

**CS/SB 526** by **CM, Grimsley**; (Similar to H 0523) Notaries Public

**SB 664** by **Altman**; (Compare to H 0139) Sentencing in Capital Felonies

**SB 672** by **Dean**; (Identical to H 0667) Service of Process

**SB 746** by **Lee (CO-INTRODUCERS) Thompson, Soto, Latvala**; (Similar to CS/H 0201) Diabetes Awareness  
Training for Law Enforcement Officers

200864 D S RCS CJ, Brandes Delete everything after 03/16 04:00 PM

**SB 1078** by **Sobel**; (Identical to H 4049) Lewd and Lascivious Behavior

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**CRIMINAL JUSTICE**  
**Senator Evers, Chair**  
**Senator Gibson, Vice Chair**

**MEETING DATE:** Monday, March 16, 2015  
**TIME:** 2:00 —3:30 p.m.  
**PLACE:** Mallory Horne Committee Room, 37 Senate Office Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1		Testimony by employees of the Department of Corrections, other state employees, and other individuals on the safety and security of the state correctional system.	Discussed
2	<b>CS/SB 526</b> Commerce and Tourism / Grimsley (Similar H 523, Compare H 513)	Notaries Public; Revising the methods available for verifying documents; defining the term "reliable electronic means"; authorizing specified officers to administer oaths by reliable electronic means when engaged in the performance of official duties, etc.  CM 02/16/2015 Temporarily Postponed CM 03/02/2015 Fav/CS CJ 03/16/2015 Favorable RC	Favorable Yeas 5 Nays 0
3	<b>SB 664</b> Altman (Compare H 139)	Sentencing in Capital Felonies; Requiring that an advisory sentence of death be made by a unanimous recommendation of the jury after a defendant's conviction or adjudication of guilt for a capital felony or capital drug trafficking felony; requiring the court to instruct the jury that, in order for the jury to recommend to the court that the death penalty be imposed, the jury must find that sufficient aggravating circumstances exist which outweigh the mitigating circumstances found to exist, etc.  CJ 03/10/2015 Not Considered CJ 03/16/2015 Favorable JU AP	Favorable Yeas 5 Nays 0
4	<b>SB 672</b> Dean (Identical H 667)	Service of Process; Authorizing a criminal witness subpoena commanding a witness to appear for a deposition to be posted at the witness's residence by an authorized person if one attempt to serve the subpoena has failed, etc.  JU 03/03/2015 Favorable CJ 03/16/2015 Favorable RC	Favorable Yeas 5 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Monday, March 16, 2015, 2:00 —3:30 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	<b>SB 746</b> Lee (Similar CS/H 201)	Diabetes Awareness Training for Law Enforcement Officers; Citing this act as the "Arthur Green, Jr., Act"; requiring the Criminal Justice Standards and Training Commission to develop standards for instruction of law enforcement officers on diabetic emergencies; specifying topics to be included in the instruction, etc.  CJ      03/16/2015 Fav/CS ACJ FP	Fav/CS Yeas 5 Nays 0
6	<b>SB 1078</b> Sobel (Identical H 4049, Compare H 4045)	Lewd and Lascivious Behavior; Repealing provisions relating to a prohibition on lewd and lascivious behavior, including a prohibition on lewd and lascivious association and cohabitation together by a man and woman who are not married to each other, etc.  CJ      03/16/2015 Favorable JU RC	Favorable Yeas 5 Nays 0

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Other Related Meeting Documents

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THE FLORIDA SENATE

APPEARANCE RECORD

Tab 1

3/16/15  
Meeting Date

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

Bill Number (if applicable)

Topic Oversight of FDIC Reg Abuses

Amendment Barcode (if applicable)

Name Judy Thompson

Job Title President

Address 5117 Brompton Ct  
Street

Phone 904-568-8231

Jax, FL 32217  
City State Zip

Email JudyT32@ymail.com

Speaking:  For  Against  Information  
oversight

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

Representing Forgotten Majority, 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)

Tab 1

3/16/15  
Meeting Date

\_\_\_\_\_  
Bill Number (if applicable)

Topic Questions from Chair -

\_\_\_\_\_  
Amendment Barcode (if applicable)

Name Tim Canon

Job Title Deputy Secretary -

Address 501 S. Calhoun ST -

Phone 850-717-3456

Tallahassee FL 32399 -  
City State Zip

Email canon.timothy@mail.dc.state.fl.us

Speaking:  For  Against  Information

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

Representing Doc -

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.)

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

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BILL: CS/SB 526

INTRODUCER: Commerce and Tourism Committee and Senator Grimsley

SUBJECT: Notaries Public

DATE: March 13, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 526 allows a law enforcement officer engaged in the performance of official duties to remotely administer an oath either through reliable electronic means, or in the physical presence of a person who swears to an affidavit. Currently, a law enforcement officer may only administer an oath in the physical presence of an affiant.

Additionally, the bill allows law enforcement officers to verify documents pursuant to ss. 92.50 and 92.525, F.S.

**II. Present Situation:**

Notaries public, governed by ch. 117, F.S., have two distinct roles: to administer oaths, and to acknowledge or verify documents.<sup>1</sup> Law enforcement officers, correctional officers, correctional probation officers, traffic accident investigation officers, and traffic infraction enforcement officers engaged in the performance of their official duties may administer oaths in the same manner as a notary public, but do not have authority to verify documents under current law.<sup>2</sup>

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<sup>1</sup> Sections 117.03-.04, F.S.

<sup>2</sup> Section 117.10, F.S.

## Administration of Oaths

In 1983, the Legislature allowed that “all law enforcement and correctional officers as defined in s. 943.10, F.S., may administer oaths, to witnesses, in connection with the taking of a sworn statement during a criminal investigation...”<sup>3</sup> Application of this law was limited by a 1983 Florida Attorney General Opinion, which opined that a law enforcement officer’s power to administer oaths was exclusive to sworn statements given by witnesses during informal investigations, and that specifically, an officer was “not empowered to take sworn statements of another officer or witness for the sole purpose of using that document to establish probable cause or serve as a complaint for direct submission to a court.”<sup>4</sup>

The following year, the Legislature created s. 117.10, F.S., which clearly granted law enforcement officers the power to serve as a notary for the purpose of certifying or attesting to documents in connection with the performance of their official duties.<sup>5</sup>

Section 117.10, F.S., was subsequently amended to include correctional probation officers, traffic accident investigation officers, and traffic infraction enforcement officers. The direct reference to notaries was removed, so the statute now states that law enforcement officers are “authorized to administer oaths when engaged in the performance of official duties.”<sup>6</sup>

Law enforcement officers administer oaths to verify signatures on official documents, such as probable cause affidavits, reports, or sworn complaints.<sup>7</sup>

Sections 668.50 and 117.021, F.S., allow electronic signatures on notarized documents. However, an oath administered by a notary or law enforcement officer must still be administered in person. Therefore, a law enforcement officer affiant may electronically sign his affidavit, but only after he physically meets with a fellow law enforcement officer to swear or affirm the oath required.

## Verification of Documents

A verified document has been signed or executed by a person who must state under oath (or affirmation) that the facts or matters made therein are true, or other words to that effect.<sup>8</sup>

A document can be verified in two ways:

- Administration of an oath or affirmation by an officer of the state authorized under s. 92.50, F.S., to administer oaths. Officers currently authorized are judges, clerks or deputy clerks of court, or any notary public; or

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<sup>3</sup> Ch. 83-147, Laws of Florida; Section 925.095, F.S. (1983).

<sup>4</sup> Fla. AGO 83-85, in response to a request for clarification of s. 925.095, F.S. (1983) from the Havana, Florida, Chief of Police.

<sup>5</sup> Chapter 84-87, L.O.F., which also repealed s. 925.095, F.S. (1983).

<sup>6</sup> Section 117.10, F.S.

<sup>7</sup> Section 117.10, F.S.

<sup>8</sup> Section 92.525(4)(c), F.S.

- Signing a written declaration, which states “Under penalty of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true.”<sup>9</sup> Where a verification of a belief is permitted, the phrase “to the best of my knowledge and belief” may be added to the declaration.

### **Perjury**

A person who knowingly makes a false statement under oath regarding any material matter commits perjury, a first degree misdemeanor.<sup>10</sup>

A person who knowingly makes a false declaration for the purpose of verifying a document under s. 92.525(2), F.S., is subject to prosecution for perjury by false written declaration, a third degree felony.<sup>11</sup>

### **III. Effect of Proposed Changes:**

Under this bill, law enforcement officers, correctional officers, correctional probation officers, traffic accident investigation officers, and traffic infraction enforcement officers acting in the scope of their authority will be able to remotely administer oaths pursuant to s. 117.10, F.S. This allows law enforcement officers to administer an oath for work purposes either in the presence of the affiant, or by electronic transmittal of the document from the affiant through means compliant with criminal justice information systems security measures,<sup>12</sup> defined in s. 117.10(1), F.S. For example, the criminal justice information systems security measures requires that all users must uniquely identify themselves before they can perform any actions on the system.<sup>13</sup>

The bill allows law enforcement officers, correctional officers, correctional probation officers, traffic accident investigation officers, and traffic infraction enforcement officers, while engaged in the performance of official duties, to verify documents pursuant to s. 92.525, F.S.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

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<sup>9</sup> Section 92.525(2), F.S.

<sup>10</sup> Section 837.012, F.S.

<sup>11</sup> Section 92.525(3), F.S.

<sup>12</sup> The criminal justice information systems (CJIS) security policy is published by the FBI, administered in Florida by the FDLE, and applied to local law enforcement agencies. Phone interview with Charles Schaeffer, February 10, 2015. See also, U.S. Department of Justice, Criminal Justice Information Services Security Policy (August 4, 2014). Retrieved February 10, 2015 from <http://www.fbi.gov/about-us/cjis/cjis-security-policy-resource-center>.

<sup>13</sup> U.S. Department of Justice, Criminal Justice Information Services Security Policy at 34 (August 4, 2014). Retrieved March 3, 2015 from <http://www.fbi.gov/about-us/cjis/cjis-security-policy-resource-center>.



C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Law enforcement agencies may, but are not required to, incur some costs associated with either implementing new technological systems or updating current systems to become compliant with the criminal justice information system security measures. Some of these costs may be mitigated by a reduced need for excess hours and other costs associated with the current method of officer administration of oaths and document verification.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Because a certain class of individuals may administer and swear oaths without the physical presence of another party, enforcement of perjury laws may become more burdensome. The prosecution in perjury cases may have extra hurdles to overcome to prove that the defendant was the person who submitted the false statement under oath. The electronic data evincing the unique identifier and password that an officer must enter each time he or she electronically administers or swears an oath may be useful to the prosecution in such cases, but is not without evidentiary hurdles.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 92.525 and 117.10.

**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 Commerce and Tourism on March 2, 2015:**

Clarifies that enumerated officers may administer oaths electronically and deletes redundant language in section two of the committee substitute.

B. Amendments:

None.

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

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By the Committee on Commerce and Tourism; and Senator Grimsley

577-01817-15

2015526c1

1 A bill to be entitled  
 2 An act relating to notaries public; amending s.  
 3 92.525, F.S.; revising the methods available for  
 4 verifying documents; amending s. 117.10, F.S.;  
 5 defining the term "reliable electronic means";  
 6 authorizing specified officers to administer oaths by  
 7 reliable electronic means when engaged in the  
 8 performance of official duties; providing an effective  
 9 date.

10  
 11 Be It Enacted by the Legislature of the State of Florida:

12  
 13 Section 1. Subsection (1) of section 92.525, Florida  
 14 Statutes, is amended to read:

15 92.525 Verification of documents; perjury by false written  
 16 declaration, penalty.—

17 (1) ~~If when it is~~ authorized or required by law, by rule of  
 18 an administrative agency, or by rule or order of court that a  
 19 document be verified by a person, the verification may be  
 20 accomplished in the following manner:

21 (a) Under oath or affirmation taken or administered before  
 22 an officer authorized under s. 92.50 to administer oaths; ~~or~~  
 23 (b) Under oath or affirmation taken or administered by an  
 24 officer authorized under s. 117.10 to administer oaths; or  
 25 (c) By the signing of the written declaration prescribed in  
 26 subsection (2).

27 Section 2. Section 117.10, Florida Statutes, is amended to  
 28 read:  
 29 117.10 Law enforcement and correctional officers;

Page 1 of 2

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

577-01817-15

2015526c1

30 administration of oaths.—  
 31 (1) For purposes of this section, the term "reliable  
 32 electronic means" means the signing and transmission of a  
 33 document through means compliant with criminal justice  
 34 information system security measures. Such signing and  
 35 transmission must be made by an affiant to an officer authorized  
 36 to administer oaths under subsection (2) under circumstances  
 37 that indicate that the document was submitted by the affiant.  
 38 (2) Law enforcement officers, correctional officers, and  
 39 correctional probation officers, as defined in s. 943.10, and  
 40 traffic accident investigation officers and traffic infraction  
 41 enforcement officers, as described in s. 316.640, are authorized  
 42 to administer oaths by reliable electronic means or in the  
 43 physical presence of an affiant when engaged in the performance  
 44 of official duties. Sections 117.01, 117.04, 117.045, 117.05,  
 45 and 117.103 do not apply to ~~the provisions of~~ this section. An  
 46 officer may not notarize his or her own signature.  
 47 (3) An oath administered pursuant to this section is an  
 48 acceptable method of verification as provided under s. 92.525.  
 49 Section 3. This act shall take effect July 1, 2015.

Page 2 of 2

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/16

Meeting Date

526

Bill Number (if applicable)

Topic ELECTRONIC OATHS

Amendment Barcode (if applicable)

Name SARAH CARROLL

Job Title LOBBYIST

Address 183 S. ADAMS ST.  
Street

Phone \_\_\_\_\_

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 FLORIDA SHERIFFS ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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The Florida Senate

## Committee Agenda Request

**To:** Senator Greg Evers, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** March 6, 2015

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I respectfully request that **Senate Bill #526**, relating to Notaries Public, be placed on the:

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



A handwritten signature in cursive script that reads "Denise Grimsley".

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Senator Denise Grimsley  
Florida Senate, District 21

**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.)

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

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BILL: SB 664

INTRODUCER: Senator Altman

SUBJECT: Sentencing in Capital Felonies

DATE: March 9, 2015

REVISED: 03/13/15

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Favorable</b>
2.			JU	
3.			AP	

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**I. Summary:**

SB 664 requires the sentencing jury to render a recommendation for the death penalty by a unanimous vote rather than a simple majority vote. It requires the jury to certify in writing that the vote for death was unanimous.

The bill effects sentencing proceedings in death penalty cases commencing on or after July 1, 2015. The new procedures created by this bill will apply to capital crimes committed both before and after July 1, 2015.

The bill requires that in order to recommend the death penalty, the jury must find that “sufficient aggravating circumstances exist which outweigh any mitigating circumstances found to exist.” This is the opposite of the findings required under current law where the mitigators must outweigh the aggravators.

The jury must certify in writing that each aggravating circumstance used to support its recommendation of death was found to exist beyond a reasonable doubt by a unanimous vote.

The bill limits the sentencing judge to consideration of only the aggravating factors unanimously found to exist by the jury as the judge determines the sentence in the case.

## II. Present Situation:

### Florida's Capital Sentencing Law

#### *The Jury's Role*

In Florida, after a guilty verdict in a capital case, the jury issues a sentencing recommendation – death or life imprisonment – unless the jury is waived.<sup>1</sup> During the sentencing phase the jury hears evidence to establish statutory aggravating factors and statutory or nonstatutory mitigating circumstances.<sup>2</sup> The aggravating factors must be established beyond a reasonable doubt.<sup>3</sup> The fact-finder must only be convinced by the greater weight of the evidence (a lower standard of proof than beyond a reasonable doubt) as to the existence of mitigating factors.<sup>4</sup>

If the jury finds one or more aggravating circumstances and determines that these circumstances are sufficient to recommend the death penalty, it must determine whether sufficient mitigating circumstances exist to outweigh the aggravating circumstances. Based upon these considerations, the jury must recommend whether the defendant should be sentenced to life imprisonment or death.<sup>5</sup> However, even if the aggravating circumstances are found to outweigh the mitigating circumstances, the jury is never required to return a recommendation for death and must be so instructed.<sup>6</sup>

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<sup>1</sup> With the issue of guilt or innocence disposed of, the jury can then view the question of penalty as a separate and distinct issue. The fact that the defendant has committed the crime no longer determines automatically that he must die in the absence of a mercy recommendation. They must consider from the facts presented to them-facts in addition to those necessary to prove the commission of the crime-whether the crime was accompanied by aggravating circumstances sufficient to require death, or whether there were mitigating circumstances which require a lesser penalty. *State v. Dixon*, 283 So.2d 1 (Fla. 1973).

<sup>2</sup> “An aggravating circumstance is a standard to guide the jury in making the choice between the alternative recommendations of life imprisonment without the possibility of parole or death. It is a statutorily enumerated circumstance which increases the gravity of a crime or the harm to a victim.” *Fla. Standard Jury Instructions, Criminal Cases, Penalty Proceedings Capital Cases*, Instr. 7.11.

<sup>3</sup> “An aggravating circumstance must be proven beyond a reasonable doubt before it may be considered by you in arriving at your recommendation. In order to consider the death penalty as a possible penalty, you must determine that at least one aggravating circumstance has been proven.” ... “If you find the aggravating circumstances do not justify the death penalty, your advisory sentence should be one of life imprisonment without possibility of parole.” *Id.*

<sup>4</sup> “Should you find sufficient aggravating circumstances do exist to justify recommending the imposition of the death penalty, it will then be your duty to determine whether the mitigating circumstances outweigh the aggravating circumstances that you find to exist.

A mitigating circumstance is not limited to the facts surrounding the crime. It can be anything in the life of the defendant which might indicate that the death penalty is not appropriate for the defendant. In other words, a mitigating circumstance may include any aspect of the defendant's character, background or life or any circumstance of the offense that reasonably may indicate that the death penalty is not an appropriate sentence in this case.

A mitigating circumstance need not be proved beyond a reasonable doubt by the defendant. A mitigating circumstance need only be proved by the greater weight of the evidence, which means evidence that more likely than not tends to prove the existence of a mitigating circumstance. If you determine by the greater weight of the evidence that a mitigating circumstance exists, you may consider it established and give that evidence such weight as you determine it should receive in reaching your conclusion as to the sentence to be imposed.” *Id.*

<sup>5</sup> “The process of weighing aggravating and mitigating factors to determine the proper punishment is not a mechanical process. The law contemplates that different factors may be given different weight or values by different jurors. In your decision-making process, you, and you alone, are to decide what weight is to be given to a particular factor.” *Id.*

<sup>6</sup> “The sentence that you recommend to the court must be based upon the facts as you find them from the evidence and the law. If, after weighing the aggravating and mitigating circumstances, you determine that at least one aggravating circumstance is found to exist and that the mitigating circumstances do not outweigh the aggravating circumstances, or, in the absence of mitigating factors, that the aggravating factors alone are sufficient, you may recommend that a sentence of death

A simple majority of the jury is necessary for recommendation of the death penalty. It is not necessary for the jury to list on the verdict the aggravating and mitigating circumstances it finds or to disclose the number of jurors making such findings.<sup>7</sup>

The aggravating and mitigating circumstances and the method by which they must be determined to apply for sentencing are set forth in s. 921.141, F.S., as follows:

(2) **ADVISORY SENTENCE BY THE JURY.**—After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:

- (a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);
- (b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and
- (c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

(3) **FINDINGS IN SUPPORT OF SENTENCE OF DEATH.**—Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:

- (a) That sufficient aggravating circumstances exist as enumerated in subsection (5), and
- (b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.

In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact based upon the circumstances in subsections (5) and (6) and upon the records of the trial and the sentencing proceedings. If the court does not make the findings requiring the death sentence within 30 days after the rendition of the judgment and sentence, the court shall impose sentence of life imprisonment in accordance with s. 775.082.

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be imposed rather than a sentence of life in prison without the possibility of parole. Regardless of your findings in this respect, however, you are neither compelled nor required to recommend a sentence of death. If, on the other hand, you determine that no aggravating circumstances are found to exist, or that the mitigating circumstances outweigh the aggravating circumstances, or, in the absence of mitigating factors, that the aggravating factors alone are not sufficient, you must recommend imposition of a sentence of life in prison without the possibility of parole rather than a sentence of death.” *Id.*

<sup>7</sup> “If a majority of the jury, seven or more, determine that (defendant) should be sentenced to death, your advisory sentence will be:

A majority of the jury by a vote of \_\_\_\_\_ to \_\_\_\_\_ advise and recommend to the court that it impose the death penalty upon (defendant).

On the other hand, if by six or more votes the jury determines that (defendant) should not be sentenced to death, your advisory sentence will be:

The jury advises and recommends to the court that it impose a sentence of life imprisonment upon (defendant) without possibility of parole.” *Id.*



(5) AGGRAVATING CIRCUMSTANCES.—Aggravating circumstances shall be limited to the following:

(a) The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation.

(b) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.

(c) The defendant knowingly created a great risk of death to many persons.

(d) The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any: robbery; sexual battery; aggravated child abuse; abuse of an elderly person or disabled adult resulting in great bodily harm, permanent disability, or permanent disfigurement; arson; burglary; kidnapping; aircraft piracy; or unlawful throwing, placing, or discharging of a destructive device or bomb.

(e) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(f) The capital felony was committed for pecuniary gain.

(g) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(h) The capital felony was especially heinous, atrocious, or cruel.

(i) The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

(j) The victim of the capital felony was a law enforcement officer engaged in the performance of his or her official duties.

(k) The victim of the capital felony was an elected or appointed public official engaged in the performance of his or her official duties if the motive for the capital felony was related, in whole or in part, to the victim's official capacity.

(l) The victim of the capital felony was a person less than 12 years of age.

(m) The victim of the capital felony was particularly vulnerable due to advanced age or disability, or because the defendant stood in a position of familial or custodial authority over the victim.

(n) The capital felony was committed by a criminal gang member, as defined in s. 874.03.

(o) The capital felony was committed by a person designated as a sexual predator pursuant to s. 775.21 or a person previously designated as a sexual predator who had the sexual predator designation removed.

(p) The capital felony was committed by a person subject to an injunction issued pursuant to s. 741.30 or s. 784.046, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.

(6) MITIGATING CIRCUMSTANCES.—Mitigating circumstances shall be the following:

(a) The defendant has no significant history of prior criminal activity.

(b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

- (c) The victim was a participant in the defendant's conduct or consented to the act.
- (d) The defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.
- (e) The defendant acted under extreme duress or under the substantial domination of another person.
- (f) The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired.
- (g) The age of the defendant at the time of the crime.
- (h) The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty.<sup>8</sup>

### ***Judicial Determination of Sentence***

After receiving the jury's recommendation the judge must then decide the appropriate sentence.<sup>9</sup> The judge weighs the jury's recommendation and conducts his or her own analysis of the aggravating and mitigating factors. The recommendation of the jury must be given great weight in the judge's decision-making process on the sentence handed down.<sup>10</sup> The judge may sentence a defendant in a different manner than the jury recommends – this is known as an “override.”

Records suggest that no Florida judge has overridden a jury's verdict of a life sentence since 1999. According to U.S. Supreme Court Justice Sotomayor's opinion dissenting from the Court's denial of certiorari review in the Alabama death penalty case of *Woodward v. Alabama*:

Even after this Court upheld Florida's capital sentencing scheme in *Spaziano v. Florida*, 468 U. S. 447 (1984), the practice of judicial overrides consistently declined in that State. Since 1972, 166 death sentences have been imposed in Florida following a jury recommendation of life imprisonment. Between 1973 and 1989, an average of eight people was sentenced to death on an override each year. That average number dropped by 50 percent between 1990 and 1994, and by an additional 70 percent from 1995 to 1999. The practice then stopped completely. It has been more than 14 years since the last life-to-death override in Florida; the last person sentenced to death after a jury recommendation of life imprisonment was Jeffrey Weaver, sentenced in August 1999.<sup>11</sup>

<sup>8</sup> Aggravating and mitigating circumstances appear in s. 921.142, F.S., which applies to Capital Drug Trafficking Felonies. Section 921.142, F.S., is also amended by this bill.

<sup>9</sup> “The punishment for this crime is either death or life imprisonment without the possibility of parole. The final decision as to which punishment shall be imposed rests with the judge of this court; however, the law requires that you, the jury, render to the court an advisory sentence as to which punishment should be imposed upon the defendant.” *Fla. Standard Jury Instructions, Criminal Cases, Penalty Proceedings Capital Cases, Instr. 7.11.*

<sup>10</sup> What is referred to as the *Tedder* “Great Weight” Standard was announced by the Florida Supreme Court in *Tedder v. State*, 322 So.2d 908 (Fla. 1975). In that case, the court determined that “[a] jury recommendation under our trifurcated death penalty statute should be given great weight. In order to sustain a sentence of death following a jury recommendation of life, the facts suggesting a sentence of death should be so clear and convincing that virtually no reasonable person could differ.”

<sup>11</sup> 571 U.S. \_\_\_\_ (2013), in which Justice Breyer joined this part of the dissent.

### ***Proportionality Review***

The judgment of conviction and sentence of death is subject to automatic review by the Supreme Court of Florida.<sup>12</sup> The sentence, and the reasons for it, must be reduced to writing so that the Florida Supreme Court can engage in a meaningful review.<sup>13</sup>

The Florida Supreme Court engages in proportionality review in all cases in which the death penalty is handed down. Proportionality review is the comparison of one case in which the defendant was sentenced to death with other similar death cases.

When the U.S. Supreme Court upheld Florida's current death penalty sentencing law in 1976, the court seemed to rely quite heavily on the Florida Supreme Court's promise to give each death case a meaningful review.<sup>14</sup> The *Proffitt* court stated:

[T]he Florida statute has a provision designed to assure that the death penalty will not be imposed on a capriciously selected group of convicted defendants. The Supreme Court of Florida reviews each death sentence to ensure that similar results are reached in similar cases....In fact, it is apparent that the Florida court has undertaken responsibility to perform its function of death sentence review with a maximum of rationality and consistency. For example, it has several times compared the circumstances of a case under review with those of previous cases in which it has assessed the imposition of death sentences (citations omitted).<sup>15</sup>

To date, Florida's capital sentencing scheme has withstood challenges based on the 8th, 14th, and 6th Amendments.<sup>16</sup>

### **Other States<sup>17</sup>**

Of the 32 states that currently authorize capital punishment, 31 require jury participation in the sentencing decision; only Montana leaves the jury with no sentencing role in capital cases.<sup>18</sup> In 27 of those 31 states, plus the federal system,<sup>19</sup> the jury's decision to impose life imprisonment is final and may not be disturbed by the trial judge under any circumstance.

In the remaining four states, the jury has a role in sentencing but is not the final decisionmaker. In Nebraska, the jury is responsible for finding aggravating circumstances, while a three-judge panel determines mitigating circumstances and weighs them against the aggravating circumstances to make the ultimate sentencing decision.<sup>20</sup>

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<sup>12</sup> s. 921.141, F.S.

<sup>13</sup> *State v. Dixon*, 283 So.2d 1 (Fla. 1973).

<sup>14</sup> *Proffitt v. Florida*, 428 U.S. 242 (1976). It is important to note that *Proffitt* was decided on 8th and 14th Amendment grounds (cruel or unusual punishment and due process), not on 6th Amendment (right to a jury trial) grounds.

<sup>15</sup> *Id.*, 258-259.

<sup>16</sup> Cruel or unusual punishment, due process and right to jury trial. *Proffitt v. Florida*, 428 U.S. 242 (1976); *Spaziano v. Florida*, 468 U.S. 447 (1984); *Hildwin v. Florida*, 490 U.S. 638 (1989).

<sup>17</sup> Taken from Justice Sotomayor's dissent in *Woodward v. Alabama*, 571 U.S. \_\_\_\_ (2013), in which Justice Breyer joined this part of the dissent.

<sup>18</sup> Mont. Code Ann. §§46-18-301, 46-18-305 (2013).

<sup>19</sup> 18 U. S. C. §3593.

<sup>20</sup> Neb. Rev. Stat. §§29-2520, 29-2521 (2008).

Three states—Alabama,<sup>21</sup> Delaware, and Florida—permit the trial judge to override the jury’s sentencing decision.<sup>22</sup>

***State v. Steele, The Florida Jury’s Responsibility in Finding Aggravating Factors***

Although the U.S. Supreme Court issued rulings in two death penalty cases indicating that aggravating factors operate as the “functional equivalent of an element of a greater offense,”<sup>23</sup> and therefore must be decided by a jury, the Florida Supreme Court has not yet held that those decisions apply within the context of Florida’s death penalty sentencing scheme.<sup>24</sup>

In *Steele*, Justice Cantero wrote for the majority:

Even if *Ring* did apply in Florida—an issue we have yet to conclusively decide—we read it as requiring only that the jury make the finding of “an element of a greater offense.” *Id.* That finding would be that at least one aggravator exists—not that a specific one does. But given the requirements of section 921.141 and the language of the standard jury instructions, such a finding already is implicit in a jury’s recommendation of a sentence of death. Our interpretation of *Ring* is consistent with the United States Supreme Court’s assessment of Florida’s capital sentencing statute. In *Jones v. United States*, 526 U.S. 227, 250–51, 119 S.Ct. 1215, 143 L.Ed.2d 311 (1999), the Court noted that in its decision in *Hildwin v. Florida*, 490 U.S. 638, 109 S.Ct. 2055, 104 L.Ed.2d 728 (1989), in which it concluded that the Sixth Amendment does not require explicit jury findings on aggravating circumstances, “a jury made a sentencing recommendation of death, thus necessarily engaging in the factfinding required for imposition of a higher sentence, that is, the determination that at least one aggravating factor had been proved.” In requiring the jury to consider by majority vote each particular aggravator submitted rather than merely specifying whether one or more aggravators exist, the trial court in this case imposed a greater burden than the one the Supreme Court imposed in reviewing Arizona’s judge-only capital sentencing scheme in *Ring*.<sup>25</sup>

Although the Florida Supreme Court declined to require more or different factfinding by a death penalty jury, the *Steele* opinion did contain “suggestions” from the court: “in light of developments in other states and at the federal level, the Legislature should revisit the statute to require some unanimity in the jury’s recommendations.”<sup>26</sup>

The court examined the death penalty sentencing requirements of the other 37 states (at the time of the opinion) and concluded that “Florida is now the only state in the country that allows a jury

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<sup>21</sup> In Alabama, a 10-2 vote is sufficient for the jury to recommend a death sentence. Ala. Code § 13A-5-44-53.

<sup>22</sup> In *Spaziano v. Florida*, 468 U. S. 447 (1984), the U.S. Supreme Court upheld Florida’s judicial-override sentencing statute.

<sup>23</sup> See *Ring v. Arizona*, 536 U.S. 584, 609 (2002) (ruling that aggravating circumstances must be determined by the jury and established beyond a reasonable doubt; quoting *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

<sup>24</sup> *State v. Steele*, 921 So.2d 538 (Fla. 2005).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 548.

to decide that aggravators exist *and* to recommend a sentence of death by a mere majority vote.”<sup>27</sup> Finally, Justice Cantero wrote: “Assuming that our system continues to withstand constitutional scrutiny, we ask the Legislature to revisit it to decide whether it wants Florida to remain the outlier state.”<sup>28</sup>

**Florida-Specific Statistical Information**

Table 1 shows that under current law and practice only 20 percent of death cases over a twelve year period had unanimous jury verdicts. Based on this analysis it is impossible to predict with any degree of accuracy whether requiring a unanimous jury recommendation would result in a marked decline in death cases. It would appear from the current practice that a decline is likely if this bill becomes law, but the degree of the decline is uncertain.

**TABLE 1**  
**Distribution of Jury Votes in Death Cases**  
**by Calendar Year of Disposition by Florida Supreme Court<sup>29</sup>**  
**(N=296)**

Original Jury Vote	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11	'12	Total	% <sup>30</sup>	Cum %
7-5	6	1	4	4	0	3	0	2	4	1	3	2	2	32	11%	11%
8-4	4	6	2	6	2	0	3	0	2	9	2	1	5	42	14%	25%
9-3	4	4	3	6	2	2	11	3	5	6	6	9	5	66	22%	47%
10-2	3	12	4	3	3	3	2	2	2	5	11	1	3	54	18%	66%
11-1	2	8	5	5	3	1	1	2	1	5	5	1	3	42	14%	80%
12-0	9	6	8	4	2	3	6	7	6	0	1	6	2	60	20%	100%
Subtotal	28	37	26	28	12	12	23	16	20	26	28	20	20	296	100%	
Other <sup>31</sup>	3	1	2	3	4	2	0	0	1	4	3	1	0	24		
TOTAL	31	38	28	31	16	14	23	16	21	30	31	21	20	320		

Table 2 analyzes the degree to which a unanimous jury vote results in the case being more likely to be affirmed by the Florida Supreme Court on direct appeal. Sixty-three percent of the 12-0 cases were affirmed by the court compared to 53 percent of the 7-5 cases. It appears then that a unanimous jury vote is not as strongly correlated with an affirmed sentence as perhaps logically predicted.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 549.

<sup>29</sup> Thirteen years of data compiled by the Supreme Court Clerk’s Office.

<sup>30</sup> Calculated percentage excludes the “other” category.

<sup>31</sup> Includes: waiver of penalty phase, and judicial overrides from jury recommendation of life to judge imposing death.

**TABLE 2**

<b>Distribution of Jury Votes in Death Cases                      Disposed by the Florida Supreme Court on Direct Appeal from Calendar Year 2000 to 2012<sup>32</sup>                      (N=296)</b>					
Original Jury Vote For Death	TOTAL	Death Sentence Affirmed	Percent Affirmed	Death Sentence Not Affirmed <sup>33</sup>	Percent Not Affirmed
7 to 5	32	17	53%	15	47%
8 to 4	42	31	74%	11	26%
9 to 3	66	48	73%	18	27%
10 to 2	54	39	72%	15	28%
11 to 1	42	37	88%	5	12%
12 to 0	60	38	63%	22	37%
TOTAL	296	210	71%	86	29%

In summary, both Tables 1 and 2 illustrate the wide variability in voting practices in these complex and emotionally charged death cases. Given this wide variability, it is difficult to predict the impact on future death cases and voting practices if SB 664 passes and becomes law.

**American Bar Association Report (2006) and Section Report to the House of Delegates (2015)**

In September of 2006, the American Bar Association (ABA) issued a report entitled “Evaluating Fairness and Accuracy in State Death Penalty Systems: The Florida Death Penalty Assessment Report.”

The authors of the report acknowledged that the Florida Supreme Court has consistently rejected the claims under the U.S. Supreme Court’s decision in *Ring v. Arizona* that the jury must make a unanimous advisory sentence.<sup>34</sup> Despite this recognition and Florida’s practice of not requiring unanimity, the ABA report asserts that by not requiring a unanimous recommendation, meaningful jury deliberation is lessened.<sup>35</sup>

The ABA report cites to a survey of Florida capital jurors who were not required to reach a unanimous vote to recommend a death sentence.<sup>36</sup> The ABA report argues that these jurors were less likely to take longer than 3 hours to reach a sentencing decision and less likely to demonstrate emotional commitment to the punishment decision.<sup>37</sup>

In its recent Report to the House of Delegates, the Section of Individual Rights and Responsibilities of the ABA points out that the penalty phase jury is asked to perform a

<sup>32</sup> Source document: Supreme Court Death Penalty Direct Appeals Disposed- With Jury Votes, 2000 to 2012

<sup>33</sup> Includes: reversal and remand for trial, reduced to life, dismissal, deceased defendant, and acquittal.

<sup>34</sup> “Evaluating Fairness and Accuracy in State Death Penalty Systems: The Florida Death Penalty Assessment Report,” American Bar Association, Death Penalty Moratorium Implementation Project (2006), pg. 287.

<sup>35</sup> *Id.* pg. 303.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* pg. 304.

“complicated and unique analysis” as it weighs aggravating and mitigating factors.<sup>38</sup> The report suggests that “requiring unanimity...promotes a thorough and reasoned resolution.”<sup>39</sup>

### **III. Effect of Proposed Changes:**

The provisions in the bill apply to s. 921.141, F.S., which relates to sentencing in capital felonies as well as s. 921.142, F.S., which applies to sentencing for capital drug trafficking felonies.

The bill effects sentencing proceedings in death penalty cases commencing on or after July 1, 2015. This effective date means that the new procedures will apply to capital crimes committed before July 1, 2015.

#### **Effect of the Bill on the Jury’s Role**

Rather than having the sentencing jury render a recommendation for the death penalty by a simple majority vote, the bill requires a unanimous recommendation. It requires the jury to certify in writing that the vote for death was unanimous.

In the penalty phase of a capital case, aggravating factors must be proven to exist at the “beyond a reasonable doubt” standard while mitigating factors must only be shown to exist at the “greater weight of the evidence” standard. The bill requires that in order to recommend the death penalty, the jury must find that “sufficient aggravating circumstances exist which outweigh any mitigating circumstances found to exist.” This is the opposite of current law which requires that sufficient mitigators outweigh any aggravators found to exist. It is unclear how this change will actually effect a jury’s penalty phase deliberations.

The same new analysis of mitigating and aggravating factors must be applied by the sentencing judge. The judge is limited by the bill to considering only the aggravating factors unanimously found by the jury to exist.

The jury must record its certification that each aggravating circumstance used to support its recommendation of death was found to exist beyond a reasonable doubt by a unanimous vote.

The application of the provisions in the bill will require that the jury be provided with a special verdict form. Jury instructions in capital cases must also be created to conform to the provisions in the bill.

#### **Effect of the Bill on the Judicial Sentencing Function**

Under current law, the sentencing court is required to weigh the jury’s recommended sentence, which is given great weight in the court’s decision to impose a death or life in prison sentence. The court is also required to conduct its own independent analysis of the aggravating and mitigating circumstances. If the court imposes a death sentence, the sentencing order must

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<sup>38</sup> ABA Death Penalty Due Process Review Project, Section of Individual Rights and Responsibilities, Report to the House of Delegates, February, 2015, pg. 4.

<sup>39</sup> *Id.*

contain specific findings of fact based upon the aggravating and mitigating factors, the trial record, and sentencing proceedings.<sup>40</sup>

The bill restricts the court's ability to consider aggravating factors. The bill requires that the court only consider the aggravating factors "unanimously found to exist by the jury."<sup>41</sup> Therefore the court will not be able to engage in weighing the evidence of mitigating and aggravating factors as it currently does in determining its sentence in a case.

### **Other Potential Implications**

Although the new sentencing provisions are effective for "sentencing proceedings commencing on or after July 1, 2015," it cannot be ruled out that persons sentenced to death prior to the effective date will nonetheless raise the issue of the application of the provisions to their cases. This could result in a substantial number of appeals and they must be answered and litigated by the Attorney General.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

### **D. Other Constitutional Issues:**

The bill is effective for sentencing proceedings commencing on or after July 1, 2015.<sup>42</sup> Generally when the Legislature amends a "criminal statute" the amendment effects criminal conduct occurring after the effective date of the amendment.

The bill's effective date means that a defendant who committed a capital murder offense at any time, even decades ago, who has not been sentenced for the crime prior to July 1, 2015, will be sentenced under the new capital case sentencing procedures created by the bill.

Arguably this effective date, because it is an unusual one, could result in litigation focusing on matters such as whether the new sentencing scheme is a "benefit" to a

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<sup>40</sup> s. 921.141(3), F.S. See also s. 921.142(4), F.S.

<sup>41</sup> See lines 74-77 and 133-136 of the bill.

<sup>42</sup> See lines 40-41 and 99-100 of the bill.



defendant and, if so, whether the Savings Clause in the Florida Constitution is somehow implicated.<sup>43</sup>

Likewise, a defendant sentenced after July 1, 2015, but who committed the murder for which he or she faces the possibility of the death penalty prior to that date, might argue that the pre-July 1 sentencing procedures could have been a benefit to him or her and therefore a violation of the constitutional prohibition on ex post facto laws has occurred.<sup>44</sup>

Although it is unlikely either of these constitutional arguments will prevail, it can be stated with near certainty that the issues will at least be litigated.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

None.

### C. Government Sector Impact:

There may be a fiscal impact to the Attorney General's Office and the court system that is a result of the potential appellate practice resulting from this bill. According to historical Supreme Court documents, legislation requiring a unanimous jury vote may have a notable workload reduction to the Supreme Court.<sup>45</sup>

However, the Office of the State Courts Administrator reports that although there may be a reduction in death penalty litigation resulting from the increased thresholds created by the bill, this may be offset somewhat at the trial court level. There may be more death penalty cases taken to trial, rather than pleas entered, because it will be less likely that a defendant will receive the death penalty under the bill's provisions. The fiscal impact cannot be determined due to the lack of data needed to determine the impact on court and judicial workload.<sup>46</sup>

It should also be noted that jury instructions will have to be amended to be consistent with the bill.

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<sup>43</sup> Article X, Section 9 of the Florida Constitution provides: Repeal of criminal statutes.—Repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed.

<sup>44</sup> Article I, Section 10 of the Florida Constitution provides: No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed. A primary purpose of the Ex Post Facto Clause is to ensure that citizens have prior notice of the consequences of committing a crime before the crime is committed. *Westerheide v. State*, App. 5 Dist., 767 So.2d 637 (Fla. 2000), review granted 786 So.2d 1192, approved 831 So.2d 93.

<sup>45</sup> Minutes of the October 24, 2001 Meeting, Supreme Court Workload Study Commission; *2001 Final Report of the Supreme Court Workload Study Commission*, page 11.

<sup>46</sup> Office of the State Court Administrator, Judicial Impact Statement, March 9, 2015. (on file with the Senate Criminal Justice Committee.)

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

On March 9, 2015, the Supreme Court of the United States granted Timothy Lee Hurst's petition for certiorari review.<sup>47</sup> *Hurst* is a Florida death case.<sup>48</sup> Hurst was convicted of the 1998 murder of a co-worker. The trial jury recommended a death sentence by a vote of 7-5 and the trial judge entered a sentence of death.

The U.S. Supreme Court will consider "whether Florida's death sentencing scheme violates the Sixth Amendment or the Eighth Amendment in light of this court's decision in *Ring v. Arizona*, 536 U.S. 584 (2002)."<sup>49</sup> The case will be heard and decided during the court's October 2015 term.

The *Ring* case required that juries rather than judges *acting alone*, as in the Arizona death penalty scheme, must make crucial factual determinations that subject a convicted murderer to the death penalty.

The *Ring* decision was not clear about whether Florida's sentencing scheme was effected by the *Ring* decision because Florida's procedures are different than Arizona's at the time of the *Ring* decision. The Florida Supreme Court has never agreed by a majority that the 2002 *Ring* decision applies to Florida's death penalty scheme.<sup>50</sup>

The *Hurst* majority declined to revisit the Court's 12 years of precedent on the *Ring* question. However, the *Hurst* court was divided on the application of *Ring* and other possible constitutional implications.<sup>51</sup>

The dissenting opinion in the *Hurst* case may provide some insight into the U.S. Supreme Court's focus on the Sixth and Eighth Amendments and the *Ring* decision in the question to be decided by the court on certiorari review in *Hurst*.<sup>52</sup>

For example, the dissent states in pertinent part:

- It is only after a sentencing hearing and additional findings of fact regarding aggravators and mitigators that the sentence of death may be imposed. Not only is this requirement imposed

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<sup>47</sup> Case No. 14-7505, *Hurst v. Florida*. <http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/14-7505.htm>

<sup>48</sup> *Hurst v. State*, 147 So.3d 435 (Fla. 2014).

<sup>49</sup> Case No. 14-7505, *Hurst v. Florida*. <http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/14-7505.htm>

<sup>50</sup> See the discussion of the Florida Supreme Court's *Steele* opinion beginning at page 7 above.

<sup>51</sup> Justice Pariente wrote a dissenting opinion as to all but one issue in the *Hurst* case and Justices Labarga and Perry concurred with Justice Pariente's dissent. *Hurst v. State*, 147 So.3d 435, 449 (2014).

<sup>52</sup> Briefly stated, the Sixth Amendment to the U.S. Constitution guarantees our right to trial by jury; the Eighth Amendment protects us from cruel and unusual punishment, which is related to the "arbitrary and capricious" application of the death penalty. The Florida Supreme Court has declined to apply the *Ring* case's holding to the Florida death penalty scheme since the case was decided by the U.S. Supreme Court in 2002. (*Ring v. Arizona*, 536 U.S. 584, 609 (2002)).

by Florida law, but it is constitutionally mandated by the Eighth Amendment to prevent death sentences from being arbitrarily imposed.<sup>53</sup>

- In addition, as interpreted by the United States Supreme Court in *Ring*, the Sixth Amendment requires that a jury find those aggravating factors. As Justice Scalia explained in his concurring opinion in *Ring*, the bottom line is that “the fundamental meaning of the jury-trial guarantee of the Sixth Amendment is that all facts essential to imposition of the level of punishment that the defendant receives—whether the statute calls them elements of the offense, sentencing factors, or Mary Jane—must be found by a jury.” *Ring*, 536 U.S. at 610, 122 S.Ct. 2428 (Scalia, J., concurring).<sup>54</sup>
- [T]he use of a special verdict form during the penalty phase would enable this Court “to tell when a jury has unanimously found a death-qualifying aggravating circumstance, which would both facilitate our proportionality review and satisfy the constitutional guarantee of trial by jury even when the recommendation of death is less than unanimous.” *Coday*, 946 So.2d at 1024 (Pariante, J., concurring in part and dissenting in part).<sup>55</sup>
- I also take this opportunity to note an evolving concern as to the possible Eighth Amendment implications of Florida’s outlier status, among those decreasing number of states that still retain the death penalty, on the issue of jury unanimity in death penalty cases. Except for Florida, every state that imposes the death penalty, as well as the federal system, requires a unanimous jury verdict as to the finding of an aggravating circumstance.<sup>56</sup>
- In addition to Florida’s outlier status as the only state in the country that allows the death penalty to be imposed without a unanimous jury finding of an aggravating circumstance, Florida is also one of the only states to permit the jury to recommend death by a less than unanimous vote.<sup>57</sup>
- The United States Supreme Court has repeatedly explained that “death is different” from every other form of punishment. *See, e.g., Ring*, 536 U.S. at 605–06, 122 S.Ct. 2428; *Harmelin v. Michigan*, 501 U.S. 957, 994, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991); *Gardner v. Florida*, 430 U.S. 349, 357, 97 S.Ct. 1197, 51 L.Ed.2d 393 (1977). The Supreme Court has also emphasized the “heightened reliability demanded by the Eighth Amendment in the determination whether the death penalty is appropriate in a particular case.”<sup>58</sup>

Although the question posed by the court<sup>59</sup> and perhaps the dissenting opinion in the *Hurst* case in the Florida Supreme Court, provide some insight, one cannot be certain how the U.S. Supreme Court will rule in the *Hurst* case.

Likewise it is not possible to determine with certainty what effect that ruling may have on Florida’s death penalty scheme. The question also remains, will the court’s opinion – assuming it changes the way Florida metes out the death penalty – only apply prospectively or will the

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<sup>53</sup> *Hurst* at page 450.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*, at 451.

<sup>56</sup> *Id.*

<sup>57</sup> *Hurst*, footnote 8 at 451.

<sup>58</sup> *Hurst* at 452.

<sup>59</sup> “Whether Florida’s death sentencing scheme violates the Sixth Amendment or the Eighth Amendment in light of this court’s decision in *Ring v. Arizona*, 536 U.S. 584 (2002).” Case No. 14-7505, *Hurst v. Florida*.

<http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/14-7505.htm>

court's ruling sweep in death cases that are "in the pipeline."<sup>60</sup> Adding to the uncertainty is the question of what effect, if any, the passage of SB 664 would have on the court's ruling.

#### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 921.141 and 921.142.

#### **IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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

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<sup>60</sup> Cases which have not completed the direct or collateral appeal process. See for discussion *Schirro v. Summerlin* 124 S.Ct. 2519 (2004), *In re Hill*, 777 F.3d 1214 (11th Cir. 2015) and *In re Holladay*, 331 F.3d 1169 (11th Cir. 2003).

By Senator Altman

16-00577D-15

2015664\_\_

A bill to be entitled

An act relating to sentencing in capital felonies; amending ss. 921.141 and 921.142, F.S.; requiring that an advisory sentence of death be made by a unanimous recommendation of the jury after a defendant's conviction or adjudication of guilt for a capital felony or capital drug trafficking felony; requiring the court to instruct the jury that, in order for the jury to recommend to the court that the death penalty be imposed, the jury must find that sufficient aggravating circumstances exist which outweigh the mitigating circumstances found to exist; requiring the court to instruct the jury that each aggravating circumstance used to support the jury's recommendation of death must be proven beyond a reasonable doubt by a unanimous vote; requiring that the court provide a special verdict form specifying each aggravating circumstance found; limiting the court's findings concerning aggravating circumstances to those found by the jury; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 921.141, Florida Statutes, are amended to read:

921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.—

(2) ADVISORY SENTENCE BY THE JURY.—After hearing all the evidence, the jury shall deliberate and render an advisory

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sentence to the court, based upon the following matters:

(a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);

(b) Whether the aggravating circumstances found to exist are sufficient to outweigh the mitigating circumstances found to exist ~~sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist~~; and

(c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

Effective for sentencing proceedings commencing on or after July 1, 2015, an advisory sentence of death must be based on a unanimous vote for death by the jury. The verdict of the jury must be in writing, and an advisory sentence of death must certify the vote for death was unanimous. The court shall instruct the jury that, in order for the jury to recommend to the court that the death penalty be imposed, the jury must first find that sufficient aggravating circumstances exist which outweigh the mitigating circumstances found to exist. The court shall further instruct the jury that each aggravating circumstance used to support the jury's recommendation of death must be proven beyond a reasonable doubt as found by a unanimous vote. The court shall provide a special verdict form that specifies which, if any, aggravating circumstances were found to exist and certifies that the vote for each aggravating circumstance found was unanimous.

(3) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—

Notwithstanding the recommendation of a ~~majority~~ of the jury, the court, after weighing the aggravating and mitigating

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59 circumstances, shall enter a sentence of life imprisonment or  
60 death, but if the court imposes a sentence of death, it shall  
61 set forth in writing its findings upon which the sentence of  
62 death is based as to the facts:

63 (a) That sufficient aggravating circumstances exist as  
64 enumerated in subsection (5);~~7~~ and

65 (b) That the aggravating circumstances found to exist are  
66 sufficient to outweigh the mitigating circumstances found to  
67 exist ~~there are insufficient mitigating circumstances to~~  
68 ~~outweigh the aggravating circumstances.~~

69  
70 In each case in which the court imposes the death sentence, the  
71 determination of the court shall be supported by specific  
72 written findings of fact based upon the circumstances in  
73 subsections (5) and (6) and upon the records of the trial and  
74 the sentencing proceedings, except that the court's  
75 consideration and finding of any fact based upon the  
76 circumstances in subsection (5) shall be limited to those  
77 unanimously found to exist by the jury. If the court does not  
78 make the findings requiring the death sentence within 30 days  
79 after the rendition of the judgment and sentence, the court  
80 shall impose sentence of life imprisonment in accordance with s.  
81 775.082.

82 Section 2. Subsections (3) and (4) of section 921.142,  
83 Florida Statutes, are amended to read:

84 921.142 Sentence of death or life imprisonment for capital  
85 drug trafficking felonies; further proceedings to determine  
86 sentence.—

87 (3) ADVISORY SENTENCE BY THE JURY.—After hearing all the

Page 3 of 5

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

16-00577D-15

2015664

88 evidence, the jury shall deliberate and render an advisory  
89 sentence to the court, based upon the following matters:

90 (a) Whether sufficient aggravating circumstances exist as  
91 enumerated in subsection (6);

92 (b) Whether the aggravating circumstances found to exist  
93 are sufficient to outweigh the mitigating circumstances found to  
94 exist ~~sufficient mitigating circumstances exist which outweigh~~  
95 ~~the aggravating circumstances found to exist;~~ and

96 (c) Based on these considerations, whether the defendant  
97 should be sentenced to life imprisonment or death.

98  
99 Effective for sentencing proceedings commencing on or after July  
100 1, 2015, an advisory sentence of death must be based on a  
101 unanimous vote for death by the jury. The verdict of the jury  
102 must be in writing, and an advisory sentence of death must  
103 certify the vote for death was unanimous. The court shall  
104 instruct the jury that, in order for the jury to recommend to  
105 the court that the death penalty be imposed, the jury must first  
106 find that sufficient aggravating circumstances exist which  
107 outweigh the mitigating circumstances found to exist. The court  
108 shall further instruct the jury that each aggravating  
109 circumstance used to support the jury's recommendation of death  
110 must be proven beyond a reasonable doubt as found by a unanimous  
111 vote. The court shall provide a special verdict form that  
112 specifies which, if any, aggravating circumstances were found to  
113 exist and certifies that the vote for each aggravating  
114 circumstance found was unanimous.

115 (4) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—

116 Notwithstanding the recommendation of a ~~majority~~ of the jury,

Page 4 of 5

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

16-00577D-15

2015664\_\_

117 the court, after weighing the aggravating and mitigating  
118 circumstances, shall enter a sentence of life imprisonment or  
119 death, but if the court imposes a sentence of death, it shall  
120 set forth in writing its findings upon which the sentence of  
121 death is based as to the facts:

122 (a) That sufficient aggravating circumstances exist as  
123 enumerated in subsection (6);~~7~~ and

124 (b) That the aggravating circumstances found to exist are  
125 sufficient to outweigh the mitigating circumstances found to  
126 exist ~~there are insufficient mitigating circumstances to~~  
127 ~~outweigh the aggravating circumstances.~~

128

129 In each case in which the court imposes the death sentence, the  
130 determination of the court shall be supported by specific  
131 written findings of fact based upon the circumstances in  
132 subsections (6) and (7) and upon the records of the trial and  
133 the sentencing proceedings, except that the court's  
134 consideration and finding of any fact based upon the  
135 circumstances in subsection (6) shall be limited to those  
136 unanimously found to exist by the jury. If the court does not  
137 make the findings requiring the death sentence within 30 days  
138 after the rendition of the judgment and sentence, the court  
139 shall impose sentence of life imprisonment in accordance with s.  
140 775.082, and the defendant ~~that person~~ shall be ineligible for  
141 parole.

142 Section 3. This act shall take effect July 1, 2015.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/14/15  
Meeting Date

664  
Bill Number (if applicable)

Topic Sentencing in Capital Felonies

Amendment Barcode (if applicable)

Name Alice Vickers

Job Title Attorney

Address 623 Beard St.  
Street

Phone 850 556 3121

Tallahassee, FL 32303  
City State Zip

Email alicevickers@flacp.org

Speaking:  For  Against  Information

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

Representing Florida Bar Public Interest Law Section

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)

3/16/15

Meeting Date

6604

Bill Number (if applicable)

Topic Capital Sentencing

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns

Respect Life

Address 201 W Park Ave

Phone \_\_\_\_\_

Street

Tallahassee

FL

32301

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/16/15  
Meeting Date

SB 664  
Bill Number (if applicable)

Topic Sentencing in Capital Felonies

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title

Address 104 S. Monroe Street

Phone 850-425-1344

Tallahassee FL 32301

Email TcgLobby@aol.com

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)

3/10/2015  
Meeting Date

5664  
Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Mark Schlakman

Job Title lawyer + FSU faculty

Address 426 W. Jefferson St.  
Street  
Tallahassee FL 32301  
City State Zip

Phone 850 644-4614

Email mschlakman@admin.fsu.edu

Speaking:  For  Against  Information

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

Representing N/A

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)

March 16, 2016

Meeting Date

664

Bill Number (if applicable)

Topic Sentencing in Capital Felonies

Amendment Barcode (if applicable)

Name Hon. Rex Dimmig

Job Title P.D., 10th Judicial Circuit

Address 255 North Broadway, 2nd Floor

Phone 863.534.4200

Street

Bartow

FL

33830

City

State

Zip

Email rexdimmig@pd10.state.fl.us

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

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

Representing Florida Public Defender Association, Inc.

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

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

3-16-15

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

Meeting Date

664

Bill Number (if applicable)

Topic SENTENCING IN CAPITAL FELONIES

Amendment Barcode (if applicable)

Name MATT WILLIARD

Job Title ATTORNEY

Address Street

Phone 850-224-2001

City State Zip

Email

Speaking: [X] 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 [X] No

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

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

664

3/16/15

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

Meeting Date

~~664~~

Bill Number (if applicable)

Topic Capital Jury

Amendment Barcode (if applicable)

Name Talbot "Sandy" D'Alemberte

Job Title Employer

Address 1117 Myers Park Dr.

Phone 325-6292

Tallahassee FL 32301

Email dalemberte@dalemberte.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against <sup>only public con</sup>  
(The Chair will read this information into the record.)

Representing Personal

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)

3-16-15

Meeting Date

664

Bill Number (if applicable)

Topic death penalty

Amendment Barcode (if applicable)

Name BILL CERVONE

Job Title STATE ATTY - 8 CIR

Address 120 W UNIVERSITY AVE  
Street

Phone 352-374-3686

Gainesville FL 32601  
City State Zip

Email cervone.w@sc08.org

Speaking:  For  Against  Information

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

Representing The Proc Atty Assoc

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Military and Veterans Affairs, Space, and Domestic Security, *Chair*  
Children, Families, and Elder Affairs, *Vice-Chair*  
Appropriations  
Appropriations Subcommittee on General Government  
Environmental Preservation and Conservation  
Finance and Tax

**SENATOR THAD ALTMAN**  
16th District

February 10, 2014

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



Dear Chairman Evers:

I respectfully request that SB 0664, related to *Sentencing in Capitol Felonies*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Thad Altman".

Thad Altman

CC: Amanda Cannon, Staff Director, 510 Knott Building  
Sue Arnold, Committee Administrative Assistant

TA/svb

REPLY TO:

- 8710 Astronaut Blvd, Cape Canaveral, FL 32920 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

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

---

BILL: SB 672

INTRODUCER: Senator Dean

SUBJECT: Service of Process

DATE: March 13, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

---

**I. Summary:**

SB 672 authorizes a process server to post a criminal witness subpoena commanding a witness to appear for a deposition at a witness’s residence if one attempt to serve the subpoena has failed. Under existing law, a process server must make three attempts, at different times of the day or night on different dates, to serve a criminal witness subpoena before the subpoena may be posted at the witness’s residence. These requirements for three attempts at service continue to apply to a criminal witness subpoena that commands a witness to appear.

**II. Present Situation:**

**Service of Process**

The role of a process server is to serve summons, subpoenas, and other forms of process in civil and criminal actions.<sup>1</sup> The term “to serve” means to make legal delivery of a notice or a pleading.<sup>2</sup> A summons is a writ or a process beginning a plaintiff’s legal action and requiring a defendant to appear in court to answer the summons.<sup>3</sup> A subpoena is a legal writ or order commanding a person to appear before a court or other tribunal.<sup>4</sup> A subpoena can command a person to be present for a deposition or for a court appearance.

The sheriff of the county where the person is to be served is generally responsible for serving as process server. However, notice of the initial nonenforceable civil process, criminal witness subpoenas, and criminal summons may be delivered by a process server other than the sheriff—a special process server or a certified process server. Special process servers and certified process

---

<sup>1</sup> Sections 48.011 and 48.021, F.S.

<sup>2</sup> BLACK’S LAW DICTIONARY (10th ed. 2014).

<sup>3</sup> BLACK’S LAW DICTIONARY (10th ed. 2014).

<sup>4</sup> BLACK’S LAW DICTIONARY (10th ed. 2014).

servers must meet certain statutory conditions and appear on a list approved and maintained by the sheriff or the chief judge of a judicial circuit.<sup>5</sup>

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

- Serving the person directly or by leaving a copy of a complaint, petition, or initial pleading or paper at the person's usual place of abode with a person who is 15 years old or older;
- Serving a person at his or her place of employment in a private area designated by the employer;
- Providing substitute service on a spouse if the cause of action is not an adversarial proceeding between the spouse and the person to be served, if the spouse requests service, and if the spouse and person to be served live together;
- Providing substitute service during regular hours at a business by leaving delivery with an employee or other person in charge if the person to be served is a sole proprietor and two attempts have been made to serve the owner.<sup>6</sup>

Service of process of witness subpoenas in criminal or civil cases is the same as provided above. However, service of process of witness subpoenas may be accomplished through United States mail for the following cases:

- Criminal traffic case;
- Misdemeanor case;
- Second degree felony; or
- Third degree felony.<sup>7</sup>

To serve a subpoena on a witness by mail, the subpoena must be sent to the last known address of the witness at least 7 days before the court appearance required in the subpoena. If a witness fails to appear in response to a subpoena served by mail, the court may not find the person in contempt of court.

A criminal witness subpoena may also be posted at the person's residence if the server has unsuccessfully attempted to serve the subpoena at least three times, at different times of the day or night on different dates.<sup>8</sup> The process server must post the subpoena at least 5 days before the witness' required appearance.<sup>9</sup>

### **III. Effect of Proposed Changes:**

This bill authorizes a process server to post a criminal witness subpoena commanding a witness to appear for a deposition at a witness's residence if one attempt to serve the subpoena has failed. Under existing law, a process server must make three attempts, at different times of the day or night on different dates, to serve a criminal witness subpoena before the subpoena may be posted

---

<sup>5</sup> Sections 48.021(1) and 48.29, F.S.

<sup>6</sup> Section 48.031(1) and (2), F.S.

<sup>7</sup> Section 48.031(3)(a), F.S.

<sup>8</sup> Section 48.031(3)(b), F.S.

<sup>9</sup> Section 48.031(3)(b), F.S.

at the witness's residence. These requirements for three attempts at service continue to apply to a criminal witness subpoena that commands a witness to appear.

The bill takes effect July 1, 2015.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Article VII, s. 18, Fla. Const., provides that a mandate potentially exists if a law:

- Requires cities or counties to spend funds or take action requiring the expenditure of funds;
- Reduces the authority of cities or counties to raise revenues in the aggregate; or
- Reduces the percentage of a state tax shared with cities and counties in the aggregate.

This bill reduces from 3 to 1 the number of times a process server must fail to deliver subpoenas for depositions to witnesses before authorizing the posting of subpoenas. As such, the bill reduces costs for cities and counties. The bill does not impact the ability of a city or county to raise revenue. The bill also does not negatively impact the tax base of a city or county. Therefore, the bill does not appear to be a mandate.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

Defendants represented by private counsel in criminal cases bear the costs for service of process. As a result, this bill may reduce costs for those defendants.

Although an indigent defendant represented by the Office of the Public Defender does not pay up front for service of process on a witness for deposition, the cost may be included in a lien. This bill may reduce the amount of money placed on a lien for service of process costs.

**C. Government Sector Impact:**

The Florida Sheriff's Association will realize a cost savings as its process servers will need to attempt service only once before posting. This cost savings will occur because the fee charged by the sheriffs is a fixed fee that includes all attempts in a particular case.

The Office of the State Courts Administrator (OSCA) anticipates more show cause hearings for non-appearance, due to the bill making service of process for depositions easier. However, the OSCA cannot accurately determine a fiscal impact.<sup>10</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 48.031 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 48.196 and 409.257.

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

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

None.

**B. Amendments:**

None.

---

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

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<sup>10</sup> Office of the State Courts Administrator, *2015 Judicial Impact Statement for SB 672* (Feb. 20, 2015).

By Senator Dean

5-00578-15

2015672\_\_

1 A bill to be entitled  
 2 An act relating to service of process; amending s.  
 3 48.031, F.S.; authorizing a criminal witness subpoena  
 4 commanding a witness to appear for a deposition to be  
 5 posted at the witness's residence by an authorized  
 6 person if one attempt to serve the subpoena has  
 7 failed; reenacting ss. 48.196(2) and 409.257(5), F.S.,  
 8 to incorporate the amendment made to s. 48.031, F.S.,  
 9 in references thereto; providing an effective date.  
 10  
 11 Be It Enacted by the Legislature of the State of Florida:  
 12  
 13 Section 1. Paragraph (b) of subsection (3) of section  
 14 48.031, Florida Statutes, is amended to read:  
 15 48.031 Service of process generally; service of witness  
 16 subpoenas.-  
 17 (3)  
 18 (b) A criminal witness subpoena commanding the witness to  
 19 appear for a court appearance may be posted by a person  
 20 authorized to serve process at the witness's residence if three  
 21 attempts to serve the subpoena, made at different times of the  
 22 day or night on different dates, have failed. A criminal witness  
 23 subpoena commanding the witness to appear for a deposition may  
 24 be posted by a person authorized to serve process at the  
 25 witness's residence if one attempt to serve the subpoena has  
 26 failed. The subpoena must be posted at least 5 days before ~~prior~~  
 27 ~~to~~ the date of the witness's required appearance.  
 28 Section 2. Subsection (2) of s. 48.196 and subsection (5)  
 29 of s. 409.257, Florida Statutes, are reenacted for the purpose

Page 1 of 2

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

5-00578-15

2015672\_\_

30 of incorporating the amendment made by this act to s. 48.031,  
 31 Florida Statutes, in references thereto.  
 32 Section 3. This act shall take effect July 1, 2015.

Page 2 of 2

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/16  
Meeting Date

672  
Bill Number (if applicable)

Topic BILL - SERVICE OF PROCESS

Name SARAH CARROLL

Amendment Barcode (if applicable)

Job Title LOBBYIST

Address 123 S. Adams St

Phone 671 4401

Street

Tallahassee

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 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)

3-16-15

Meeting Date

672

Bill Number (if applicable)

Topic Service of Process

Amendment Barcode (if applicable)

Name Bob Dillinger

Job Title Public Defender - 6<sup>th</sup>

Address 14250 49<sup>th</sup> St W

Phone 727-464-6865

Clwr 33762

City

State

Zip

Email: pd@wearthehope.org

Speaking:  For  Against  Information

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

Representing Public Defender Assoc

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Environmental Preservation and  
Conservation, *Chair*  
Agriculture, *Vice Chair*  
Appropriations Subcommittee on General  
Government  
Children, Families, and Elder Affairs  
Communications, Energy, and Public Utilities  
Community Affairs

**SENATOR CHARLES S. DEAN, SR.**  
5th District

March 4, 2015

The Honorable Greg Evers  
308 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Evers,

I respectfully request you place Senate Bill 672, relating to Service of Process, on your Criminal Justice Committee agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

A handwritten signature in black ink that reads "Charles S. Dean".

Charles S. Dean  
State Senator District 5

cc: Amanda Cannon, Staff Director

REPLY TO:

- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

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

---

**BILL:** CS/SB 746

**INTRODUCER:** Criminal Justice Committee and Senator Lee and others

**SUBJECT:** Diabetes Awareness Training for Law Enforcement Officers

**DATE:** March 17, 2015      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	<b>Fav/CS</b>
2.			ACJ	
3.			FP	

---

**Please see Section IX. for Additional Information:**  
COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 746 requires the Florida Department of Law Enforcement (FDLE) to establish an online continued employment training component relating to diabetic emergencies. This component must include, at a minimum, recognition of symptoms of such an emergency, distinguishing such an emergency from alcohol intoxication or drug overdose, and appropriate first aid for such an emergency. Completion of the training component may count toward the 40 hours of instruction for continued employment or appointment as a law enforcement officer.

**II. Present Situation:**

The Criminal Justice Standards and Training Commission (CJSTC) within the Florida Department of Law Enforcement (FDLE) establishes uniform minimum standards for the employment and training of full-time, part-time, and auxiliary law enforcement officers. Currently, every prospective officer must meet the minimum qualifications outlined in s. 943.13, F.S., successfully complete a CJSTC-developed basic recruit training program, and pass a statewide certification examination in order to receive their certification.

The CJSTC establishes basic skills training on a number of specific topics (e.g., domestic violence, interpersonal skills relating to diverse populations, and victim’s assistance and rights).<sup>1</sup> Basic skills training on diabetic emergencies is not specially required by current Florida law but

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<sup>1</sup> Sections 943.171, 943.175, and 943.172, F.S.

the FDLE states that the topics described in the bill are taught in the basic recruit training program.<sup>2</sup>

In order to maintain their certification, law enforcement officers must satisfy the continuing training and education requirements of s. 943.135, F.S. Law enforcement officers receive periodic CJSTC-approved training or education at the rate of 40 hours every 4 years. The CJSTC establishes continued employment training relating to specific topics (e.g., community policing, sexual offender and victim investigations, and interpersonal skills relating to diverse populations).<sup>3</sup> This training counts toward the 40 hours of required instruction for continued employment. Current Florida law does not specifically require continued employment training relating to diabetic emergencies.

### III. Effect of Proposed Changes:

The bill creates s. 943.1726, F.S., which requires the Florida Department of Law Enforcement (FDLE) to establish an online continued employment training component relating to diabetic emergencies. This component must include, at a minimum, recognition of symptoms of such an emergency, distinguishing such an emergency from alcohol intoxication or drug overdose, and appropriate first aid for such an emergency. Completion of the training component may count toward the 40 hours of instruction for continued employment or appointment as a law enforcement officer as required under s. 943.135, F.S.

The act may be cited as the “Arthur Green, Jr., Act.”

The bill takes effect on October 1, 2015.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

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<sup>2</sup> Analysis of SB 746 (February 9, 2015), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice). The instruction includes learning modules on identifying signs and symptoms of a diabetic emergency, identifying treatment for a patient with a diabetic emergency, and identifying medical conditions with clues that may mimic alcohol or drug impairment to determine if a DUI investigation is warranted. *Id.*

<sup>3</sup> Sections 943.1729, 943.17295, and 943.1758, F.S.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 943.1726 of the Florida Statutes.

**IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Criminal Justice on March 16, 2015:**

- Requires the Florida Department of Law Enforcement (FDLE) to establish an online continued employment training component relating to diabetic emergencies.
- Requires that this component include, at a minimum, recognition of symptoms of such an emergency, distinguishing such an emergency from alcohol intoxication or drug overdose, and appropriate first aid for such an emergency.
- Provides that completion of the training component may count toward the 40 hours of instruction for continued employment or appointment as a law enforcement officer.
- Provides that the bill takes effect on October 1, 2015.

## B. Amendments:

None.



200864

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/16/2015	.	
	.	
	.	
	.	

---

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. This act may be cited as the "Arthur Green, Jr., Act."

Section 2. Section 943.1726, Florida Statutes, is created  
to read:

943.1726 Continued employment training relating to diabetic  
emergencies.—The department shall establish an online continued



200864

11 employment training component relating to diabetic emergencies.  
12 Instruction shall include, but need not be limited to,  
13 recognition of symptoms of such an emergency, distinguishing  
14 such an emergency from alcohol intoxication or drug overdose,  
15 and appropriate first aid for such an emergency. Completion of  
16 the training component may count toward the 40 hours of  
17 instruction for continued employment or appointment as a law  
18 enforcement officer as required under s. 943.135.

19 Section 3. This act shall take effect October 1, 2015.  
20

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

22 And the title is amended as follows:

23 Delete everything before the enacting clause  
24 and insert:

25 A bill to be entitled  
26 An act relating to diabetes awareness training for law  
27 enforcement officers; providing a short title;  
28 creating s. 943.1726, F.S.; requiring the Department  
29 of Law Enforcement to establish an online continued  
30 employment training component relating to diabetic  
31 emergencies; specifying topics to be included in the  
32 instruction; providing that completion of the training  
33 may count towards continued employment instruction  
34 requirements; providing an effective date.

By Senator Lee

24-00839-15

2015746\_\_

A bill to be entitled

An act relating to diabetes awareness training for law enforcement officers; providing a short title; creating s. 943.1726, F.S.; requiring the Criminal Justice Standards and Training Commission to develop standards for instruction of law enforcement officers on diabetic emergencies; specifying topics to be included in the instruction; providing an effective date.

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

Section 1. This act may be cited as the "Arthur Green, Jr., Act."

Section 2. Section 943.1726, Florida Statutes, is created to read:

943.1726 Basic skills training on diabetic emergencies.—The commission shall establish standards for the instruction of law enforcement officers on the subject of diabetic emergencies. Instruction shall include, but need not be limited to, recognition of symptoms of such an emergency, distinguishing such an emergency from alcohol intoxication or drug overdose, and appropriate first aid for such an emergency.

Section 3. This act shall take effect July 1, 2015.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/16/15

Meeting Date

746

Bill Number (if applicable)

Topic Diabetes

Amendment Barcode (if applicable)

Name Lena Young Green

Job Title Resident

Address 3406 M. Avon Ave.

Phone 813 407-2376

Tampa FL 33603

City

State

Zip

Email lenayoung211@yahoo.com

Speaking:  For  Against  Information

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

Representing My Family

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)

3.16.15  
Meeting Date

746  
Bill Number (if applicable)

Topic Diabetes/Law Enforcement

Amendment Barcode (if applicable)

Name Ken Kopczynski "cop-CHEN-ski"

Job Title Lobbyist

Address 300 East Brevard St  
Street

Phone 222-3329

Tallah FL 32301  
City State Zip

Email ken@alpha.org

Speaking:  For  Against  Information

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

Representing Fla PBA 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)

3/16

Meeting Date

746

Bill Number (if applicable)

Topic BILL - DIABETES TRAINING FOR LE

Amendment Barcode (if applicable)

Name SARAH CARROL

Job Title LOBBYIST

Address 1235 Adams Street

Phone 671-4401

Street

Tallahassee

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 FLORIDA SHERIFFS ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:  
Appropriations, *Chair*  
Appropriations Subcommittee on General  
Government  
Banking and Insurance  
Rules

JOINT COMMITTEE:  
Joint Legislative Budget Commission,  
*Alternating Chair*

SENATOR TOM LEE  
24th District

February 16, 2015

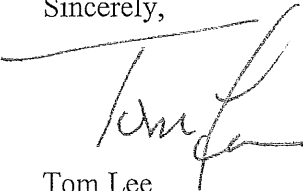
The Honorable Greg Evers  
Senate Committee on Criminal Justice, Chair  
308 Senate Office Building  
404 South Monroe St.  
Tallahassee, FL 32399

Dear Chair Evers,

I respectfully request that SB 746 related to *Diabetes Awareness Training for Law Enforcement Officers*, be placed on the Senate Committee on Criminal Justice agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

  
Tom Lee  
Senator, District 24

Cc: Amanda Cannon, Staff Director

REPLY TO:

- 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 653-7061
- 418 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5024

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

ANDY GARDINER  
President of the Senate

GARRETT RICHTER  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

---

BILL: SB 1078

INTRODUCER: Senator Sobel

SUBJECT: Lewd and Lascivious Behavior

DATE: March 13, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	<b>Favorable</b>
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____

---

**I. Summary:**

SB 1078 repeals s. 798.02, F.S., which makes it a second degree misdemeanor for an unmarried man and a woman to lewdly and lasciviously cohabit together, or any man or woman, married or unmarried to engage in open and gross lewdness and lascivious behavior.

**II. Present Situation:**

Section 798.02, F.S., makes it a second degree misdemeanor for any unmarried man and woman to lewdly and lasciviously associate and cohabit together, or if married or unmarried engage in open and gross lewdness and lascivious behavior. This law was originally enacted in 1868 and made the crime of cohabitation punishable by imprisonment in the state prison not exceeding two years, or in the county jail not exceeding one year, or by a fine not exceeding three hundred dollars.<sup>1</sup>

According to the National Conference of State Legislatures there are only three states, Florida, Michigan, and Mississippi that make cohabitation illegal. Eight states that once made cohabitation illegal have repealed those statutes, one as recently as 2013.<sup>2</sup>

**States with Cohabitation Laws**

Florida	798.02	If any man and woman, not being married to each other, lewdly and lasciviously associate and cohabit together, or if any man or woman, married or unmarried, engages in open and gross lewdness and lascivious behavior, they shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.
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<sup>1</sup> Ch. 71-136 s. 773, L.O.F.

<sup>2</sup> E-mail from NCSL, March 11, 2015.

		NOTE: FSA 798.03, 04 & 05 dealing with cohabitation and adultery were repealed.
Michigan		<p>MCLA § 750.335 Any man or woman, not being married to each other, who shall lewdly and lasciviously associate and cohabit together, and any man or woman, married or unmarried, who shall be guilty of open and gross lewdness and lascivious behavior, shall be guilty of a misdemeanor, punishable by imprisonment in the county jail not more than 1 year, or by fine of not more than \$500.00. No prosecution shall be commenced under this section after 1 year from the time of committing the offense.</p> <p>Amendment to § 750.335 effective March 31, 2003: Any man or woman, not being married to each other, who lewdly and lasciviously associates and cohabits together, and any man or woman, married or unmarried, who is guilty of open and gross lewdness and lascivious behavior, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00. No prosecution shall be commenced under this section after 1 year from the time of committing the offense.</p>
Mississippi	97-29-1	If any man and woman shall unlawfully cohabit, whether in adultery or fornication, they shall be fined in any sum not more than five hundred dollars each, and imprisoned in the county jail not more than six months; and it shall not be necessary, to constitute the offense, that the parties shall dwell together publicly as husband and wife, but it may be proved by circumstances which show habitual sexual intercourse.

**States that have Repealed Laws Making Cohabitation Illegal**

Arizona		NOTE: ARS 13-1409 Open and notorious cohabitation or adultery. Repealed.
Idaho		NOTE: IC 18-6604 Sex Crimes. Lewd Cohabitation. Repealed.
Maine		NOTE: MRSA 17-75 § 2151 Lascivious cohabitation and lewdness. Repealed.
New Mexico		NOTE: NMRS § 30-10-2 Unlawful Cohabitation. Repealed.
North Carolina	14-184	<p>If any man and woman, not being married to each other, shall lewdly and lasciviously associate, bed and cohabit together, they shall be guilty of a Class 2 misdemeanor: Provided, that the admissions or confessions of one shall not be received in evidence against the other.</p> <p>NOTE: held Unconstitutional by Hobbs v. Smith, Superior Court of North Carolina, Pender County.</p>
North Dakota	12.1-20-10	<p>A person is guilty of a class B misdemeanor if he or she lives openly and notoriously with a person of the opposite sex as a married couple without being married to the other person.</p> <p>NOTE: Repealed by S.L. 2007, ch. 131, § 4, eff. Aug. 1, 2007</p>
Virginia	18.2-345	<p>If any persons, not married to each other, lewdly and lasciviously associate and cohabit together, or, whether married or not, be guilty of open and gross lewdness and lasciviousness, each of them shall be guilty of a Class 3 misdemeanor; and upon a repetition of the offense, and conviction thereof, each of them shall be guilty of a Class 1 misdemeanor.</p> <p>NOTE: Repealed by Acts 2013, c. 621</p>

West Virginia	61-8-4	<p>If any persons, not married to each other, lewdly and lasciviously associate and cohabit together, or, whether married or not, be guilty of open or gross lewdness and lasciviousness, they shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty dollars, and may, in the discretion of the court, be imprisoned not exceeding six months, and, upon a repetition of the offense, they shall, upon conviction, be confined in jail not less than six nor more than twelve months. In prosecutions for adultery and fornication, and for lewdly and lasciviously cohabiting together, the persons named in the indictment shall be presumed to be unmarried persons in the absence of proof to the contrary.</p> <p>NOTE: Repealed by Acts 2010, c. 34, eff. June 11, 2010</p>
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**III. Effect of Proposed Changes:**

The bill repeals the statutory section making it a second degree misdemeanor for an unmarried man and woman to lewdly and lasciviously associate and cohabit together, or if any man or woman, married or unmarried, engages in open and gross lewdness and lascivious behavior.

The bill makes conforming changes and has an effective date of July 1, 2015.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 39.0139, 39.509, and 435.04.

This bill repeals section 798.02 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

By Senator Sobel

33-01255-15

20151078\_\_

1 A bill to be entitled  
 2 An act relating to lewd and lascivious behavior;  
 3 repealing s. 798.02, F.S., relating to a prohibition  
 4 on lewd and lascivious behavior, including a  
 5 prohibition on lewd and lascivious association and  
 6 cohabitation together by a man and woman who are not  
 7 married to each other; amending ss. 39.0139, 39.509,  
 8 and 435.04, F.S.; conforming provisions to changes  
 9 made by the act; providing an effective date.

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

11 Section 1. Section 798.02, Florida Statutes, is repealed.  
 12 Section 2. Paragraph (a) of subsection (3) of section  
 13 39.0139, Florida Statutes, is amended to read:  
 14 39.0139 Visitation or other contact; restrictions.—  
 15 (3) PRESUMPTION OF DETRIMENT.—  
 16 (a) A rebuttable presumption of detriment to a child is  
 17 created when:  
 18 1. A court of competent jurisdiction has found probable  
 19 cause exists that a parent or caregiver has sexually abused a  
 20 child as defined in s. 39.01;  
 21 2. A parent or caregiver has been found guilty of,  
 22 regardless of adjudication, or has entered a plea of guilty or  
 23 nolo contendere to, charges under the following statutes or  
 24 substantially similar statutes of other jurisdictions:  
 25 a. Section 787.04, relating to removing minors from the  
 26 state or concealing minors contrary to court order;  
 27 b. Section 794.011, relating to sexual battery;

Page 1 of 3

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

33-01255-15

20151078\_\_

30 ~~e. Section 798.02, relating to lewd and lascivious~~  
 31 ~~behavior;~~  
 32 ~~c.d.~~ Chapter 800, relating to lewdness and indecent  
 33 exposure;  
 34 ~~d.e.~~ Section 826.04, relating to incest; or  
 35 ~~e.f.~~ Chapter 827, relating to the abuse of children; or  
 36 3. A court of competent jurisdiction has determined a  
 37 parent or caregiver to be a sexual predator as defined in s.  
 38 775.21 or a parent or caregiver has received a substantially  
 39 similar designation under laws of another jurisdiction.  
 40 Section 3. Paragraph (a) of subsection (6) of section  
 41 39.509, Florida Statutes, is amended to read:  
 42 39.509 Grandparents rights.—Notwithstanding any other  
 43 provision of law, a maternal or paternal grandparent as well as  
 44 a stepgrandparent is entitled to reasonable visitation with his  
 45 or her grandchild who has been adjudicated a dependent child and  
 46 taken from the physical custody of the parent unless the court  
 47 finds that such visitation is not in the best interest of the  
 48 child or that such visitation would interfere with the goals of  
 49 the case plan. Reasonable visitation may be unsupervised and,  
 50 where appropriate and feasible, may be frequent and continuing.  
 51 Any order for visitation or other contact must conform to the  
 52 provisions of s. 39.0139.  
 53 (6) In determining whether grandparental visitation is not  
 54 in the child's best interest, consideration may be given to the  
 55 following:  
 56 (a) The finding of guilt, regardless of adjudication, or  
 57 entry or plea of guilty or nolo contendere to charges under the  
 58 following statutes, or similar statutes of other jurisdictions:

Page 2 of 3

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

33-01255-15

20151078\_\_

59 s. 787.04, relating to removing minors from the state or  
60 concealing minors contrary to court order; s. 794.011, relating  
61 to sexual battery; ~~s. 798.02, relating to lewd and lascivious~~  
62 ~~behavior~~; chapter 800, relating to lewdness and indecent  
63 exposure; s. 826.04, relating to incest; or chapter 827,  
64 relating to the abuse of children.

65 Section 4. Present paragraphs (x) through (zz) of  
66 subsection (2) of section 435.04, Florida Statutes, are  
67 redesignated as paragraphs (w) through (yy), respectively, and  
68 paragraph (w) of subsection (2) of that section, is amended to  
69 read:

70 435.04 Level 2 screening standards.—

71 (2) The security background investigations under this  
72 section must ensure that no persons subject to the provisions of  
73 this section have been arrested for and are awaiting final  
74 disposition of, have been found guilty of, regardless of  
75 adjudication, or entered a plea of nolo contendere or guilty to,  
76 or have been adjudicated delinquent and the record has not been  
77 sealed or expunged for, any offense prohibited under any of the  
78 following provisions of state law or similar law of another  
79 jurisdiction:

80 ~~(w) Section 798.02, relating to lewd and lascivious~~  
81 ~~behavior.~~

82 Section 5. This act shall take effect July 1, 2015.



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/16/15

Meeting Date

1078

Bill Number (if applicable)

Topic Bill SB 1078

Amendment Barcode (if applicable)

Name Greg Pound

Job Title N/A

Address 9166 Sunrise Dr  
Street

Phone \_\_\_\_\_

Largo  
City

Fl.  
State

33773  
Zip

Email Savingfamilies7@gmail.com

Speaking:  For  Against  Information

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

Representing Families

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

Tallahassee, Florida 32399-1100

COMMITTEES:  
Children, Families, and Elder Affairs, *Chair*  
Health Policy, *Vice Chair*  
Agriculture  
Education Pre-K-12  
Appropriations Subcommittee on Health  
and Human Services

**SENATOR ELEANOR SOBEL**

33rd District



March 4, 2015

Senator Greg Evers  
Chair of Committee on Criminal Justice  
308 Senate Office Building  
404 South Monroe Street  
Tallahassee, Florida 32399

Dear Chair Evers,

This letter is to request that **SB 1078** relating to **the repeal of cohabitation laws** be placed on the agenda of the next scheduled meeting of the Criminal Justice Committee.

Thank you for your consideration of this request.

Respectfully,

Eleanor Sobel  
State Senator, 33rd District

Cc: Amanda Cannon, Sue Arnold

REPLY TO:

- The "Old" Library, First Floor, 2600 Hollywood Blvd., Hollywood, Florida 33020 (954) 924-3693 FAX: (954) 924-3695
- 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

# CourtSmart Tag Report

Room: LL 37

Case:

Type: C

Caption: Senate Criminal Justice Committee

Judge:

Started: 3/16/2015 2:06:20 PM

Ends: 3/16/2015 3:30:24 PM

Length: 01:24:05

2:06:23 PM Meeting called to order, Roll Call  
2:07:39 PM Tab 6 - SB 1078 by Senator Sobel—Lewd and Lascivious Behavior  
2:09:44 PM Senator Brandes asked a question  
2:10:30 PM Greg Pound, representing Families  
2:13:42 PM Senator Sobel closes on SB 1078  
2:14:08 PM Roll Call on SB 1078  
2:14:35 PM Tab 2 - CS/SB 526 by Commerce and Tourism / Senator Grimsley—Notaries Public  
2:15:40 PM Roll Call on CS/SB 526  
2:16:12 PM Tab 3 - SB 664 by Senator Altman—Sentencing in Capital Felonies  
2:18:07 PM Sandy Attenburg, ACCU of Florida  
2:23:58 PM Matt William, Attorney, Florida Association of Criminal Defense Lawyers  
2:27:31 PM Senator Gibson asks Mr. Williams a question.  
2:28:55 PM Hon. Rex Dimming, Florida Public Defender Association, Inc.  
2:32:26 PM Mark Schlakman, Lawyer and FSU Faculty  
2:35:39 PM Bill Cervone, State Attorney  
2:43:05 PM Senator Bradley makes a statement.  
2:44:54 PM Senator Gibson makes a statement.  
2:47:18 PM Senator Evers makes a statement.  
2:48:51 PM Senator Altman closes on SB 664  
2:49:26 PM Roll Call on SB 664  
2:50:12 PM Senator Gibson recognizes the Girl Scouts of Florida  
2:51:10 PM Tab 5 - SB 746 by Senator Lee—Diabetes Awareness Training for Law Enforcement Officers  
2:51:28 PM Amendment Barcode 200864, Senator Brandes  
2:52:46 PM Back on bill as amended.  
2:53:38 PM Roll Call on CS SB 746  
2:54:30 PM Tab 4 - SB 672 by Senator Dean—Service of Process. Chase Daniels explains the bill.  
2:55:22 PM Senator Gibson asks a question.  
2:56:37 PM Roll Call on SB 672  
2:57:26 PM Judy Thompson, President, Forgotten Majority, Inc. speaks on FDOC Abuses.  
3:06:17 PM Senator Clemens asks a question of Ms. Thompson.  
3:07:10 PM Ms. Thompson responds.  
3:14:22 PM Senator Gibson asks questions to Ms. Thompson.  
3:19:49 PM Senator Evers asks questions to Ms. Thompson .  
3:21:16 PM Senator Evers asks questions to Ms. Thompson on chemical agents.  
3:24:01 PM Senator Evers asks Mr. Tom Cannon, Deputy Sec'y, DOC, to come forward and asked him questions about cameras.  
3:30:15 PM Meeting adjourned