 being taken into custody. At the hearing, the court may order
342 that the minor continue to be held in secure detention in
343 accordance with the applicable time periods specified in s.
344 985.26(1)-(5), if the court finds that the minor meets the
345 criteria specified in s. 985.255, or if the court finds by clear
346 and convincing evidence that the minor is a clear and present
347 danger to himself or herself or the community. The Department of
348 Juvenile Justice shall prepare a form for all minors charged
349 under this subsection which states the period of detention and
350 the relevant demographic information, including, but not limited
351 to, the gender, age, and race of the minor; whether or not the
352 minor was represented by private counsel or a public defender;
353 the current offense; and the minor's complete prior record,
354 including any pending cases. The form shall be provided to the
355 judge for determining whether the minor should be continued in
356 secure detention under this subsection. An order placing a minor
357 in secure detention because the minor is a clear and present
358 danger to himself or herself or the community must be in



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359 writing, must specify the need for detention and the benefits
360 derived by the minor or the community by placing the minor in
361 secure detention, and must include a copy of the form provided
362 by the department.

363 Section 10. For the purpose of incorporating the amendments
364 made by this act to sections 985.255 and 985.26, Florida
365 Statutes, in references thereto, subsection (2) of section
366 985.115, Florida Statutes, is reenacted to read:

367 985.115 Release or delivery from custody.—

368 (2) Unless otherwise ordered by the court under s. 985.255
369 or s. 985.26, and unless there is a need to hold the child, a
370 person taking a child into custody shall attempt to release the
371 child as follows:

372 (a) To the child's parent, guardian, or legal custodian or,
373 if the child's parent, guardian, or legal custodian is
374 unavailable, unwilling, or unable to provide supervision for the
375 child, to any responsible adult. Prior to releasing the child to
376 a responsible adult, other than the parent, guardian, or legal
377 custodian, the person taking the child into custody may conduct
378 a criminal history background check of the person to whom the
379 child is to be released. If the person has a prior felony
380 conviction, or a conviction for child abuse, drug trafficking,
381 or prostitution, that person is not a responsible adult for the
382 purposes of this section. The person to whom the child is
383 released shall agree to inform the department or the person
384 releasing the child of the child's subsequent change of address
385 and to produce the child in court at such time as the court may
386 direct, and the child shall join in the agreement.

387 (b) Contingent upon specific appropriation, to a shelter



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388 approved by the department or to an authorized agent.

389 (c) If the child is believed to be suffering from a serious
390 physical condition which requires either prompt diagnosis or
391 prompt treatment, to a law enforcement officer who shall deliver
392 the child to a hospital for necessary evaluation and treatment.

393 (d) If the child is believed to be mentally ill as defined
394 in s. 394.463(1), to a law enforcement officer who shall take
395 the child to a designated public receiving facility as defined
396 in s. 394.455 for examination under s. 394.463.

397 (e) If the child appears to be intoxicated and has
398 threatened, attempted, or inflicted physical harm on himself or
399 herself or another, or is incapacitated by substance abuse, to a
400 law enforcement officer who shall deliver the child to a
401 hospital, addictions receiving facility, or treatment resource.

402 (f) If available, to a juvenile assessment center equipped
403 and staffed to assume custody of the child for the purpose of
404 assessing the needs of the child in custody. The center may then
405 release or deliver the child under this section with a copy of
406 the assessment.

407 Section 11. For the purpose of incorporating the amendments
408 made by this act to sections 985.255 and 985.26, Florida
409 Statutes, in references thereto, subsection (2) of section
410 985.13, Florida Statutes, is reenacted to read:

411 985.13 Probable cause affidavits.—

412 (2) A person taking a child into custody who determines,
413 under part V, that the child should be detained or released to a
414 shelter designated by the department, shall make a reasonable
415 effort to immediately notify the parent, guardian, or legal
416 custodian of the child and shall, without unreasonable delay,



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417 deliver the child to the appropriate juvenile probation officer
418 or, if the court has so ordered under s. 985.255 or s. 985.26,
419 to a detention center or facility. Upon delivery of the child,
420 the person taking the child into custody shall make a written
421 report or probable cause affidavit to the appropriate juvenile
422 probation officer. Such written report or probable cause
423 affidavit must:

424 (a) Identify the child and, if known, the parents,
425 guardian, or legal custodian.

426 (b) Establish that the child was legally taken into
427 custody, with sufficient information to establish the
428 jurisdiction of the court and to make a prima facie showing that
429 the child has committed a violation of law.

430 Section 12. For the purpose of incorporating the amendment
431 made by this act to section 985.255, Florida Statutes, in a
432 reference thereto, paragraph (b) of subsection (2) of section
433 985.245, Florida Statutes, is reenacted to read:

434 985.245 Risk assessment instrument.—

435 (2)

436 (b) The risk assessment instrument shall take into
437 consideration, but need not be limited to, prior history of
438 failure to appear, prior offenses, offenses committed pending
439 adjudication, any unlawful possession of a firearm, theft of a
440 motor vehicle or possession of a stolen motor vehicle, and
441 probation status at the time the child is taken into custody.
442 The risk assessment instrument shall also take into
443 consideration appropriate aggravating and mitigating
444 circumstances, and shall be designed to target a narrower
445 population of children than s. 985.255. The risk assessment



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446 instrument shall also include any information concerning the
447 child's history of abuse and neglect. The risk assessment shall
448 indicate whether detention care is warranted, and, if detention
449 care is warranted, whether the child should be placed into
450 secure or nonsecure detention care.

451 Section 13. For the purpose of incorporating the amendment
452 made by this act to section 985.26, Florida Statutes, in a
453 reference thereto, subsection (2) of section 985.255, Florida
454 Statutes, is reenacted to read:

455 985.255 Detention criteria; detention hearing.—

456 (2) A child who is charged with committing an offense that
457 is classified as an act of domestic violence as defined in s.
458 741.28 and whose risk assessment instrument indicates secure
459 detention is not appropriate may be held in secure detention if
460 the court makes specific written findings that:

461 (a) Respite care for the child is not available.

462 (b) It is necessary to place the child in secure detention
463 in order to protect the victim from injury.

464
465 The child may not be held in secure detention under this
466 subsection for more than 48 hours unless ordered by the court.
467 After 48 hours, the court shall hold a hearing if the state
468 attorney or victim requests that secure detention be continued.
469 The child may continue to be held in detention care if the court
470 makes a specific, written finding that detention care is
471 necessary to protect the victim from injury. However, the child
472 may not be held in detention care beyond the time limits set
473 forth in this section or s. 985.26.

474 Section 14. For the purpose of incorporating the amendment



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475 made by this act to section 985.255, Florida Statutes, in a
476 reference thereto, subsection (1) of section 985.275, Florida
477 Statutes, is reenacted to read:

478 985.275 Detention of escapee or absconder on authority of
479 the department.—

480 (1) If an authorized agent of the department has reasonable
481 grounds to believe that any delinquent child committed to the
482 department has escaped from a residential commitment facility or
483 from being lawfully transported thereto or therefrom, or has
484 absconded from a nonresidential commitment facility, the agent
485 shall notify law enforcement and, if the offense would require
486 notification under chapter 960, notify the victim. The agent
487 shall make every reasonable effort as permitted within existing
488 resources provided to the department to locate the delinquent
489 child, and the child may be returned to the facility or, if it
490 is closer, to a detention center for return to the facility.
491 However, a child may not be held in detention longer than 24
492 hours, excluding Saturdays, Sundays, and legal holidays, unless
493 a special order so directing is made by the judge after a
494 detention hearing resulting in a finding that detention is
495 required based on the criteria in s. 985.255. The order shall
496 state the reasons for such finding. The reasons shall be
497 reviewable by appeal or in habeas corpus proceedings in the
498 district court of appeal.

499 Section 15. For the purpose of incorporating the amendment
500 made by this act to section 985.255, Florida Statutes, in a
501 reference thereto, subsection (6) of section 985.319, Florida
502 Statutes, is reenacted to read:

503 985.319 Process and service.—



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504 (6) If the petition alleges that the child has committed a
505 delinquent act or violation of law and the judge deems it
506 advisable to do so, under the criteria of s. 985.255, the judge
507 may, by endorsement upon the summons and after the entry of an
508 order in which valid reasons are specified, order the child to
509 be taken into custody immediately, and in such case the person
510 serving the summons shall immediately take the child into
511 custody.

512 Section 16. For the 2017-2018 fiscal year, the sums of
513 \$2,978,012 in recurring funds and \$2,978,012 in nonrecurring
514 funds from the General Revenue Fund are appropriated to the
515 Department of Juvenile Justice for the purpose of implementing
516 this act.

517 Section 17. This act shall take effect October 1, 2017.

518
519 ===== T I T L E A M E N D M E N T =====

520 And the title is amended as follows:

521 Delete everything before the enacting clause
522 and insert:

523 A bill to be entitled
524 An act relating to juvenile justice; amending s.
525 382.0255, F.S.; requiring the Department of Health to
526 waive fees for a birth certificate issued to certain
527 juvenile offenders; amending s. 985.25, F.S.; revising
528 terminology; requiring that a child who meets
529 specified criteria be placed in secure detention care
530 until the child's detention hearing; amending s.
531 985.255, F.S.; revising terminology; providing an
532 additional circumstance under which the court may



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533 order continued detention; providing criteria for a
534 child to be a prolific juvenile offender; defining the
535 term "arrest event"; specifying certain information
536 and criteria that may be considered by a court only
537 when determining whether a prolific juvenile offender
538 should be held in secure detention; conforming
539 provisions to changes made by the act; amending s.
540 985.26, F.S.; revising terminology; requiring the
541 court to place a prolific juvenile offender in certain
542 detention care under a special detention order until
543 disposition; specifying time limitations for secure
544 detention for a prolific juvenile offender; defining
545 the term "disposition"; providing for the tolling of
546 nonsecure detention care for an alleged violation of
547 such detention care; providing for the retention of
548 jurisdiction by the court over a child during the
549 tolling period; revising the calculation of detention
550 care days served if a child violates nonsecure
551 detention care; amending s. 985.265, F.S.; revising
552 terminology; amending s. 985.27, F.S.; requiring
553 secure detention for all children awaiting placement
554 in a residential commitment program until the
555 placement or commitment is accomplished; deleting
556 provisions specifying the maximum number of days a
557 child may be placed in secure detention under certain
558 circumstances; amending s. 985.35, F.S.; requiring the
559 adjudicatory hearing for a child who is a prolific
560 juvenile offender to be held within a specified period
561 unless such child requests a delay; amending s.



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562 985.514, F.S.; revising terminology; reenacting s.
563 790.22(8), F.S., relating to secure detention for
564 minors charged with an offense involving BB guns, air
565 or gas-operated guns, or electric weapons or devices,
566 to incorporate the amendments made by the act to ss.
567 985.25, 985.255, and 985.26, F.S., in references
568 thereto; reenacting s. 985.115(2), F.S., relating to
569 release or delivery from custody, to incorporate the
570 amendments made by the act to ss. 985.255 and 985.26,
571 F.S., in references thereto; reenacting s. 985.13(2),
572 F.S., relating to probable cause affidavits, to
573 incorporate the amendments made by the act to ss.
574 985.255 and 985.26, F.S., in references thereto;
575 reenacting s. 985.245(2)(b), F.S., relating to risk
576 assessment instruments, to incorporate the amendment
577 made by this act to s. 985.255, F.S., in a reference
578 thereto; reenacting s. 985.255(2), F.S., relating to
579 detention criteria and hearings, to incorporate the
580 amendment made by this act to s. 985.26, F.S., in a
581 reference thereto; reenacting s. 985.275(1), F.S.,
582 relating to detention of an escapee or absconder, to
583 incorporate the amendment made by this act to s.
584 985.255, F.S., in a reference thereto; reenacting s.
585 985.319(6), F.S., relating to process and service, to
586 incorporate the amendment made by this act to s.
587 985.255, F.S., in a reference thereto; providing an
588 appropriation; providing an effective date.

By Senator Latvala

16-00721B-17

20171670__

1 A bill to be entitled
 2 An act relating to juvenile justice; amending s.
 3 985.24, F.S.; revising requirements for placement of a
 4 child in detention care; revising terminology;
 5 amending s. 985.245, F.S.; providing that a child who
 6 is designated a prolific juvenile offender does not
 7 require a risk assessment to be placed in detention
 8 care; amending s. 985.25, F.S.; revising terminology;
 9 providing that a child meeting specified criteria
 10 shall be placed in secure detention care until the
 11 child's detention hearing; amending s. 985.255, F.S.;
 12 revising terminology; providing criteria for a child
 13 to be designated a prolific juvenile offender;
 14 defining the term "arrest event"; conforming
 15 provisions to changes made by the act; amending s.
 16 985.26, F.S.; revising terminology; requiring the
 17 court to place a prolific juvenile offender in secure
 18 detention care under a special detention order until
 19 disposition; defining the term "disposition"; revising
 20 terminology; providing for the tolling of the period
 21 of detention care for an alleged violation of
 22 detention care conditions; providing for the retention
 23 of jurisdiction by the court over a child during the
 24 tolling period; revising the calculation of detention
 25 days served if a child violates detention care;
 26 amending s. 985.265, F.S.; revising terminology;
 27 amending s. 985.27, F.S.; requiring secure detention
 28 for all children awaiting placement in a commitment
 29 program until the placement or commitment is

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

16-00721B-17

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30 accomplished; deleting provisions relating to the
 31 detention of children; amending s. 985.35, F.S.;
 32 requiring the adjudicatory hearing for a child
 33 designated a prolific juvenile offender to be held
 34 within a specified period unless such child requests a
 35 delay; amending s. 985.514, F.S.; revising
 36 terminology; reenacting s. 790.22(8), F.S., relating
 37 to secure detention for minors charged with an offense
 38 involving firearms, to incorporate the amendments made
 39 by the act to ss. 985.24, 985.25, 985.255, and 985.26,
 40 F.S., in references thereto; reenacting s. 985.115(2),
 41 F.S., relating to release or delivery from custody, to
 42 incorporate the amendments made by the act to ss.
 43 985.255 and 985.26, F.S., in references thereto;
 44 reenacting s. 985.13(2), F.S., relating to probable
 45 cause affidavits, to incorporate the amendments made
 46 by the act to ss. 985.255 and 985.26, F.S., in
 47 references thereto; reenacting s. 985.245(2)(b), F.S.,
 48 relating to risk assessment instruments, to
 49 incorporate the amendment made by this act to s.
 50 985.255, F.S., in a reference thereto; reenacting s.
 51 985.255(2), F.S., relating to detention criteria and
 52 hearings, to incorporate the amendment made by this
 53 act to s. 985.26, F.S., in a reference thereto;
 54 reenacting s. 985.275(1), F.S., relating to detention
 55 of an escapee or absconder, to incorporate the
 56 amendment made by this act to s. 985.255, F.S., in a
 57 reference thereto; reenacting s. 985.319(6), F.S.,
 58 relating to process and service, to incorporate the

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59 amendment made by this act to s. 985.255, F.S., in a
60 reference thereto; providing an effective date.

61
62 Be It Enacted by the Legislature of the State of Florida:

63
64 Section 1. Paragraphs (d) and (e) of subsection (1) and
65 subsection (2) of section 985.24, Florida Statutes, are amended,
66 and paragraph (f) is added to subsection (1) of that section, to
67 read:

68 985.24 Use of detention; prohibitions.—

69 (1) All determinations and court orders regarding the use
70 of detention care shall be based primarily upon findings that
71 the child:

72 (d) Has committed contempt of court by:

73 1. Intentionally disrupting the administration of the
74 court;

75 2. Intentionally disobeying a court order; or

76 3. Engaging in a punishable act or speech in the court's
77 presence which shows disrespect for the authority and dignity of
78 the court; ~~or~~

79 (e) Requests protection from imminent bodily harm; or

80 (f) Is at risk for recidivism.

81 (2) A child alleged to have committed a delinquent act or
82 violation of law may not be placed into ~~secure or nonsecure~~
83 detention care for any of the following reasons:

84 (a) To allow a parent to avoid his or her legal
85 responsibility.

86 (b) To permit more convenient administrative access to the
87 child.

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88 (c) To facilitate further interrogation or investigation.

89 (d) Due to a lack of more appropriate facilities.

90 Section 2. Subsection (1) of section 985.245, Florida
91 Statutes, is amended to read:

92 985.245 Risk assessment instrument.—

93 (1) All determinations and court orders regarding placement
94 of a child into detention care shall comply with all
95 requirements and criteria provided in this part and shall be
96 based on a risk assessment of the child, unless the child is
97 placed into detention care under as provided in s. 985.255(2) or
98 is designated a prolific juvenile offender under s.
99 985.255(1)(j).

100 Section 3. Subsection (1) of section 985.25, Florida
101 Statutes, is amended to read:

102 985.25 Detention intake.—

103 (1) The department shall receive custody of a child who has
104 been taken into custody from the law enforcement agency or court
105 and shall review the facts in the law enforcement report or
106 probable cause affidavit and make such further inquiry as may be
107 necessary to determine whether detention care is appropriate.

108 (a) During the period of time from the taking of the child
109 into custody to the date of the detention hearing, the initial
110 decision as to the child's placement into ~~secure or nonsecure~~
111 detention care shall be made by the department under ss. 985.24
112 and 985.245(1).

113 (b) The department shall base the decision whether to place
114 the child into ~~secure or nonsecure~~ detention care on an
115 assessment of risk in accordance with the risk assessment
116 instrument and procedures developed by the department under s.

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117 985.245, except that, however, a child shall be placed in secure
 118 detention care until the child's detention hearing if the child
 119 meets the criteria specified in s. 985.255(1)(j), is charged
 120 with possessing or discharging a firearm on school property in
 121 violation of s. 790.115, ~~or shall be placed in secure detention~~
 122 ~~care. A child who~~ has been taken into custody on three or more
 123 separate occasions within a 60-day period ~~shall be placed in~~
 124 ~~secure detention care until the child's detention hearing.~~

125 (c) If the final score on the child's risk assessment
 126 instrument indicates detention care is appropriate, but the
 127 department otherwise determines the child should be released,
 128 the department shall contact the state attorney, who may
 129 authorize release.

130 (d) If the final score on the risk assessment instrument
 131 indicates detention is not appropriate, the child may be
 132 released by the department in accordance with ss. 985.115 and
 133 985.13.

134
 135 Under no circumstances shall the department or the state
 136 attorney or law enforcement officer authorize the detention of
 137 any child in a jail or other facility intended or used for the
 138 detention of adults, without an order of the court.

139 Section 4. Subsection (1) and paragraphs (a) and (c) of
 140 subsection (3) of section 985.255, Florida Statutes, are amended
 141 to read:

142 985.255 Detention criteria; detention hearing.—

143 (1) Subject to s. 985.25(1), a child taken into custody and
 144 placed into ~~secure or nonsecure~~ detention care shall be given a
 145 hearing within 24 hours after being taken into custody. At the

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146 hearing, the court may order continued detention if:

147 (a) The child is alleged to be an escapee from a
 148 residential commitment program; or an absconder from a
 149 nonresidential commitment program, a probation program, or
 150 conditional release supervision; or is alleged to have escaped
 151 while being lawfully transported to or from a residential
 152 commitment program.

153 (b) The child is wanted in another jurisdiction for an
 154 offense which, if committed by an adult, would be a felony.

155 (c) The child is charged with a delinquent act or violation
 156 of law and requests in writing through legal counsel to be
 157 detained for protection from an imminent physical threat to his
 158 or her personal safety.

159 (d) The child is charged with committing an offense of
 160 domestic violence as defined in s. 741.28 and is detained as
 161 provided in subsection (2).

162 (e) The child is charged with possession of or discharging
 163 a firearm on school property in violation of s. 790.115 or the
 164 illegal possession of a firearm.

165 (f) The child is charged with a capital felony, a life
 166 felony, a felony of the first degree, a felony of the second
 167 degree that does not involve a violation of chapter 893, or a
 168 felony of the third degree that is also a crime of violence,
 169 including any such offense involving the use or possession of a
 170 firearm.

171 (g) The child is charged with any second degree or third
 172 degree felony involving a violation of chapter 893 or any third
 173 degree felony that is not also a crime of violence, and the
 174 child:

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175 1. Has a record of failure to appear at court hearings
 176 after being properly notified in accordance with the Rules of
 177 Juvenile Procedure;

178 2. Has a record of law violations prior to court hearings;

179 3. Has already been detained or has been released and is
 180 awaiting final disposition of the case;

181 4. Has a record of violent conduct resulting in physical
 182 injury to others; or

183 5. Is found to have been in possession of a firearm.

184 (h) The child is alleged to have violated the conditions of
 185 the child's probation or conditional release supervision.
 186 However, a child detained under this paragraph may be held only
 187 in a consequence unit as provided in s. 985.439. If a
 188 consequence unit is not available, the child shall be placed on
 189 nonsecure detention with electronic monitoring.

190 (i) The child is detained on a judicial order for failure
 191 to appear and has previously willfully failed to appear, after
 192 proper notice:

193 1. For an adjudicatory hearing on the same case regardless
 194 of the results of the risk assessment instrument; or

195 2. At two or more court hearings of any nature on the same
 196 case regardless of the results of the risk assessment
 197 instrument.

198 A child may be held in secure detention for up to 72 hours in
 199 advance of the next scheduled court hearing pursuant to this
 200 paragraph. The child's failure to keep the clerk of court and
 201 defense counsel informed of a current and valid mailing address
 202 where the child will receive notice to appear at court
 203

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204 proceedings does not provide an adequate ground for excusal of
 205 the child's nonappearance at the hearings.

206 (j) The child is a prolific juvenile offender. A child must
 207 be designated by the court as a prolific juvenile offender if
 208 the child:

209 1. Is charged with a delinquent act that would be a felony
 210 if committed by an adult;

211 2. Has been adjudicated or had adjudication withheld for a
 212 felony offense or delinquent act that would be a felony if
 213 committed by an adult, before the charge under subparagraph 1.;
 214 and

215 3. Has 5 or more of any of the following, at least 3 of
 216 which must have been for felony offenses or delinquent acts that
 217 would have been felonies if committed by an adult:

218 a. An arrest event for which a disposition, as defined in
 219 s. 985.26, has not been entered;

220 b. An adjudication; or

221 c. An adjudication withheld.

222

223 This subparagraph excludes the arrest event that resulted in the
 224 charge under subparagraph 1. and the adjudication or
 225 adjudication withheld under subparagraph 2. As used in this
 226 subparagraph, the term "arrest event" means an arrest for one or
 227 more criminal offenses or delinquent acts arising out of the
 228 same episode, act, or transaction.

229 (3) (a) The purpose of the detention hearing required under
 230 subsection (1) is to determine the existence of probable cause
 231 that the child has committed the delinquent act or violation of
 232 law that he or she is charged with and the need for continued

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233 detention. Unless a child is detained under paragraph (1)(d), ~~or~~
 234 paragraph (1)(e), or paragraph (1)(j), the court shall use the
 235 results of the risk assessment performed by the department and,
 236 based on the criteria in subsection (1), shall determine the
 237 need for continued detention.

238 (c) Except as provided in s. 790.22(8), s. 985.26(2)(b), or
 239 ~~in~~ s. 985.27, when a child is placed into ~~secure or nonsecure~~
 240 detention care, or into a respite home or other placement
 241 pursuant to a court order following a hearing, the court order
 242 must include specific instructions that direct the release of
 243 the child from such placement no later than 5 p.m. on the last
 244 day of the detention period specified in s. 985.26 or s. 985.27,
 245 whichever is applicable, unless the requirements of such
 246 applicable provision have been met or an order of continuance
 247 has been granted under s. 985.26(4). If the court order does not
 248 include a release date, the release date shall be requested from
 249 the court on the same date that the child is placed in detention
 250 care. If a subsequent hearing is needed to provide additional
 251 information to the court for safety planning, the initial order
 252 placing the child in detention care shall reflect the next
 253 detention review hearing, which shall be held within 3 calendar
 254 days after the child's initial detention placement.

255 Section 5. Subsections (1) through (4) of section 985.26,
 256 Florida Statutes, are amended to read:

257 985.26 Length of detention.—

258 (1) A child may not be placed into or held in ~~secure or~~
 259 ~~nonsecure~~ detention care for longer than 24 hours unless the
 260 court orders such detention care, and the order includes
 261 specific instructions that direct the release of the child from

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262 such detention care, in accordance with s. 985.255. The order
 263 shall be a final order, reviewable by appeal under s. 985.534
 264 and the Florida Rules of Appellate Procedure. Appeals of such
 265 orders shall take precedence over other appeals and other
 266 pending matters.

267 (2) (a) Except as provided in paragraph (b), a child may not
 268 be held in ~~secure or nonsecure~~ detention care under a special
 269 detention order for more than 21 days unless an adjudicatory
 270 hearing for the case has been commenced in good faith by the
 271 court. However, upon good cause being shown that the nature of
 272 the charge requires additional time for the prosecution or
 273 defense of the case, the court may extend the length of
 274 detention for an additional 9 days if the child is charged with
 275 an offense that would be, if committed by an adult, a capital
 276 felony, a life felony, a felony of the first degree, or a felony
 277 of the second degree involving violence against any individual.

278 (b) A child who is designated a prolific juvenile offender
 279 under s. 985.255(1)(j) shall be held in secure detention care
 280 under a special detention order until disposition. As used in
 281 this paragraph, the term "disposition" means the entry of a
 282 nolle prosequi for the charges, a dismissal of the case, or the
 283 entry of a disposition order by the court.

284 (3) Except as provided in subsection (2), a child may not
 285 be held in ~~secure or nonsecure~~ detention care for more than 15
 286 days following the entry of an order of adjudication.

287 (4) (a) The time limits in subsections (2) and (3) do not
 288 include periods of delay resulting from a continuance granted by
 289 the court for cause on motion of the child or his or her counsel
 290 or of the state. Upon the issuance of an order granting a

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 291 continuance for cause on a motion by either the child, the
 292 child's counsel, or the state, the court shall conduct a hearing
 293 at the end of each 72-hour period, excluding Saturdays, Sundays,
 294 and legal holidays, to determine the need for continued
 295 detention of the child and the need for further continuance of
 296 proceedings for the child or the state.

(b) The period for detention care under this section is
 298 tolled on the date that the department alleges that the child
 299 has violated a condition of the child's detention care until the
 300 court enters a ruling on the violation. Notwithstanding the
 301 tolling of detention care, the court retains jurisdiction over
 302 the child for a violation of a condition of detention care
 303 during the tolling period. If the court finds that a child has
 304 violated his or her detention care, the number of days that the
 305 child served in detention care before commission of the
 306 violation shall be excluded from the time limits under
 307 subsections (2) and (3).

308 Section 6. Subsection (2) of section 985.265, Florida
 309 Statutes, is amended to read:

310 985.265 Detention transfer and release; education; adult
 311 jails.-

312 (2) If a child is on release status and not detained under
 313 this part, the child may be placed into ~~secure or nonsecure~~
 314 detention care only pursuant to a court hearing in which the
 315 original risk assessment instrument and the newly discovered
 316 evidence or changed circumstances are introduced into evidence
 317 with a rescored risk assessment instrument.

318 Section 7. Section 985.27, Florida Statutes, is amended to
 319 read:

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 320 985.27 Postdisposition detention while awaiting commitment
 321 placement.-

322 ~~(1) The court must place all children who are adjudicated
 323 and awaiting placement in a commitment program in secure
 324 detention care until the placement or commitment is
 325 accomplished. Children who are in nonsecure detention care may
 326 be placed on electronic monitoring.~~

327 ~~(a) A child who is awaiting placement in a nonsecure
 328 residential program must be removed from detention within 5
 329 days, excluding Saturdays, Sundays, and legal holidays. Any
 330 child held in secure detention during the 5 days must meet
 331 detention admission criteria under this part. The department may
 332 seek an order from the court authorizing continued detention for
 333 a specific period of time necessary for the appropriate
 334 residential placement of the child. However, such continued
 335 detention in secure detention care may not exceed 15 days after
 336 entry of the commitment order, excluding Saturdays, Sundays, and
 337 legal holidays, and except as otherwise provided in this
 338 section. A child who is placed in nonsecure detention care or
 339 nonsecure detention care with electronic monitoring, while
 340 awaiting placement in a nonsecure residential program, may be
 341 held in secure detention care for 5 days, if the child violates
 342 the conditions of the nonsecure detention care or the electronic
 343 monitoring agreement. For any subsequent violation, the court
 344 may impose an additional 5 days in secure detention care.~~

345 ~~(b) If the child is committed to a high-risk residential
 346 program, the child must be held in secure detention care until
 347 placement or commitment is accomplished.~~

348 ~~(c) If the child is committed to a maximum-risk residential~~

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349 ~~program, the child must be held in secure detention care until~~
 350 ~~placement or commitment is accomplished.~~

351 ~~(2) Regardless of detention status, a child being~~
 352 ~~transported by the department to a residential commitment~~
 353 ~~facility of the department may be placed in secure detention~~
 354 ~~overnight, not to exceed a 24-hour period, for the specific~~
 355 ~~purpose of ensuring the safe delivery of the child to his or her~~
 356 ~~residential commitment program, court, appointment, transfer, or~~
 357 ~~release.~~

358 Section 8. Subsection (1) of section 985.35, Florida
 359 Statutes, is amended to read:

360 985.35 Adjudicatory hearings; withheld adjudications;
 361 orders of adjudication.—

362 (1) (a) Except as provided in paragraph (b), the
 363 adjudicatory hearing must be held as soon as practicable after
 364 the petition alleging that a child has committed a delinquent
 365 act or violation of law is filed and in accordance with the
 366 Florida Rules of Juvenile Procedure; but reasonable delay for
 367 the purpose of investigation, discovery, or procuring counsel or
 368 witnesses shall be granted. If the child is being detained, the
 369 time limitations in s. 985.26(2) and (3) apply.

370 (b) If the child is designated a prolific juvenile offender
 371 under s. 985.255(1)(j), the adjudicatory hearing must be held
 372 within 45 days after the petition alleging that the child has
 373 committed a delinquent act or violation of law has been filed
 374 unless a delay is requested by the child.

375 Section 9. Subsection (1) of section 985.514, Florida
 376 Statutes, is amended to read:

377 985.514 Responsibility for cost of care; fees.—

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378 (1) When any child is placed into ~~secure or nonsecure~~
 379 detention care or into other placement for the purpose of being
 380 supervised by the department pursuant to a court order following
 381 a detention hearing, the court shall order the child's parents
 382 to pay fees to the department as provided in s. 985.039.

383 Section 10. For the purpose of incorporating the amendments
 384 made by this act to sections 985.24, 985.25, 985.255, and
 385 985.26, Florida Statutes, in references thereto, subsection (8)
 386 of section 790.22, Florida Statutes, is reenacted to read:

387 790.22 Use of BB guns, air or gas-operated guns, or
 388 electric weapons or devices by minor under 16; limitation;
 389 possession of firearms by minor under 18 prohibited; penalties.—

390 (8) Notwithstanding s. 985.24 or s. 985.25(1), if a minor
 391 is charged with an offense that involves the use or possession
 392 of a firearm, including a violation of subsection (3), or is
 393 charged for any offense during the commission of which the minor
 394 possessed a firearm, the minor shall be detained in secure
 395 detention, unless the state attorney authorizes the release of
 396 the minor, and shall be given a hearing within 24 hours after
 397 being taken into custody. At the hearing, the court may order
 398 that the minor continue to be held in secure detention in
 399 accordance with the applicable time periods specified in s.
 400 985.26(1)-(5), if the court finds that the minor meets the
 401 criteria specified in s. 985.255, or if the court finds by clear
 402 and convincing evidence that the minor is a clear and present
 403 danger to himself or herself or the community. The Department of
 404 Juvenile Justice shall prepare a form for all minors charged
 405 under this subsection which states the period of detention and
 406 the relevant demographic information, including, but not limited

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407 to, the gender, age, and race of the minor; whether or not the
 408 minor was represented by private counsel or a public defender;
 409 the current offense; and the minor's complete prior record,
 410 including any pending cases. The form shall be provided to the
 411 judge for determining whether the minor should be continued in
 412 secure detention under this subsection. An order placing a minor
 413 in secure detention because the minor is a clear and present
 414 danger to himself or herself or the community must be in
 415 writing, must specify the need for detention and the benefits
 416 derived by the minor or the community by placing the minor in
 417 secure detention, and must include a copy of the form provided
 418 by the department.

419 Section 11. For the purpose of incorporating the amendment
 420 made by this act to sections 985.255 and 985.26, Florida
 421 Statutes, in references thereto, subsection (2) of section
 422 985.115, Florida Statutes, is reenacted to read:

423 985.115 Release or delivery from custody.—

424 (2) Unless otherwise ordered by the court under s. 985.255
 425 or s. 985.26, and unless there is a need to hold the child, a
 426 person taking a child into custody shall attempt to release the
 427 child as follows:

428 (a) To the child's parent, guardian, or legal custodian or,
 429 if the child's parent, guardian, or legal custodian is
 430 unavailable, unwilling, or unable to provide supervision for the
 431 child, to any responsible adult. Prior to releasing the child to
 432 a responsible adult, other than the parent, guardian, or legal
 433 custodian, the person taking the child into custody may conduct
 434 a criminal history background check of the person to whom the
 435 child is to be released. If the person has a prior felony

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436 conviction, or a conviction for child abuse, drug trafficking,
 437 or prostitution, that person is not a responsible adult for the
 438 purposes of this section. The person to whom the child is
 439 released shall agree to inform the department or the person
 440 releasing the child of the child's subsequent change of address
 441 and to produce the child in court at such time as the court may
 442 direct, and the child shall join in the agreement.

443 (b) Contingent upon specific appropriation, to a shelter
 444 approved by the department or to an authorized agent.

445 (c) If the child is believed to be suffering from a serious
 446 physical condition which requires either prompt diagnosis or
 447 prompt treatment, to a law enforcement officer who shall deliver
 448 the child to a hospital for necessary evaluation and treatment.

449 (d) If the child is believed to be mentally ill as defined
 450 in s. 394.463(1), to a law enforcement officer who shall take
 451 the child to a designated public receiving facility as defined
 452 in s. 394.455 for examination under s. 394.463.

453 (e) If the child appears to be intoxicated and has
 454 threatened, attempted, or inflicted physical harm on himself or
 455 herself or another, or is incapacitated by substance abuse, to a
 456 law enforcement officer who shall deliver the child to a
 457 hospital, addictions receiving facility, or treatment resource.

458 (f) If available, to a juvenile assessment center equipped
 459 and staffed to assume custody of the child for the purpose of
 460 assessing the needs of the child in custody. The center may then
 461 release or deliver the child under this section with a copy of
 462 the assessment.

463 Section 12. For the purpose of incorporating the amendment
 464 made by this act to section 985.255 and 985.26, Florida

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465 Statutes, in references thereto, subsection (2) of section
 466 985.13, Florida Statutes, is reenacted to read:
 467 985.13 Probable cause affidavits.—
 468 (2) A person taking a child into custody who determines,
 469 under part V, that the child should be detained or released to a
 470 shelter designated by the department, shall make a reasonable
 471 effort to immediately notify the parent, guardian, or legal
 472 custodian of the child and shall, without unreasonable delay,
 473 deliver the child to the appropriate juvenile probation officer
 474 or, if the court has so ordered under s. 985.255 or s. 985.26,
 475 to a detention center or facility. Upon delivery of the child,
 476 the person taking the child into custody shall make a written
 477 report or probable cause affidavit to the appropriate juvenile
 478 probation officer. Such written report or probable cause
 479 affidavit must:
 480 (a) Identify the child and, if known, the parents,
 481 guardian, or legal custodian.
 482 (b) Establish that the child was legally taken into
 483 custody, with sufficient information to establish the
 484 jurisdiction of the court and to make a prima facie showing that
 485 the child has committed a violation of law.
 486 Section 13. For the purpose of incorporating the amendment
 487 made by this act to section 985.255, Florida Statutes, in a
 488 reference thereto, paragraph (b) of subsection (2) of section
 489 985.245, Florida Statutes, is reenacted to read:
 490 985.245 Risk assessment instrument.—
 491 (2)
 492 (b) The risk assessment instrument shall take into
 493 consideration, but need not be limited to, prior history of

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494 failure to appear, prior offenses, offenses committed pending
 495 adjudication, any unlawful possession of a firearm, theft of a
 496 motor vehicle or possession of a stolen motor vehicle, and
 497 probation status at the time the child is taken into custody.
 498 The risk assessment instrument shall also take into
 499 consideration appropriate aggravating and mitigating
 500 circumstances, and shall be designed to target a narrower
 501 population of children than s. 985.255. The risk assessment
 502 instrument shall also include any information concerning the
 503 child's history of abuse and neglect. The risk assessment shall
 504 indicate whether detention care is warranted, and, if detention
 505 care is warranted, whether the child should be placed into
 506 secure or nonsecure detention care.
 507 Section 14. For the purpose of incorporating the amendment
 508 made by this act to section 985.26, Florida Statutes, in a
 509 reference thereto, subsection (2) of section 985.255, Florida
 510 Statutes, is reenacted to read:
 511 985.255 Detention criteria; detention hearing.—
 512 (2) A child who is charged with committing an offense that
 513 is classified as an act of domestic violence as defined in s.
 514 741.28 and whose risk assessment instrument indicates secure
 515 detention is not appropriate may be held in secure detention if
 516 the court makes specific written findings that:
 517 (a) Respite care for the child is not available.
 518 (b) It is necessary to place the child in secure detention
 519 in order to protect the victim from injury.
 520
 521 The child may not be held in secure detention under this
 522 subsection for more than 48 hours unless ordered by the court.

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523 After 48 hours, the court shall hold a hearing if the state
 524 attorney or victim requests that secure detention be continued.
 525 The child may continue to be held in detention care if the court
 526 makes a specific, written finding that detention care is
 527 necessary to protect the victim from injury. However, the child
 528 may not be held in detention care beyond the time limits set
 529 forth in this section or s. 985.26.

530 Section 15. For the purpose of incorporating the amendment
 531 made by this act to section 985.255, Florida Statutes, in a
 532 reference thereto, subsection (1) of section 985.275, Florida
 533 Statutes, is reenacted to read:

534 985.275 Detention of escapee or absconder on authority of
 535 the department.—

536 (1) If an authorized agent of the department has reasonable
 537 grounds to believe that any delinquent child committed to the
 538 department has escaped from a residential commitment facility or
 539 from being lawfully transported thereto or therefrom, or has
 540 absconded from a nonresidential commitment facility, the agent
 541 shall notify law enforcement and, if the offense would require
 542 notification under chapter 960, notify the victim. The agent
 543 shall make every reasonable effort as permitted within existing
 544 resources provided to the department to locate the delinquent
 545 child, and the child may be returned to the facility or, if it
 546 is closer, to a detention center for return to the facility.
 547 However, a child may not be held in detention longer than 24
 548 hours, excluding Saturdays, Sundays, and legal holidays, unless
 549 a special order so directing is made by the judge after a
 550 detention hearing resulting in a finding that detention is
 551 required based on the criteria in s. 985.255. The order shall

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552 state the reasons for such finding. The reasons shall be
 553 reviewable by appeal or in habeas corpus proceedings in the
 554 district court of appeal.

555 Section 16. For the purpose of incorporating the amendment
 556 made by this act to section 985.255, Florida Statutes, in a
 557 reference thereto, subsection (6) of section 985.319, Florida
 558 Statutes, is reenacted to read:

559 985.319 Process and service.—

560 (6) If the petition alleges that the child has committed a
 561 delinquent act or violation of law and the judge deems it
 562 advisable to do so, under the criteria of s. 985.255, the judge
 563 may, by endorsement upon the summons and after the entry of an
 564 order in which valid reasons are specified, order the child to
 565 be taken into custody immediately, and in such case the person
 566 serving the summons shall immediately take the child into
 567 custody.

568 Section 17. This act shall take effect October 1, 2017.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Chair*
Commerce and Tourism
Environmental Preservation and Conservation
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission,
Alternating Chair

SENATOR JACK LATVALA
16th District

March 28, 2017

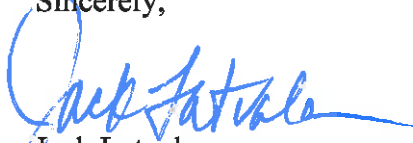
The Honorable Aaron Bean
306 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Bean,

I respectfully request you place Senate Bill 1670, relating to Juvenile Justice, on your Appropriations Subcommittee on Criminal and Civil Justice agenda at your earliest convenience.

Should you have any questions or concerns regarding this legislation, please do not hesitate to contact me personally.

Sincerely,



Jack Latvala
Senator, 16th District

cc: Tim Sadberry, Staff Director

STATE APPROPRIATIONS
RECEIVED
17 MAR 29 AM 10:25
STAFF DIR. _____ STAFF _____

REPLY TO:

- 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
- 412 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

APPEARANCE RECORD

4/13/17

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

SB 1670

Meeting Date

Bill Number (if applicable)

347468

Amendment Barcode (if applicable)

Topic Amendment 347468

Name Christina K. Daly

Job Title Secretary

Address 2737 Centerview Dr.

Phone (850) 413-7313

Street

Tallahassee, FL

32399

Email Christy.daly@djj.

City

State

Zip

State, fl.us

Speaking: For Against Information

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

Representing Department of Juvenile 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.

APPEARANCE RECORD

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

4/13/2017

Meeting Date

1670

Bill Number (if applicable)

347468

Amendment Barcode (if applicable)

Topic Juvenile Justice

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-877-2165

Street

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

City

State

Zip

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

13 Apr 17

Meeting Date

1670

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone 850.510.9922

Tall FL 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

4/13/2017

Meeting Date

1670

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-877-2165

Street

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

City

State

Zip

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

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

S-001 (10/14/14)

CourtSmart Tag Report

Room: LL 37

Case No.:

Type:

Caption: Senate Appropriations Subcommittee on Criminal and Civil Justice Committee

Judge:

Started: 4/13/2017 1:00:12 PM

Ends: 4/13/2017 1:54:36 PM

Length: 00:54:25

1:00:11 PM Sen. Bean (Chair)
1:01:07 PM S 446
1:01:27 PM Mark Sweet, Executive Director, Sunshine 811 (waive in support)
1:02:00 PM Kari Hebrank, NUCA FL (waive in support)
1:02:46 PM S 1670
1:03:26 PM Am. 347468
1:03:35 PM Matt Dunegan, Florida Sheriffs Association (waive in support)
1:03:55 PM Barney Bishop, President and CEO, Florida Smart Justice Alliance (waive in support)
1:04:03 PM Christina Daly, Secretary, Department of Juvenile Justice
1:04:45 PM S 1670 (cont.)
1:04:58 PM Sen. Bracy
1:05:10 PM Sen. Latvala
1:07:15 PM S 448
1:08:05 PM Am. 333852
1:08:39 PM Melissa Villar, Executive Director, NORML Tallahassee
1:09:31 PM S 448 (cont.)
1:09:41 PM Kara Gross, Legislative Counsel, ACLU of Florida (waive in support)
1:09:47 PM Barney Bishop, President and CEO, Florida Smart Justice Alliance (waive in support)
1:09:52 PM Greg Frost, President, Civil Citation Network (waive in support)
1:10:02 PM Carla Laroche, Law Fellow, Southern Poverty Law Center (waive in support)
1:10:07 PM Ellie Piloseno, Research Analyst, Florida Tax Watch (waive in support)
1:10:18 PM Fred Baggett, Florida Association of Court Clerks (waive in support)
1:10:27 PM Melissa Villar, Executive Director, NORML Tallahassee
1:11:53 PM Nancy Daniels, Legislative Consultant, Florida Public Defender Assoc., Inc. (waive in support)
1:11:57 PM Matt Dunegan, Florida Sheriffs Association (waive in support)
1:12:13 PM Sen. Clemens
1:13:13 PM S 1102
1:13:38 PM Am. 865206
1:14:20 PM Sen. Bracy
1:14:28 PM Sen. Rouson
1:14:49 PM Sen. Bracy
1:14:52 PM Sen. Rouson
1:15:41 PM Sen. Clemens
1:15:44 PM Sen. Rouson
1:16:22 PM Sen. Baxley
1:17:05 PM Sen. Clemens
1:17:35 PM Am. 574046
1:17:55 PM Sen. Rouson
1:18:34 PM Sen. Bean
1:19:09 PM Sen. Bracy
1:20:14 PM Sen. Baxley
1:21:09 PM S 1102 (cont.)
1:21:21 PM Carla Laroche, Law Fellow, Southern Poverty Law Center (waive in support)
1:21:28 PM Colleen Mackin, Constituency Services, The Children's Campaign (waive in support)
1:21:35 PM Kara Gross, Legislative Counsel, ACLU of Florida (waive in support)
1:21:42 PM Jorge Chamizo, Florida Association of Criminal Defense Lawyers (waive in support)
1:21:50 PM Chelsea Murphy, Right on Crime (waive in support)
1:21:59 PM Natalie Kato, Campaign for Criminal Justice Reform (waive in support)
1:22:08 PM Sal Nuzzo, James Madison Institute (waive in support)
1:22:15 PM Nancy Daniels, Legislative Consultant, Florida Public Defender Association, Inc. (waive in support)
1:22:25 PM Barney Bishop, President and CEO, Florida Smart Justice Alliance (waive in support)
1:22:31 PM Melissa Ramba, VP of Governmental Affairs, Florida Retail Federation

1:23:53 PM Sen. Clemens
1:24:00 PM M. Ramba
1:24:21 PM Sen. Bean
1:24:31 PM Sen. Rouson
1:26:25 PM S 844
1:26:31 PM Sen. Simmons
1:27:01 PM Am. 869370
1:27:09 PM Sen. Simmons
1:27:39 PM S 844 (cont.)
1:27:51 PM Bob Boyd, Attorney, Florida Catholic Cemeteries of Archdiocese of Miami (waive in support)
1:28:09 PM Sen. Baxley
1:29:11 PM S 1626
1:31:03 PM S 776
1:31:09 PM Sen. Baxley
1:31:23 PM Mike Bjorklund, Director of Legislative Affairs, FECA (waive in support)
1:31:30 PM Nancy Daniels, Legislative Consultant, Florida Public Defender Association, Inc.
1:32:52 PM S 260
1:33:35 PM Sen. Steube
1:33:48 PM Am. 909318
1:34:27 PM S 260 (cont.)
1:34:36 PM Dennis Strange, Captain, Orange County Sheriff's Office (waive in support)
1:34:44 PM Barney Bishop, President and CEO, Florida Smart Justice Alliance (waive in support)
1:35:17 PM S 748
1:35:26 PM Sen. Steube
1:35:51 PM Angela Cowden, Circuit Judge, Conference of Circuit Court Judges
1:39:27 PM Sen. Baxley
1:39:37 PM A. Cowden
1:42:35 PM Sen. Baxley
1:42:40 PM A. Cowden
1:44:10 PM Sen. Steube
1:45:51 PM Sen. Clemens
1:46:00 PM Sen. Steube
1:46:49 PM Sen. Bean
1:47:13 PM S 302
1:47:55 PM Sen. Clemens
1:48:22 PM Sen. Bean
1:48:29 PM Am. 701486
1:48:34 PM Sen. Clemens
1:49:06 PM Am. 298474
1:49:18 PM S 302 (cont.)
1:49:29 PM Kara Gross, Legislative Counsel, ACLU of Florida (waive in support)
1:49:34 PM Carla Laroche, Law Fellow, Southern Poverty Law Center (waive in support)
1:49:44 PM Fred Baggett, Florida Association of Court Clerks
1:50:44 PM Nancy Daniels, Legislative Consultant, Florida Public Defender Association, Inc. (waive in support)
1:50:56 PM Ingrid Delgaolo, Assoc. for Social Concerns and Respect Life, FL Conf. of Catholic Bishops
1:51:34 PM S 1068
1:51:35 PM Sen. Clemens
1:51:59 PM Am. 109356
1:52:05 PM Am. 389028
1:52:11 PM Sen. Clemens
1:52:29 PM S 1068 (cont.)
1:52:40 PM Nancy Daniels, Legislative Consultant, Florida Public Defender Association, Inc. (waive in support)
1:52:46 PM Barney Bishop, President and CEO, Florida Smart Justice Alliance (waive in support)
1:52:55 PM Sen. Baxley
1:53:46 PM Sen. Perry
1:54:04 PM Sen. Bracy
1:54:27 PM Sen. Bean