

**SPB 7080** by **CJ**; Law Enforcement Officer Body Cameras

877704 A S FAV CJ, Evers Delete L.84: 04/07 02:31 PM

**SB 134** by **Diaz de la Portilla**; (Identical to H 0203) Lifetime Electronic Monitoring of Sex Offenders

**CS/SB 908** by **TR, Altman (CO-INTRODUCERS) Gibson**; (Similar to CS/CS/H 0231) Traffic Safety

763146 A S RCS CJ, Brandes Delete L.81 - 100. 04/07 02:31 PM

255866 A S RCS CJ, Brandes Delete L.162 - 169. 04/07 02:31 PM

331138 A S RCS CJ, Brandes Delete L.237. 04/07 02:31 PM

**SB 1178** by **Richter**; (Similar to H 0979) Drone Surveillance

133542 D S FAV CJ, Bradley Delete everything after 04/07 02:31 PM

**CS/SB 1306** by **BI, Bradley**; (Identical to CS/H 1127) Insurance Fraud

**SB 1482** by **Bean**; (Identical to H 1115) Cold Case Task Force

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

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

**MEETING DATE:** Tuesday, April 7, 2015  
**TIME:** 10:00 a.m.—12:00 noon  
**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.		Not Considered

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
<p><b>Senate Confirmation Hearing:</b> A public hearing will be held for consideration of the below-named executive appointment to the office indicated.</p> <p><b>Secretary of Corrections</b></p>			
2	Jones, Julie ()	Pleasure of Governor	Recommend Confirm Yeas 5 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
Consideration of proposed bill:			
3	<b>SPB 7080</b>	Law Enforcement Officer Body Cameras; Requiring a law enforcement agency that permits its law enforcement officers to wear body cameras to establish policies and procedures addressing the proper use, maintenance, and storage of body cameras and the data recorded by body cameras; requiring such a law enforcement agency to ensure that specified personnel are trained in the law enforcement agency's policies and procedures; requiring that data recorded by body cameras be retained in accordance with specified requirements, etc.	Submitted as Committee Bill Yeas 5 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Tuesday, April 7, 2015, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 134</b> Diaz de la Portilla (Identical H 203, Compare CS/H 1037, CS/S 1286)	Lifetime Electronic Monitoring of Sex Offenders; Establishing the lifetime electronic monitoring program within the Department of Law Enforcement; requiring the implementation of an electronic monitoring system to monitor sex offenders sentenced to lifetime electronic monitoring; requiring a sex offender sentenced to lifetime electronic monitoring to wear or carry an electronic monitoring device as determined by the department; requiring a convicted sex offender to be sentenced to lifetime electronic monitoring; providing criminal penalties, etc.  CJ 04/07/2015 Temporarily Postponed ACJ AP	Temporarily Postponed
5	<b>CS/SB 908</b> Transportation / Altman (Similar CS/CS/H 231, Compare CS/CS/H 7075)	Traffic Safety; Providing criminal penalties for certain noncriminal traffic infractions that cause serious bodily injury or death to a person; defining the term "serious bodily injury"; prohibiting passing and turning in front of a vulnerable user in an unsafe manner; providing penalties; prohibiting harassing, taunting, or throwing an object at a person riding a bicycle; providing mandatory revocation of license for a specified conviction, etc.  TR 03/26/2015 Fav/CS CJ 04/07/2015 Fav/CS FP	Fav/CS Yeas 5 Nays 0
6	<b>SB 1178</b> Richter (Similar H 979, Compare CS/CS/CS/H 649, CS/S 766)	Drone Surveillance; Citing this act as the "Florida Drone Privacy Act"; requiring the Department of Law Enforcement to develop guidelines for the use of drones by state or local law enforcement agencies; specifying situations in which it is lawful to capture an image with a drone; providing criminal penalties, etc.  CJ 04/07/2015 Temporarily Postponed ACJ AP	Temporarily Postponed
7	<b>CS/SB 1306</b> Banking and Insurance / Bradley (Identical CS/H 1127)	Insurance Fraud; Repealing provisions relating to criminal penalties applicable to unlicensed health care clinics and the reporting of unlicensed health care clinics; revising provisions related to unlawful, noncompensable, and unenforceable health care clinic charges or reimbursement claims; revising and providing criminal penalties for making unlawful charges, operating or failing to report an unlicensed clinic, filing false or misleading information related to a clinic license application, and other violations, etc.  BI 03/31/2015 Fav/CS CJ 04/07/2015 Favorable AP	Favorable Yeas 5 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Tuesday, April 7, 2015, 10:00 a.m.—12:00 noon

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	<b>SB 1482</b> Bean (Identical H 1115)	Cold Case Task Force; Creating the task force within the Department of Law Enforcement; specifying membership of the task force; authorizing reimbursement for per diem and travel expenses; prescribing duties of the task force; requiring the task force to submit a report to the Governor and the Legislature by a specified date; providing for expiration of the task force, etc.  CJ     04/07/2015 Favorable ACJ FP	Favorable Yeas 5 Nays 0

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Other Related Meeting Documents

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The Florida Senate  
**Committee Notice Of Hearing**

IN THE FLORIDA SENATE  
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of  
Julie Jones  
Secretary of Corrections


**NOTICE OF HEARING**

TO: Ms. Julie Jones

YOU ARE HEREBY NOTIFIED that the Committee on Criminal Justice of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, April 07, 2015, in the Mallory Horne Committee Room, 37 Senate Office Building, commencing at 10:00 a.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.  
DATED this the 2nd day of April, 2015

Committee on Criminal Justice

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

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

Amended

7

A black and white copy of this document is not official

500

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

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

*Julie Jones*

is duly appointed

**Secretary,  
Department of Corrections**

for a term beginning on the  
Sixth day of January, A.D., 2015,  
to serve at the pleasure of the Governor  
and is subject to be confirmed by the Senate  
during the next regular session of the Legislature.

*Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Twenty-Fifth day of February, A.D., 2015.*



*Ken Detzner*

Secretary of State

DSDE 99 (3/03)

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

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

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

*Amended*



**RICK SCOTT**  
GOVERNOR

RECEIVED  
15 FEB 25 PM 1:  
DEPARTMENT OF CORRECTIONS  
SECRETARY OF STATE

February 24, 2015

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

Dear Secretary Detzner:

Please be advised I have made the following reappointment under the provisions of Section 20.315, Florida Statutes:

Secretary Julie Jones

as Secretary of the Department of Corrections, subject to confirmation by the Senate. This appointment is effective January 6, 2015, for a term ending at the pleasure of the Governor.

Sincerely,

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

Rick Scott  
Governor

RS/vh

# OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of Leon

RECORDED  
15 JAN 14 AM 10:10  
DIVISION OF ELECTIONS  
SECRETARY OF STATE

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

Secretary, Florida Department of Corrections

(Title of Office)

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

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

Julie Jones  
Signature

Sworn to and subscribed before me this 31<sup>st</sup> day of December, 2014.

Bradie M. Strickland  
Signature of Officer Administering Oath or of Notary Public



BRADIE M. STRICKLAND  
MY COMMISSION # FF 177468  
EXPIRES: December 2, 2018  
Bonded Thru Budget Notary Services

Bradie M. Strickland  
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known  OR Produced Identification

Type of Identification Produced Drivers License

## ACCEPTANCE

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

Mailing Address:  Home  Office

Willie L. Jones  
Print name as you desire commission issued

Julie Jones  
Signature



The Florida Senate  
**COMMITTEE RECOMMENDATION ON  
EXECUTIVE APPOINTMENT**

**COMMITTEE:** Committee on Criminal Justice  
**MEETING DATE:** Tuesday, April 07, 2015  
**TIME:** 10:00 a.m.—12:00 noon  
**PLACE:** Mallory Horne Committee Room, 37 Senate Office Building

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**TO:** The Honorable Andy Gardiner, President

**FROM:** Committee on Criminal Justice

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

**Office:** Secretary of Corrections

**Appointee:** Jones, Julie

**Term:** 1/6/2015-Pleasure of Governor

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



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/7/2015

Meeting Date

Topic Confirm Sec. Jones

Bill Number Tab 2  
*(if applicable)*

Name BRIAN PITTS

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

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

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 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

7 Apr 15  
Meeting Date

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

Topic Confirmation of DOC Secretary

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

Name Barney Bishop III

Job Title Pres & CEO

Address 204 S. Monroe  
Street

Phone 577-3032

Fall FL 32301  
City State Zip

Email barney@smartjusticealliance.org

Speaking:  For  Against  Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**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: SPB 7080

INTRODUCER: Criminal Justice Committee

SUBJECT: Law Enforcement Officer Body Cameras

DATE: April 7, 2015

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

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Cannon		<b>CJ Submitted as Committee Bill</b>

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## I. Summary:

SPB 7080 requires law enforcement agencies that use body cameras to establish policies and procedures addressing the proper use, maintenance, and storage of body cameras and the data recorded by body cameras. The bill specifies what must be included in those policies and procedures, such as general guidelines for the proper use, maintenance, and storage of body cameras and limitations on recording law enforcement-related encounters and activities.

The bill also requires these agencies to conduct training, retain audio and video data recorded by body cameras, and perform periodic review of practices.

Finally, the bill provides that ch. 934, F.S. (interception of communications), does not apply to body camera recordings made by law enforcement agencies that elect to use body cameras. Therefore, a body camera recording cannot be considered an “intercept” and the general prohibition against interception of wire, oral, and electronic communications does not apply to such recordings.

## II. Present Situation:

### Body-Worn Cameras

Body-Worn Cameras (BWCs) or “body cameras” are currently being used or considered for use by many law enforcement agencies. “BWCs are mobile audio and video capture devices that allow officers to record what they see and hear. Devices can be attached to various body areas, including the head, by helmet, glasses or other means, or to the body by pocket, badge, or other means of attachment (such as in-car on the dash). They have the capability to record officer interactions that previously could only be captured by in-car interrogation room camera systems.”<sup>1</sup>

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<sup>1</sup> Sensor, Surveillance, and Biometric Technologies Center of Excellence. September 2012. *A Primer on Body-Worn Cameras for Law Enforcement*. National Institute of Justice. The quoted text is from page 5 of the report, which is available at <https://www.justnet.org/pdf/00-Body-Worn-Cameras-508.pdf> (last viewed on March 31, 2015).

One recent study of BWCs noted some of the perceived benefits and perceived concerns and problems regarding their use:

***Perceived Benefits:***

- BWCs “increase transparency and citizen views of police legitimacy”;
- BWCs “have a civilizing effect, resulting in improved behavior among both police officers and citizens”;
- BWCs “have evidentiary benefits that expedite resolution of citizen complaints or lawsuits and that improve evidence for arrest and prosecution”;
- BWCs “provide opportunities for police training.”<sup>2</sup>

***Perceived Concerns and Problems:***

- BWCs “create citizen privacy concerns”;
- BWCs “create concerns for police officer privacy” (e.g., some police unions “have claimed that the cameras represent a change in working conditions that must be negotiated”);
- BWCs “create concerns for officer health and safety” (e.g., head and neck injuries that may be mitigated by wearing the BWC on the uniform instead of on the head);
- BWCs “require investments in terms of training and policy development”;
- BWCs “require substantial commitment of finances, resources, and logistics.”

Florida Police Chiefs Association staff is aware of 13 Florida police departments that currently use BWCs<sup>3</sup> and 9 Florida police departments that have implemented pilot programs to test the use of BWCs.<sup>4</sup> The media have reported that the Flagler County Sheriff’s Office is using BWCs<sup>5</sup> and the Pasco County Sheriff has indicated an intent to purchase BWCs.<sup>6</sup> Other Florida sheriffs’ offices may be considering whether to use BWCs.

On December 1, 2014, the White House announced that President Barack Obama was proposing “a three-year \$263 million investment package that will increase use of body-worn cameras, expand training for law enforcement agencies (LEAs), add more resources for police department reform, and multiply the number of cities where DOJ facilitates community and local LEA engagement. As part of this initiative, a new Body Worn Camera Partnership Program would provide a 50 percent match to States/localities who purchase body worn cameras and requisite

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<sup>2</sup> White, Michael D. 2014. *Police Officer Body-Worn Cameras: Assessing the Evidence*. Washington, DC: Office of Community Oriented Policing Services. The information is from the “Executive Summary” section of the report. The report is available at <https://ojpdiagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf> (last viewed on March 31, 2015).

<sup>3</sup> Police departments: Eustis; City of Miami; Cocoa; Daytona Beach; Daytona Beach Shores; Florida State University (motorcycle officers); Gulfport; Palm Bay (SWAT Officers); Pensacola; West Melbourne; Windermere; Miami Beach; and Rockledge.

<sup>4</sup> Police departments: Clearwater; Ft. Myers; Marianna; Orlando (University of South Florida study); Plant City; Sarasota; St. Petersburg; Tampa; and West Palm Beach.

<sup>5</sup> Metz, Claire. “Flagler County deputies fitted with new body cameras.” WESH.com (Orlando). August 28, 2014. The news broadcast video is available at <http://www.wesh.com/flagler-county-deputies-fitted-with-new-body-cameras/27779830> (last viewed on March 31, 2015).

<sup>6</sup> Behrman, Elizabeth. “Local law enforcement split on body cameras.” *The Tampa Tribune*. December 14, 2014. The article is available at <http://tbo.com/news/crime/-20141226/> (last viewed on March 31, 2015).

storage. Overall, the proposed \$75 million investment over three years could help purchase 50,000 body worn cameras.”<sup>7</sup>

Currently, Florida law does not require such agencies to have policies in place that govern the use of such technology.

### **Interception of Communications**

Paragraphs (1) (a) and (4)(a) of s. 934.03, F.S., make it a third degree felony<sup>8</sup> to intentionally “intercept”<sup>9</sup> an “oral communication.”<sup>10</sup> The statute provides for a number of exceptions to this general prohibition.<sup>11</sup> For example, it is lawful under ss. 934.03-934.09, F.S.,<sup>12</sup> for:

- A law enforcement officer to intercept an oral communication if the officer is a party to the communication or one of the parties to the communication has given prior consent to the interception and the purpose of the interception is to obtain evidence of a criminal act;<sup>13</sup> or
- A person to intercept an oral communication when all of the parties to the communication have given prior consent to the interception.<sup>14</sup>

The contents of an intercepted communication and evidence derived from the contents may not be received in evidence in court proceedings and other specified proceedings if the disclosure of the information would violate ch. 934, F.S. (i.e., a statutory exclusionary rule):

Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision thereof, if the disclosure of that information would be in violation of this chapter. The prohibition of use as evidence provided in this section does not apply in cases of prosecution for criminal interception in violation of the provisions of this chapter.<sup>15</sup>

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<sup>7</sup> “FACT SHEET: Strengthening Community Policing,” Office of the Press Secretary, The White House. December 1, 2014. The document is available at <http://www.whitehouse.gov/the-press-office/2014/12/01/fact-sheet-strengthening-community-policing> (last viewed on March 31, 2015).

<sup>8</sup> A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.

<sup>9</sup> Section 934.02(3), F.S., defines “intercept” as the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

<sup>10</sup> Section 934.02(2), F.S., defines “oral communication” as any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation and does not mean any public oral communication uttered at a public meeting or any electronic communication.

<sup>11</sup> Section 934.02(2)(a)-(j), F.S.

<sup>12</sup> These laws respectively relate to: interception and disclosure of wire, oral, and electronic communications; manufacture of communication-intercepting devices; confiscation of those devices; authorization of an interception; authorization for disclosure and use of an intercepted communication; and the procedure for interception.

<sup>13</sup> Section 934.03(2)(c), F.S.

<sup>14</sup> Section 934.03(2)(d), F.S.

<sup>15</sup> Section 934.06, F.S.

Florida state courts have not addressed whether a body camera recording that records “oral communications” constitutes an “intercept” within the meaning of that term in s. 934.02, F.S. However, the Florida Supreme Court has previously held that other recordings of “oral communications” constituted an “intercept.”<sup>16</sup> Body camera recordings are not expressly addressed in any existing exception in ch. 934, F.S., or otherwise excluded from ch. 934, F.S. Assuming body camera recordings are an “intercept,” some recordings might fall under an existing exception (such as the examples of exceptions previously noted) but others might not. Absent the recording falling under a current exception or otherwise being excluded from ch. 934, F.S., it might be in violation of ch. 934, F.S., and inadmissible under s. 934.06, F.S.

### III. Effect of Proposed Changes:

The bill does the following:

- Provides a preamble that indicates:
  - Advancements in technology allow body cameras to be affordable and practical tools for law enforcement use;
  - Body cameras can provide a valuable source of information to both law enforcement and the general public;
  - The audio and video recording of police and citizen interactions allows law enforcement agencies to improve efforts to reduce crime and properly address citizen complaints;
  - Establishing uniform procedural requirements for the use of body cameras by law enforcement will provide consistency and reliability throughout the state; and
  - There are currently no statewide mandatory and uniform standards or guidelines that apply to use of body cameras by law enforcement officers.
- Provides relevant definitions of body camera,<sup>17</sup> law enforcement officer,<sup>18</sup> and law enforcement agency.<sup>19</sup>

<sup>16</sup> For a discussion of this issue, see *Guilder v. State*, 899 So.2d 412 (Fla. 4th DCA 2005). The court relied on *State v. Tsavaris*, 394 So.2d 418, 420 (Fla. 1981), *receded from on other grounds*, 478 So.2d 38 (Fla. 1985), as precedent for affirming the trial court’s decision to deny a motion to suppress a recording made by the defendant of a face-to-face conversation without the consent of the parties to the conversation. *Id.* at 417-419. *Tsavaris* involved “a medical examiner recording a telephone conversation with a murder suspect who called him.” *Id.* at 417. In its analysis, the Fourth District Court of Appeals also noted that the Florida Supreme Court, in reaching its holding in *Shevin v. Sunbeam Television Corp.*, 31 So.2d 723 (Fla. 1977), was “apparently under the belief that recording a conversation in which one is a participant constituted intercepting a conversation[.]” *Id.* Further, the court noted that the Florida Supreme Court held in *State v. Walls*, 356 So.2d 294, 296 (Fla. 1978) that “an extortionary threat delivered personally to the victim in the victim’s home is an ‘oral communication’ ... [and] pursuant to Section 934.03, the electronic recording of such ‘oral communication’ without the consent of all parties to the communication was prohibited.” *Id.*

<sup>17</sup> The bill defines a “body camera” as a portable electronic recording device that is worn on a law enforcement officer’s person that records audio and video data of the officer’s law-enforcement-related encounters and activities.

<sup>18</sup> The bill states that “law enforcement officer” has the same meaning as provided in s. 943.10, F.S. Section 943.10(1), F.S., defines a “law enforcement officer” as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

<sup>19</sup> The bill defines “law enforcement agency” as an agency that has a primary mission of preventing and detecting crime and enforcing the penal, criminal, traffic, and motor vehicle laws of the state and in furtherance of that primary mission employs law enforcement officers as defined in s. 943.10, F.S.



- Requires law enforcement agencies that use body cameras to establish policies and procedures addressing the proper use, maintenance, and storage of body cameras and the data recorded by body cameras. The policies and procedures must include:
  - General guidelines for the proper use, maintenance, and storage of body cameras.
  - Any limitations on which law enforcement officers are permitted to wear body cameras.
  - Any limitations on law-enforcement-related encounters and activities in which law enforcement officers are permitted to wear body cameras.
  - General guidelines for the proper storage, retention, and release of audio and video data recorded by body cameras.
- Requires a law enforcement agency that permits its law enforcement officers to wear body cameras to:
  - Ensure that all personnel who wear, use, maintain, or store body cameras are trained in the law enforcement agency's policies and procedures concerning them.
  - Ensure that all personnel who use, maintain, store, or release audio or video data recorded by body cameras are trained in the law enforcement agency's policies and procedures.
  - Retain audio and video data recorded by body cameras in accordance with the requirements of s. 119.021, F.S. (maintenance of public records), except as otherwise provided by law.
  - Perform a periodic review of actual agency body camera practices to ensure conformity with the agency's policies and procedures.
- Provides that ch. 934, F.S. (interception of communications), does not apply to body camera recordings made by law enforcement agencies that elect to use body cameras. Therefore, a body camera recording cannot be considered an "intercept" and the general prohibition against interception of wire, oral, and electronic communications does not apply to such recordings.

The bill takes effect upon becoming a law.

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

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

Article VII, Section 18 of the Florida Constitution (the "mandates" provision) restricts the state's ability to: require local governments to spend money; reduce local government authority to raise revenues; and reduce local governments' share of state taxes.

While subsection (d) of Section 18 provides a "criminal law" exemption from the requirements of Section 18, it is uncertain if that exemption applies. The bill requires county or municipal governments (local law enforcement agencies) to develop policies and procedures on body cameras, conduct training, retain audio and video data recorded by body cameras, and perform periodic review of practices. If the bill's requirements implicate the mandates provision, an exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments. Even absent the bill, local law enforcement agencies that uses body cameras would likely conduct some training and develop some policies and procedures to ensure effective implementation of a body camera program and avoid potential liability issues.

**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:**

If an agency chooses to use body cameras, the bill may have a minimal impact on state expenditures because the bill creates a new requirement for state law enforcement agencies that use body cameras to establish policies and procedures governing body cameras and to train personnel accordingly.

The bill may also have a minimal impact on local expenditures because the bill creates a new requirement for local law enforcement agencies that use body cameras to establish policies and procedures governing body cameras, and to train personnel accordingly.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 943.1718 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.

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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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877704

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/07/2015	.	
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The Committee on Criminal Justice (Evers) recommended the following:

- 1       **Senate Amendment**
- 2
- 3       Delete line 84
- 4 and insert:
- 5       Section 2. This act shall take effect upon becoming a law.

FOR CONSIDERATION By the Committee on Criminal Justice

591-03135-15

20157080pb

1 A bill to be entitled  
 2 An act relating to law enforcement officer body  
 3 cameras; creating s. 943.1718, F.S.; providing  
 4 definitions; requiring a law enforcement agency that  
 5 permits its law enforcement officers to wear body  
 6 cameras to establish policies and procedures  
 7 addressing the proper use, maintenance, and storage of  
 8 body cameras and the data recorded by body cameras;  
 9 requiring such policies and procedures to include  
 10 specified information; requiring such a law  
 11 enforcement agency to ensure that specified personnel  
 12 are trained in the law enforcement agency's policies  
 13 and procedures; requiring that data recorded by body  
 14 cameras be retained in accordance with specified  
 15 requirements; requiring a periodic review of agency  
 16 body camera practices to ensure conformity with the  
 17 agency's policies and procedures; exempting the  
 18 recordings from specified provisions relating to the  
 19 interception of wire, electronic, and oral  
 20 communications; providing an effective date.  
 21  
 22 WHEREAS, advancements in technology allow body cameras to  
 23 be affordable and practical tools for law enforcement use, and  
 24 WHEREAS, body cameras can provide a valuable source of  
 25 information to both law enforcement and the general public, and  
 26 WHEREAS, the audio and video recording of police and  
 27 citizen interactions allows law enforcement agencies to improve  
 28 efforts to reduce crime and properly address citizen complaints,  
 29 and

Page 1 of 3

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

591-03135-15

20157080pb

30 WHEREAS, establishing uniform procedural requirements for  
 31 the use of body cameras by law enforcement will provide  
 32 consistency and reliability throughout the state, and  
 33 WHEREAS, there are currently no statewide mandatory and  
 34 uniform standards or guidelines that apply to use of body  
 35 cameras by law enforcement officers, NOW, THEREFORE,  
 36  
 37 Be It Enacted by the Legislature of the State of Florida:  
 38  
 39 Section 1. Section 943.1718, Florida Statutes, is created  
 40 to read:  
 41 943.1718 Body cameras; policies and procedures.-  
 42 (1) As used in this section, the term:  
 43 (a) "Body camera" means a portable electronic recording  
 44 device that is worn on a law enforcement officer's person and  
 45 which records audio and video data of the officer's law  
 46 enforcement-related encounters and activities.  
 47 (b) "Law enforcement agency" means an agency that has a  
 48 primary mission of preventing and detecting crime and enforcing  
 49 the penal, criminal, traffic, and motor vehicle laws of the  
 50 state and in furtherance of that primary mission employs law  
 51 enforcement officers as defined in s. 943.10.  
 52 (c) "Law enforcement officer" has the same meaning as  
 53 provided in s. 943.10.  
 54 (2) A law enforcement agency that permits its law  
 55 enforcement officers to wear body cameras shall establish  
 56 policies and procedures addressing the proper use, maintenance,  
 57 and storage of body cameras and the data recorded by body  
 58 cameras. The policies and procedures must include:

Page 2 of 3

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59 (a) General guidelines for the proper use, maintenance, and  
60 storage of body cameras.

61 (b) Any limitations on which law enforcement officers are  
62 permitted to wear body cameras.

63 (c) Any limitations on law enforcement-related encounters  
64 and activities under which law enforcement officers are  
65 permitted to wear body cameras.

66 (d) General guidelines for the proper storage, retention,  
67 and release of audio and video data recorded by body cameras.

68 (3) A law enforcement agency that permits its law  
69 enforcement officers to wear body cameras shall:

70 (a) Ensure that all personnel who wear, use, maintain, or  
71 store body cameras are trained in the law enforcement agency's  
72 policies and procedures concerning them.

73 (b) Ensure that all personnel who use, maintain, store, or  
74 release audio or video data recorded by body cameras are trained  
75 in the law enforcement agency's policies and procedures.

76 (c) Retain audio and video data recorded by body cameras in  
77 accordance with the requirements of s. 119.021, except as  
78 otherwise provided by law.

79 (d) Perform a periodic review of actual agency body camera  
80 practices to ensure conformity with the agency's policies and  
81 procedures.

82 (4) Chapter 934 does not apply to body camera recordings  
83 made by law enforcement agencies that elect to use body cameras.

84 Section 2. This act shall take effect January 1, 2016.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/15/15

Meeting Date

7080

Bill Number (if applicable)

Topic Boby Cameras

Amendment Barcode (if applicable)

Name Greg Pound

Job Title \_\_\_\_\_

Address 9166 Sunrise Dr.

Phone \_\_\_\_\_

Street

Largo

City

Fl.

State

33773

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Pineellas County Florida Government Corruption

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/16

Meeting Date

7080

Bill Number (if applicable)

Topic Proposed Bill 7080

Amendment Barcode (if applicable)

Name Michelle Richardson

Job Title Public Policy Director

Address 4500 Biscayne Blvd

Phone 786-363-2700

Street

Miami

FL

33137

City

State

Zip

Email mrichardson@aclufl.org

Speaking:  For  Against  Information

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

Representing ACLU of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/7/15  
Meeting Date

SB 7080  
Bill Number (if applicable)

Topic Body Cameras

Amendment Barcode (if applicable)

Name Kathleen Russell

Job Title Dir of Gov. Relations

Address 400 S. Orange Ave  
Street

Phone \_\_\_\_\_

Orlando FL 32801  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing City of Orlando

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/07/15  
Meeting Date

S. 7080  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title \_\_\_\_\_

Address 104 S. Monroe Street

Phone 850-425-1344

Street

Tallahassee FL 32301

Email TcgLobby@aol.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing State Conference of NAACP

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

April 7, 2015  
Meeting Date

7080  
Bill Number (if applicable)

Topic Law Enforcement Officer Body Cameras

Amendment Barcode (if applicable)

Name Amy Mercer

Job Title Executive Director

Address 924 North Gadsden Street  
Street

Phone 219-3631

Tallahassee FL 32303  
City State Zip

Email amercer@fpca.com

Speaking:  For  Against  Information

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

Representing The Florida Police Chiefs Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

7  
April 6, 2015

Meeting Date

7080

Bill Number (if applicable)

Topic Body Cameras

Amendment Barcode (if applicable)

Name Bob Dillinger

Job Title Public Defender, 6th Judicial Circuit

Address 14250 49th Street North

Phone 727.464.6516

Street

Clearwater

Florida

33762

Email bdilling@wearethehope.org

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4-7-15

Meeting Date

7080

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive  
Street

Phone 850 248 3599

Tallahassee FL 32308  
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

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4 / 7 / 2015

Meeting Date

Topic \_\_\_\_\_

Bill Number 7080

(if applicable)

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

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 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/17/15

Meeting Date

7080

Bill Number (if applicable)

Topic LAW ENFORCEMENT BODY CAMERAS

Amendment Barcode (if applicable)

Name GARY BRADFORD

Job Title Legislative Services

Address 300 E. BREUARD ST  
Street

Phone 800-733-3722

TALLAHASSEE FL 32301  
City State Zip

Email GBRADFORD@FLSPEYAL100

Speaking:  For  Against  Information

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

Representing FLORIDA POLICE Benevolent Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/7/15

7080

Meeting Date

Bill Number (if applicable)

Topic Body Worn Cameras

Amendment Barcode (if applicable)

Name Jeremiah Hawkes

Job Title Attorney

Address 8700 Citizen Dr

Phone 727-277-7362

New Port Richey FL 34652

Email jhawkes@pascosheriff.org

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

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

Representing Pasco Sheriff's Office

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

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

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

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



**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 134

INTRODUCER: Senator Diaz de la Portilla

SUBJECT: Lifetime Electronic Monitoring of Sex Offenders

DATE: April 6, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	<b>Pre-meeting</b>
2.			ACJ	
3.			AP	

---

**I. Summary:**

SB 134 creates s. 943.71, F.S., an act relating to lifetime electronic monitoring of sex offenders within the Florida Department of Law Enforcement (FDLE). The bill requires the FDLE to implement an electronic monitoring system to monitor, track, and record sex offenders who are released from prison, probation, community control, or conditional release and who are sentenced to lifetime electronic monitoring. It requires the sex offender to reimburse FDLE for the electronic monitoring services.

The bill creates s. 943.711, F.S., that adds three new felonies for sex offenders who tamper with the electronic device, who fail to notify officials of damage to the device, or who fail to pay the required fees. It defines sex offender for purposes of the section as an offender convicted of a crime committed in this state on or after October 1, 2015, which requires them to register on the sex offender registry.

**II. Present Situation:**

**Sexual Predator/Offender Registration**

Florida's registry laws subject sexual predators and offenders to registration and notification requirements. All qualifying sexual predators or offenders are listed on a public registry web site maintained by the Florida Department of Law Enforcement (FDLE).<sup>1</sup> The web site can also provide the public with email notifications when an offender moves nearby.

The sexual predator designation in Florida is reserved for relatively few sex offenders. As of September 11, 2013, a total of 43,640 persons located in Florida were required to register as a

---

<sup>1</sup> The web site is located online at: <http://offender.fdle.state.fl.us/offender/homepage.do>. (last visited April 3, 2015).

sexual predator or sexual offender. Of that number, courts designated 21 percent as sexual predators.

### **Designation of a Sexual Predator or Sexual Offender**

A person is designated a sexual predator by a court if the person:

- Has been convicted of a current qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;
- Has been convicted of a current qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Is subject to civil commitment.<sup>2</sup>

A person is designated as a sexual offender by the FDLE if the person:

- Has been convicted of a qualifying sex offense and released on or after October 1, 1997 (the date the modern registry became effective) from the sanction imposed for that offense;
- Is a Florida resident and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the victim was 14 years of age or older.<sup>3</sup>

### **Registration Obligations of Sexual Predators/Offenders**

- Registrants must report to their local sheriff's office and provide a photograph, personal identifying information, driver's license/state ID number, social security number, residence address (including transient addresses), employer information, email addresses, instant message names, and crime information.<sup>4</sup>
- Sexual predators and some sexual offenders must report to the local sheriff's office quarterly; other sexual offenders report bi-annually.<sup>5</sup>
- Sexual predators and offenders must update their driver's license or identification card within 48 hours after any change of residence or name change.<sup>6</sup>
- Generally, sexual predators and offenders are subject to lifetime registration. Some sexual offenders may petition for removal of registration requirements if they have been released from the latest sanction for at least 25 years, remain arrest-free, and do not have an adult conviction for a disqualifying offense. Persons convicted of a qualifying sex offense as a young adult may also petition for removal of registration requirements.<sup>7</sup>
- Sexual predators are prohibited from working or volunteering at any place where children regularly congregate.<sup>8</sup>

---

<sup>2</sup> Section 775.21(4), F.S.

<sup>3</sup> Section 943.9435(1), F.S.

<sup>4</sup> Section 775.21(6) and 943.0435(14), F.S.

<sup>5</sup> Sections 775.21(8)(a) and 943.0435(14)(a), F.S.

<sup>6</sup> Sections 775.21(6)(g)1., and 943.0435(4)(a), F.S.

<sup>7</sup> Sections 775.21(6)(1) and 943.0435(11), F.S.

<sup>8</sup> Section 775.21(3)(b)5., F.S.

### III. Effect of Proposed Changes:

The bill creates s. 943.71, F.S., the Lifetime Electronic Monitoring Program, requiring the Florida Department of Law Enforcement (FDLE) to implement a system of monitoring sex offenders in Florida who are released from prison, probation, community control, or conditional release and who are sentenced by the court to lifetime electronic monitoring. The lifetime electronic monitoring program shall require all of the following:

- Electronic tracking of the movement and location of each sex offender sentenced to lifetime electronic monitoring from the time that he or she is released from prison, probation, community control, or conditional release for the remainder of his or her natural life; and
- Use of an electronic system that actively monitors and identifies a sex offender's location and movement, and timely reports and records his or her presence near or within a crime scene or in a prohibited area or his or her departure from specified geographic limitations. This information must be available upon request to the court or a law enforcement agency.

A sex offender who is sentenced to lifetime electronic monitoring shall wear or otherwise carry the device as determined by the department and in the manner prescribed by the program. A sex offender shall pay the department for the electronic monitoring services as provided in s. 948.09(2), F.S.<sup>9</sup>

The bill creates s. 943.711, F.S., which provides a definition of "sex offender" and creates three new felonies. The bill defines "sex offender" as an offender convicted of a crime committed in Florida on or after October 1, 2015, for which he or she is required to register pursuant to s. 775.21<sup>10</sup>, s. 943.0435<sup>11</sup>, or s. 944.607<sup>12</sup>, F.S. A person convicted as a sex offender shall be sentenced to lifetime electronic monitoring as provided in s. 943.71, F.S.

The bill provides that it is a third degree felony if the sex offender with lifetime electronic monitoring willfully and knowingly commits any of the following acts:

- Intentionally altering, tampering with, damaging, or destroying electronic monitoring equipment;
- Failure to notify the Department of Corrections of any damage to an electronic monitoring device; and
- Failure to reimburse the Department of Corrections, or its agent for the cost of electronic monitoring.

Violation of this section may result in a prison term to be served consecutively to any term of prison imposed for any other violation of law committed by the offender while in violation of this section.

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

---

<sup>9</sup> This appears to be in an incorrect reference to the Department of Corrections statutory provision relating to payment for costs of supervision.

<sup>10</sup> Section 775.21, F.S., is the Florida Sexual Predators Act.

<sup>11</sup> Section 943.0435, F.S., provides the criteria for which sexual offenders are required to register with FDLE.

<sup>12</sup> Section 944.607, F.S., provides a definition of "Sexual Offender" to mean a person who is in custody or control of, or under the supervision of FDLE or in the custody of a private correctional facility.

**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:

In *Grady v. North Carolina*, 2015 WL 1400850, after completion of a convicted sex offender's sentence, he was ordered by the North Carolina Superior Court to be subjected to satellite-based monitoring as a recidivist sex offender. The sex offender appealed. The North Carolina Appeals Court affirmed and the North Carolina Supreme Court denied review. United States Supreme Court on a grant of certiorari held that a State conducts a search when a device is attached to a person's body without consent for purpose of tracing that persons movements. The Court also held that North Carolina's program under which recidivist sex offenders could be subjected to satellite-based monitoring constituted a search within the meaning of the Fourth Amendment of the U.S. Constitution. The Court further stated that "the Fourth Amendment prohibits only unreasonable searches, and the reasonableness depends on the totality of the circumstances, including the nature and purpose of the search and the extent to which the search intrudes upon reasonable privacy expectations." The Court stated that the North Carolina courts did not examine whether the State's monitoring program is reasonable. The Court vacated the judgment of the Supreme Court of North Carolina and remanded for further proceeding not inconsistent with its opinion.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

There will be a cost to the individuals required to reimburse FDLE for the cost of the electronic monitoring devices.

## C. Government Sector Impact:

According to FDLE the fiscal impact is indeterminate, but will likely have substantial costs. FDLE stated though not detailed in the bill language, it is likely that sheriff's

offices and police departments would need to be involved in the administration of this program. Language is needed to identify, authorize, and direct such local responsibilities.

Statutory revenues are significantly limited by the ability of the offender to pay and a great number of offenders will not meet the established criteria to pay the actual costs for the lifetime monitoring program and equipment.

It is anticipated that the costs to establish and maintain such a lifetime program, though indeterminate at this writing, will be significant and will naturally increase at a regular rate as more individuals are convicted of the many identified offenses every year and the resource costs of equipment, systems, and staffing will similarly need to increase as a result of volume and general economic changes.

Considerations include:

- 24/7 Unit Staffing & Oversight of unspecified number of offenders for life;
- Statewide staffing to identify, determine parameters, and maintain all crime scene locations, “prohibited areas,” and “specified geographic limitations”;
- Statewide staffing for local repairs to equipment, local programming relative to each offender’s area. Issues re: offender moving, leaving state, traveling, etc.;
- Equipment/Software
  - Maintenance
  - Distribution
  - Replacement
- Financial Staff
  - Fees Collections
  - Recovery Costs
  - Bookkeeping/Reporting

## **VI. Technical Deficiencies:**

FDLE provided the following comments:

As written the bill language is unclear regarding the operating agency charged with responsibility for the proposed sex offender electronic monitoring program. The language creates new sections for the program and refers to “the department,” identified as the Florida Department of Law Enforcement (FDLE), in Chapter 943, F.S., and also references various notifications directly to the “Department of Corrections.” Lines 102-105.

A disparity in language occurs as lines 69-73 require electronic monitoring “from the time he or she is released from, prison, probation, community control, or conditional release for the remainder of his or her natural life.” As prescribed in lines 65-66, and 95-96, lifetime electronic monitoring is to be part of a conviction sentence and as such, would necessarily be included as part of some form of supervision either immediately upon sentencing or upon release from incarceration. Outside of traditional supervision forms or completion of sanctions, this provision would constitute a punitive sanction beyond a sentence served as well as implicate numerous privacy concerns and may well be ruled unconstitutional.

- “Specified geographical limitations” is undefined and would be specific to each sexual predator/offender as re: locations, type of offense, type of supervision and designation vary. Line 78.
- Lines #36-44 cite a 2012 report regarding the sheriff’s offices difficulty in locating transient sexual offenders/predators.
  - Effective 10/1/2014, all transient sexual offenders/predators are required to report in person every 30 days to the sheriff’s office in their county of transient residence to provide address and location information.
  - Since the provision noted above was very recently implemented, there has not been sufficient time to determine if it is effectively assisting to reduce issues with sheriff’s offices in locating transient sexual offenders/predators.
- Line 90-96 propose a provision for a person convicted as a sexual offender on or after October 1, 2015, to be sentenced to lifetime electronic monitoring. Lifetime electronic monitoring would be considered part of the criminal sentence. The lifetime sanction would exceed the statutory maximum punishment for many of the sexual offenses that would require sexual offender registration and may be ruled, at this time, as unlawful.
  - At this time ss. 947.1405, 948.03, 948.06, 948.063, 948.11, 948.30, 948.101, F.S., provides for the FL Department of Corrections to electronically monitor certain offenders under sanction, including sexual offenders. DOC has the same described electronic monitoring program already in place. Creating an additional section would duplicate costly programs and areas of responsibility across two agencies.
- Line 97-109 provide punishments for violations of the proposed laws and cites punishment classification statutes s. 775.082, s. 775.083, or s. 775.084— however these sections are not revised in the bill language to reflect the proposed changes as to the level of crime and penalty. Certain sex offenses requiring registration are third degree felonies and sanctions that currently include electronic monitoring are life, first, and second degree felonies. Additionally, other statutory chapters will require amendments in order to revise associated penalties and punishments for violations and punishment in accordance with the proposed language.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 943.71 and 943.711.

**IX. Additional Information:**

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

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

None.

B. Amendments:

None.

---

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

---

By Senator Diaz de la Portilla

40-00226-15

2015134\_\_

A bill to be entitled

An act relating to lifetime electronic monitoring of sex offenders; creating s. 943.71, F.S.; establishing the lifetime electronic monitoring program within the Department of Law Enforcement; requiring the implementation of an electronic monitoring system to monitor sex offenders sentenced to lifetime electronic monitoring; requiring tracking the movement and location of each sex offender; requiring timely reporting and recording of the sex offender's presence in certain circumstances; requiring that such records be available upon request; requiring a sex offender sentenced to lifetime electronic monitoring to wear or carry an electronic monitoring device as determined by the department; requiring the sex offender to reimburse the department for the cost of the lifetime electronic monitoring; creating s. 943.711, F.S.; defining the term "sex offender"; requiring a convicted sex offender to be sentenced to lifetime electronic monitoring; providing criminal penalties; authorizing a term of imprisonment imposed for specified violations relating to lifetime electronic monitoring to run consecutively with other violations; providing an effective date.

WHEREAS, the Legislature is concerned about convicted sex offenders who are released from custody or supervision and repeat the unlawful acts for which they were originally convicted, and

Page 1 of 4

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

40-00226-15

2015134\_\_

WHEREAS, the Legislature has a compelling interest in protecting children and other individuals from predatory sexual activity, and

WHEREAS, the Legislature finds that, despite registration and reporting requirements, law enforcement agencies encounter difficulties in locating many convicted sex offenders, and

WHEREAS, a 2012 report by the Office of Program Policy Analysis and Government Accountability found that 40 percent of sheriff's offices surveyed reported that they had difficulty locating convicted sex offenders who provide transient residences, and

WHEREAS, the Legislature believes that some convicted sex offenders report their addresses as "transient" for the express purpose of avoiding law enforcement oversight, and

WHEREAS, requiring a convicted sex offender to wear an electronic monitoring device for the duration of his or her natural life would provide law enforcement with the capability of determining the offender's precise location, and

WHEREAS, an electronic monitoring system would immediately inform law enforcement if a convicted sex offender was near a prohibited area such as a park, a child care facility, a school, or another location where children regularly congregate, and

WHEREAS, the implementation of this electronic monitoring technology can assist law enforcement agencies in marshaling their resources to more effectively protect children and others from predatory sexual activity, NOW, THEREFORE,

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

Page 2 of 4

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



40-00226-15

2015134\_\_

59 Section 1. Section 943.71, Florida Statutes, is created to  
60 read:

61 943.71 Lifetime electronic monitoring program.-

62 (1) The lifetime electronic monitoring program is  
63 established in the department, which shall implement a system of  
64 monitoring sex offenders who are released from prison,  
65 probation, community control, or conditional release and who are  
66 sentenced by the court to lifetime electronic monitoring. The  
67 lifetime electronic monitoring program shall require all of the  
68 following:

69 (a) Electronic tracking of the movement and location of  
70 each sex offender sentenced to lifetime electronic monitoring  
71 from the time that he or she is released from prison, probation,  
72 community control, or conditional release for the remainder of  
73 his or her natural life.

74 (b) Use of an electronic system that actively monitors and  
75 identifies a sex offender's location and movement, and timely  
76 reports and records his or her presence near or within a crime  
77 scene or in a prohibited area or his or her departure from  
78 specified geographic limitations. Such recorded information must  
79 be available upon request to the court or a law enforcement  
80 agency.

81 (2) A sex offender who is sentenced to lifetime electronic  
82 monitoring shall wear or otherwise carry an electronic  
83 monitoring device as determined by the department and in the  
84 manner prescribed by the program. A sex offender subject to  
85 electronic monitoring by the department shall pay the department  
86 for the electronic monitoring services as provided in s.  
87 948.09(2).

Page 3 of 4

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

40-00226-15

2015134\_\_

88 Section 2. Section 943.711, Florida Statutes, is created to  
89 read:

90 943.711 Lifetime electronic monitoring.-

91 (1) For purposes of this section, "sex offender" means an  
92 offender convicted of a crime committed in this state on or  
93 after October 1, 2015, for which he or she is required to  
94 register pursuant to s. 775.21, s. 943.0435, or s. 944.607.

95 (2) A person convicted as a sex offender shall be sentenced  
96 to lifetime electronic monitoring as provided under s. 943.71.

97 (3) A sex offender who willfully or knowingly commits any  
98 of the following acts commits a felony of the third degree,  
99 punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

100 (a) Intentionally altering, tampering with, damaging, or  
101 destroying electronic monitoring equipment.

102 (b) Failure to notify the Department of Corrections of any  
103 damage to an electronic monitoring device.

104 (c) Failure to reimburse the Department of Corrections or  
105 its agent for the cost of electronic monitoring.

106 (4) A term of imprisonment imposed for a violation of this  
107 section may be served consecutively to any term of imprisonment  
108 imposed for any other violation of law which is committed by the  
109 offender while in violation of this section.

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

Page 4 of 4

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

# APPEARANCE RECORD

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

7  
April 6, 2015

Meeting Date

134

Bill Number (if applicable)

Topic Body Cameras - ELECTRONIC MONITORING

Amendment Barcode (if applicable)

Name Bob Dillinger

Job Title Public Defender, 6th Judicial Circuit

Address 14250 49th Street North

Phone 727.464.6516

Street

Clearwater

Florida

33762

Email bdilling@wearethehope.org

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4 / 7 / 2015

Meeting Date

Topic \_\_\_\_\_

Bill Number 139  
*(if applicable)*

Name BRIAN PITTS

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

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH  
*Street*

Phone 727-897-9291

SAINT PETERSBURG      FLORIDA      33705  
*City*                                      *State*                                      *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/7/15

Meeting Date

SB134

Bill Number (if applicable)

Topic Lifetime Monitoring

Amendment Barcode (if applicable)

Name Ron Book

Job Title

Address 104 W. Jefferson

Phone 850 224 3427

Street

City

TLH

State

32301

Zip

Email Ron@RLBookPA.com

Speaking:  For  Against  Information

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

Representing Lauren's Kids

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)

7 Apr 15

Meeting Date

SB 13A

Bill Number (if applicable)

Topic Electronic Monitoring

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title Pres & CEO

Address 204 S. Monroe St.

Phone 577-3032

Street

Tall

City

FL

State

32301

Zip

Email barney@smartjusticealliance.org

Speaking:  For  Against  Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/7/15  
Meeting Date

0134  
Bill Number (if applicable)

Topic LIFETIME ELEC MONITORING OF SEX OFFENDERS Amendment Barcode (if applicable)

Name ~~COM~~ MIAMI DADE COMMISSIONER JOSE DIAZ

Job Title \_\_\_\_\_

Address 111 NW 1ST Phone 305-375-5600  
Street  
MIAMI FL. 33134 Email \_\_\_\_\_  
City State Zip

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

Representing MIAMI-DADE COUNTY

Appearing at request of Chair:  Yes  No  
Lobbyist registered with Legislature:  Yes  No

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

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Judiciary, *Chair*  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Community Affairs  
Finance and Tax  
Regulated Industries  
Rules

**SENATOR MIGUEL DIAZ de la PORTILLA**  
40th District

December 12, 2014

The Honorable Greg Evers  
Chair, Senate Criminal Justice Committee

Via email

Dear Chairman Evers:

My Senate bill 134, Lifetime Electronic Monitoring of Sex Offenders, has been referred to the Committee on Criminal Justice.

I respectfully request that you agenda the bill at the next opportunity.

Thank you for your consideration.

Sincerely,

Miguel Diaz de la Portilla  
Senator, District 40

Cc: Ms. Amanda Cannon, Staff Director; Ms. Sue Arnold, Committee Administrative Assistant

REPLY TO:

- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
- 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

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/CS/SB 908

INTRODUCER: Criminal Justice Committee; Transportation Committee; and Senator Altman

SUBJECT: Traffic Safety

DATE: April 8, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	<b>Fav/CS</b>
2.	Dugger	Cannon	CJ	<b>Fav/CS</b>
3.			FP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/CS/SB 908 seeks to increase the safety of “vulnerable users of a public roadway.” The bill:

- Revises and creates various statutory provisions and penalties relating to traffic control laws and vulnerable users, such as pedestrians and bicyclists;
- Clarifies provisions relating to overtaking and passing vulnerable users, particularly with respect to maintaining required distance between a passing vehicle and a vulnerable user;
- Sets out requirements for making turns at certain locations when passing a vulnerable user;
- Allows drivers to cross the centerline in an identified no-passing zone when passing a vulnerable user;
- Requires appearance at a mandatory hearing for certain infractions contributing to the bodily injury of a vulnerable user;
- Provides a mandatory fine for certain infractions contributing to the bodily injury of a vulnerable user;
- Requires law enforcement officers issuing certain citations to note if the violation contributed to the bodily injury of a vulnerable user; and
- Revises cross-references to conform definitions.



## II. Present Situation:

### Definitions

Current law defines certain relevant terms for purposes of ch. 316, F.S., relating to traffic control laws, as follows:

- “Vehicle” means every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks.<sup>1</sup>
- “Bicycle” means every vehicle propelled solely by human power, and every motorized bicycle propelled by a combination of human power and an electric helper motor capable of propelling the vehicle at a speed of not more than 20 miles per hour on level ground upon which any person may ride, having two tandem wheels, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels. The term does not include such a vehicle with a seat height of no more than 25 inches from the ground when the seat is adjusted to its highest position or a scooter or similar device.<sup>2</sup>
- “Roadway” means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder.<sup>3</sup>

The term “bodily injury,” is defined identically in various sections of Florida Statutes<sup>4,5,6</sup> to mean:

- A cut, abrasion, bruise, burn, or disfigurement;
- Physical pain;
- Illness;
- Impairment of the function of a bodily member, organ, or mental faculty; or
- Any other injury to the body, no matter how temporary.

The term “vulnerable road user,” as used in provisions relating to crashes involving death or personal injuries, is defined to mean:

- A pedestrian, including a person actually engaged in work upon a highway, or in work upon utility facilities along a highway, or engaged in the provision of emergency services within the right-of-way;
- A person operating a bicycle, motorcycle, scooter, or moped lawfully on the roadway;
- A person riding an animal;
- A person lawfully operating on a public right-of-way, crosswalk, or shoulder of the roadway;
- A farm tractor or similar vehicle designed primarily for farm use;
- A skateboard, roller skates, or in-line skates;

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<sup>1</sup> Section 316.003(75), F.S.

<sup>2</sup> Section 316.003(2), F.S.

<sup>3</sup> Section 316.003(42), F.S.

<sup>4</sup> Section 501.001(1)(c), F.S.

<sup>5</sup> Section 831.03(1), F.S.

<sup>6</sup> Section 914.21, F.S.

- A horse-drawn carriage;
- An electric personal assistive mobility device; or
- A wheelchair.<sup>7</sup>

### **Driving on Right Side of Roadway**

Vehicles must generally be driven up the right half of the roadway, with certain exceptions, such as when overtaking and passing another vehicle proceeding in the same direction and when an obstruction exists making it necessary to drive to the left of the center of the highway.<sup>8</sup> Additionally, any vehicle traveling at less than the normal speed of traffic under existing conditions must be driven in the right-hand lane or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.<sup>9</sup> A violation is a noncriminal traffic infraction, punishable as a moving violation, the penalty for which is \$60.<sup>10, 11</sup>

Similarly, any person operating a bicycle upon a roadway at less than normal speed of traffic under existing conditions must be ridden in the lane marked for bicycle use or, if no marked lane exists, as close as practicable to the right-hand curb or edge of the roadway except when:

- Overtaking and passing another bicycle or vehicle traveling in the same direction;
- Preparing for a left turn at an intersection or into a private road or driveway; or when
- Reasonably necessary to avoid any condition or potential conflict, including without limitation a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, turn lane, or substandard-width lane, which makes it unsafe to continue along the right-hand curb or edge or within a bicycle lane.<sup>12</sup>

“Substandard-width lane” is defined to mean a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.<sup>13</sup>

### **Overtaking and Passing**

Section 316.083, F.S., sets out requirements relating to overtaking and passing vehicles proceeding in the same direction. The driver of a vehicle overtaking another proceeding in the same direction must give an appropriate signal,<sup>14</sup> pass to the left at a safe distance, and not again drive to the right side of the roadway until safely clear of the overtaken vehicle. When

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<sup>7</sup> Section 316.027, F.S.

<sup>8</sup> Section 316.081(1), F.S.

<sup>9</sup> Section 316.081(2), F.S.

<sup>10</sup> Sections 316.081(5) and 318.18(3), F.S.

<sup>11</sup> A person convicted of a noncriminal violation may not be sentenced to a term of imprisonment or to any other punishment more severe than a fine, forfeiture, or other civil penalty, except as provided in chapter 316 or by ordinance of any city or county. Section 775.082(5), F.S.

<sup>12</sup> Section 316.2065(5)(a), F.S.

<sup>13</sup> Section 316.2065(5)(a)3., F.S. See also s. 316.208, F.S., reflecting almost identical requirements and providing the same definition of “substandard-width lane” relating to mopeds.

<sup>14</sup> Generally, by means of the hand and arm or by signal lamps. See ss. 316.155, 316.156, and 316.157, F.S.

overtaking a bicycle or other nonmotorized vehicle, the driver of the overtaking vehicle must pass at a safe distance not less than three feet between the overtaking vehicle and the bicycle.<sup>15</sup>

Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle must give way to the right in favor of the overtaking vehicle, on audible signal or upon visible flashing of the headlamps of the overtaking vehicle if at nighttime. The driver of the overtaken vehicle is prohibited from increasing speed until completely passed by the overtaking vehicle.<sup>16</sup> A violation is a noncriminal traffic infraction, punishable as a moving violation, the penalty for which is \$60.<sup>17</sup>

### **Right Turns on Red**

Generally, a vehicle facing a steady red signal must stop before entering a crosswalk on the near side of an intersection or, if none, then before entering the intersection, and remain stopped until a green indication is shown. Right turns on red are authorized, but a driver must yield the right-of-way to pedestrians and other traffic proceeding as directed by the signal at the intersection. Cities and counties may prohibit right-turns-on-red at any intersection with notice of the prohibition erected in a location visible to traffic approaching the intersection.<sup>18, 19</sup>

### **No-Passing Zones**

A driver is prohibited from driving on the left side of a roadway if signs or markings are in place to define a no-passing zone, or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.<sup>20</sup> The prohibition does not apply when an obstruction exists making it necessary to drive to the left of the center of the highway, or to the driver of a vehicle turning left into or from an alley, private road, or driveway.<sup>21</sup> A no-passing zone violation is a noncriminal traffic infraction, punishable as a moving violation, the penalty for which is \$60.<sup>22</sup>

### **Infractions Requiring Mandatory Hearing**

Current law requires appearance at a mandatory hearing for any person cited for the following:

- Any infraction resulting in a crash that causes the death of another;
- Any infraction resulting in a crash that causes “serious bodily injury” of another as defined in s. 316.1933(1), F.S.;

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<sup>15</sup> Section 316.083(2), F.S.

<sup>16</sup> Section 316.083(2), F.S.

<sup>17</sup> Sections 316.083(3) and 318.18(3), F.S.

<sup>18</sup> Section 316.074(1), F.S., and s. 316.075(1)(c), F.S.

<sup>19</sup> A notice of violation or a traffic citation for a red light violation detected by a traffic infraction detector, or a “red light camera,” may not be issued for failure to stop at a red light if the driver is making a right-hand turn in a careful and prudent manner at intersections where right-hand turns are permissible. Section 316.0083, F.S.

<sup>20</sup> Section 316.0875(2), F.S. Section 316.0875(1), F.S., authorizes the Florida Department of Transportation and local authorities to determine those portions of any highway where overtaking and passing or driving to the left of the roadway would be hazardous and, by appropriate signs or markings on the roadway, to indicate the beginning and end of such zones.

<sup>21</sup> Section 316.0875(3), F.S.

<sup>22</sup> Sections 316.0875(4) and 318.18(3), F.S.

- Any infraction for passing a school bus displaying a stop signal, when passing on the side that children enter or exit;
- Any infraction for failure to secure the load being hauled on a vehicle; or
- Any infraction for exceeding certain speed limits by 30 miles per hour or more.<sup>23</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 316.003, F.S., to define the term “bodily injury” identically as that term is already defined in existing law. The bill also defines the term “vulnerable user of a public roadway” or “vulnerable user” identically to the definition of “vulnerable road user” in current s. 316.027, F.S., except that the phrase “or roadway” is inserted after the word “highway” with regard to pedestrians; “a skateboard, roller skates, or in-line skates” is deleted; and passengers on a bicycle, motorcycle, scooter, or moped lawfully on the roadway are included in the definition.

**Section 2** amends s. 316.027(1)(b), F.S., to delete the current definition of “vulnerable road user,” strike “road” from the term, and redefine “vulnerable user” by cross-referencing the broader definition in s. 316.003, F.S.

**Section 3** revises s. 316.083, F.S., relating to overtaking and passing a vehicle, to:

- Clarify that subsection (2) is applicable to the driver of a *motor* vehicle overtaking *a person operating* a bicycle or other *vulnerable user of a public roadway*;
- Require such driver to pass the person operating the bicycle or the vulnerable user at a safe distance of no less than three feet *as measured from anything extending from the motor vehicle and trailer or other item towed by the motor vehicle*; and
- Require that a law enforcement officer issuing a citation for a violation note on the citation if the violation contributed to the bodily injury of a vulnerable user of a public right-of-way.

**Section 4** creates s. 316.0833, F.S., to prohibit a person operating a vehicle while overtaking and passing a vulnerable user of a public roadway traveling in the same direction from making a right or left turn at an intersection or into a private road or driveway unless the turn can be made at a safe distance from the vulnerable user with reasonable safety and will not impede the travel of the vulnerable user. A violation is a noncriminal traffic infraction, punishable as a moving violation, the penalty for which is \$60. A law enforcement officer issuing a citation for a violation must note on the citation if the violation contributed to the bodily injury of a vulnerable user of a public right-of-way.

**Section 5** amends s. 316.0875(3), F.S., to add an additional exclusion from the provisions relating to no-passing zones. If the driver of a motor vehicle is required to cross pavement striping indicating a no-passing zone when passing a vulnerable user of a public right-of-way in order to provide at least three feet between the motor vehicle and the vulnerable user, the driver is *not* prohibited from crossing the centerline or driving on the left side of a roadway.

---

<sup>23</sup> Section 318.19, F.S. Section 316.1933(1)(b), F.S., defines “serious bodily injury” to mean an injury to any person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

**Section 6** amends s. 316.1925, relating to careless driving, to require a law enforcement officer issuing a citation for a violation to note on the citation if the violation contributed to the bodily injury of a vulnerable user of a public right-of-way.

**Section 7** creates s. 318.142, F.S., to require the designated official to impose a fine of not more than \$2,000 for any violation that contributes to the bodily injury of a vulnerable user of a public roadway, in addition to any other penalties imposed under s. 316.083 (overtaking and passing), s. 316.0833 (right or left turns at intersections or into private driveways), or s. 316.1925 (careless driving), F.S.

**Section 8** amends s. 318.19, F.S., to require appearance at a mandatory hearing for any infraction of s. 316.083, s. 316.0833, or s. 316.1925, F.S., which contributes to the bodily injury of a vulnerable user of a public right-of-way.

**Section 9** amends s. 322.0261(2), F.S., to revise a cross-reference to the relocated and revised definition of “vulnerable user.”

**Section 10** provides the bill takes effect on October 1, 2015.

A number of editorial and grammatical revisions are also made in the bill.

#### **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:

Offenders will be subject to the described penalties. A decrease in personal injury and death for vulnerable users may be experienced, as well as a reduction in costs associated with litigating claims for such injury or death.

**C. Government Sector Impact:**

According to the DHSMV, the bill's revisions to penalties associated with the rights and safety of vulnerable users of public roadways and for violations contributing to bodily injuries may result in positive fiscal impacts to local government. The number of additional citations and resulting positive fiscal impact, as well as any negative fiscal impact due to the need for reprogramming local e-citation systems, is indeterminate at this time.

Similarly, the department suggests, the bill's revisions to penalties associated with the rights and safety of vulnerable users of public roadways and for violations contributing to bodily injuries may result in positive fiscal impacts to state government. The number of additional citations and resulting revenues is indeterminate at this time. The DHSMV further notes:

The adoption of the bill will require state government to update and modify their programing systems. The fiscal impact to the Department is estimated at \$41,400 for 540 programing hours. Of the 540 programing hours, 210 hours at a \$40 hourly rate will be accomplished with full time equivalent personnel, and 330 hours at a \$100 hourly rate will be accomplished with contracted resources.<sup>24</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 316.003, 316.027, 316.083, 316.0875, 316.1925, 318.19, and 322.0261.

This bill creates the following sections of the Florida Statutes: 316.0833 and 318.142.

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<sup>24</sup> See the DHSMV's 2015 Agency Legislative Bill Analysis for companion HB 231. On file in the Senate Transportation Committee.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Criminal Justice on April 7, 2015:**

- Deletes Section 3 of the bill which makes the second noncriminal infraction causing serious injury or death a first degree misdemeanor.
- Deletes Section 7 of the bill which makes harassing, taunting, or throwing an object at a bicyclist a first degree misdemeanor.
- Deletes Section 12 of the bill which requires mandatory license revocation for the newly created misdemeanor offense involving a second noncriminal infraction causing serious injury or death.

**CS by Transportation on March 26, 2015:**

The CS modifies the bill by:

- Revising the term, “vulnerable user of a public right-of-way,” to “vulnerable user of a public roadway,” but keeping the same definition with a few exceptions.
- Revising the term, “vulnerable road user” to “vulnerable user” in s. 316.027, F.S., and referencing the broader definition inserted into s. 316.003, F.S.
- Requiring reclassification of a second noncriminal traffic infraction causing serious bodily injury or death to another person within five years of the first such violation a first degree misdemeanor; subjecting an offender to certain penalties and driver license revocation; and defining “serious bodily injury.”
- Applying the requirements for making a right turn, when overtaking and passing a vulnerable user at certain locations, to left turns.
- Removing from the bill revisions to the definition of “substandard-width lane.”
- Revising the penalty provisions that may be imposed in addition to any others for violations related to overtaking and passing a vulnerable user, making turns at intersections or into private driveways when passing a vulnerable user, and careless driving.
- Removing provisions requiring the curriculum for certain driver education and examinations to provide instruction on traffic laws and test the applicant’s knowledge of such laws relating to the rights and safety of vulnerable users of public rights-of-way.

**B. Amendments:**

None.



763146

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2015	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete lines 81 - 100.

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

And the title is amended as follows:

Delete lines 5 - 9

and insert:

deleting obsolete provisions; amending s. 316.083,  
F.S.;





255866

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2015	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete lines 162 - 169.

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

And the title is amended as follows:

Delete lines 15 - 17

and insert:

designated no-passing zones; providing fines



331138

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2015	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete line 237.

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

And the title is amended as follows:

Delete lines 24 - 26

and insert:

322.0261, F.S.; conforming a cross-reference;  
providing an

By the Committee on Transportation; and Senator Altman

596-02941-15

2015908c1

1 A bill to be entitled  
 2 An act relating to traffic safety; amending s.  
 3 316.003, F.S.; providing definitions; amending s.  
 4 316.027, F.S.; redefining the term "vulnerable user";  
 5 deleting obsolete provisions; creating s. 316.0275,  
 6 F.S.; providing criminal penalties for certain  
 7 noncriminal traffic infractions that cause serious  
 8 bodily injury or death to a person; defining the term  
 9 "serious bodily injury"; amending s. 316.083, F.S.;  
 10 revising provisions relating to the passing of a  
 11 vehicle; creating s. 316.0833, F.S.; prohibiting  
 12 passing and turning in front of a vulnerable user in  
 13 an unsafe manner; providing penalties; amending s.  
 14 316.0875, F.S.; revising exceptions to provisions for  
 15 designated no-passing zones; creating s. 316.1921,  
 16 F.S.; prohibiting harassing, taunting, or throwing an  
 17 object at a person riding a bicycle; providing fines  
 18 and penalties; amending s. 316.1925, F.S.; revising  
 19 provisions relating to careless driving; creating s.  
 20 318.142, F.S.; providing fines and penalties for  
 21 specified infractions contributing to bodily injury of  
 22 a vulnerable user; amending s. 318.19, F.S.; requiring  
 23 a hearing for specified offenses; amending s.  
 24 322.0261, F.S.; conforming a cross-reference; amending  
 25 s. 322.26, F.S.; providing mandatory revocation of  
 26 license for a specified conviction; providing an  
 27 effective date.  
 28  
 29 Be It Enacted by the Legislature of the State of Florida:

Page 1 of 9

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

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30  
 31 Section 1. Subsections (94) and (95) are added to section  
 32 316.003, Florida Statutes, to read:  
 33 316.003 Definitions.—The following words and phrases, when  
 34 used in this chapter, shall have the meanings respectively  
 35 ascribed to them in this section, except where the context  
 36 otherwise requires:  
 37 (94) BODILY INJURY.—  
 38 (a) A cut, abrasion, bruise, burn, or disfigurement;  
 39 (b) Physical pain;  
 40 (c) Illness;  
 41 (d) Impairment of the function of a bodily member, organ,  
 42 or mental faculty; or  
 43 (e) Any other injury to the body, no matter how temporary.  
 44 (95) VULNERABLE USER OF A PUBLIC ROADWAY OR VULNERABLE  
 45 USER.—  
 46 (a) A pedestrian, including a person actually engaged in  
 47 work upon a highway, work upon utility facilities along a  
 48 highway, or the provision of emergency services within the  
 49 right-of-way;  
 50 (b) A person operating, or who is a passenger on, a  
 51 bicycle, motorcycle, scooter, or moped lawfully on the roadway;  
 52 (c) A person riding an animal; or  
 53 (d) A person lawfully operating on a public roadway,  
 54 crosswalk, or shoulder of the roadway:  
 55 1. A farm tractor or similar vehicle designed primarily for  
 56 farm use;  
 57 2. A horse-drawn carriage;  
 58 3. An electric personal assistive mobility device; or

Page 2 of 9

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59 4. A wheelchair.

60 Section 2. Paragraph (b) of subsection (1) of section  
61 316.027, Florida Statutes, is amended to read:

62 316.027 Crash involving death or personal injuries.—

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

64 (b) "Vulnerable ~~road~~ user" has the same meaning as in s.  
65 316.003 means+

66 ~~1. A pedestrian, including a person actually engaged in~~  
67 ~~work upon a highway, or in work upon utility facilities along a~~  
68 ~~highway, or engaged in the provision of emergency services~~  
69 ~~within the right-of-way;~~

70 ~~2. A person operating a bicycle, motorcycle, scooter, or~~  
71 ~~moped lawfully on the roadway;~~

72 ~~3. A person riding an animal; or~~

73 ~~4. A person lawfully operating on a public right-of-way,~~  
74 ~~crosswalk, or shoulder of the roadway:~~

75 ~~a. A farm tractor or similar vehicle designed primarily for~~  
76 ~~farm use;~~

77 ~~b. A skateboard, roller skates, or in-line skates;~~

78 ~~e. A horse-drawn carriage;~~

79 ~~d. An electric personal assistive mobility device; or~~

80 ~~e. A wheelchair.~~

81 Section 3. Section 316.0275, Florida Statutes, is created  
82 to read:

83 316.0275 Noncriminal traffic infractions leading to serious  
84 bodily injury or death; reclassification.—

85 (1) Notwithstanding any other provision of law, if an  
86 individual commits a noncriminal traffic infraction under this  
87 chapter which causes serious bodily injury or death to a person

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88 and, within 5 years after that violation, commits another  
89 noncriminal traffic infraction under this chapter which causes  
90 serious bodily injury or death to a person, the second such  
91 violation shall be reclassified as a misdemeanor of the first  
92 degree, punishable as provided in s. 775.082 or s. 775.083, and  
93 the individual will have his or her license revoked under s.  
94 322.26(10).

95 (2) As used in this section, the term "serious bodily  
96 injury" means an injury to a person, excluding the at-fault  
97 driver, which consists of a physical condition that creates a  
98 substantial risk of death, serious personal disfigurement, or  
99 protracted loss or impairment of the function of any bodily  
100 member or organ.

101 Section 4. Section 316.083, Florida Statutes, is amended to  
102 read:

103 316.083 Overtaking and passing a vehicle.—The following  
104 provisions ~~rules shall~~ govern the overtaking and passing of  
105 vehicles proceeding in the same direction, ~~subject to those~~  
106 ~~limitations, exceptions, and special rules hereinafter stated:~~

107 (1) The driver of a vehicle overtaking another vehicle  
108 proceeding in the same direction shall give an appropriate  
109 signal as provided for in s. 316.156, shall pass to the left  
110 thereof at a safe distance, and shall not again drive to the  
111 right side of the roadway until safely clear of the overtaken  
112 vehicle.

113 (2) The driver of a motor vehicle overtaking a person  
114 operating a bicycle or other vulnerable user of a public roadway  
115 ~~nonmotorized vehicle~~ must pass the person operating the bicycle  
116 or other vulnerable user ~~nonmotorized vehicle~~ at a safe distance

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117 of not less than 3 feet between any part of or attachment to the  
 118 motor vehicle, any thing extending from the motor vehicle, any  
 119 trailer or other thing being towed by the motor vehicle and the  
 120 bicycle, the person operating the bicycle, or other vulnerable  
 121 user ~~nonmotorized vehicle~~.

122 (3)(2) Except when overtaking and passing on the right is  
 123 permitted, the driver of an overtaken vehicle shall give way to  
 124 the right in favor of the overtaking vehicle, on audible signal  
 125 or upon the visible blinking of the headlamps of the overtaking  
 126 vehicle if such overtaking is being attempted at nighttime, and  
 127 shall not increase the speed of his or her vehicle until  
 128 completely passed by the overtaking vehicle.

129 (4)(3) A violation of this section is a noncriminal traffic  
 130 infraction, punishable as a moving violation as provided in  
 131 chapter 318. If a violation of this section contributed to the  
 132 bodily injury of a vulnerable user of a public roadway, the law  
 133 enforcement officer issuing the citation for the violation shall  
 134 note such information on the citation.

135 Section 5. Section 316.0833, Florida Statutes, is created  
 136 to read:

137 316.0833 Turning when passing vulnerable user.—

138 (1) A person operating a vehicle who overtakes and passes a  
 139 vulnerable user of a public roadway proceeding in the same  
 140 direction may not make a right or left turn at an intersection  
 141 or into a private road or driveway unless the turn can be made  
 142 at a safe distance from the vulnerable user with reasonable  
 143 safety and will not impede the travel of the vulnerable user.

144 (2) A violation of subsection (1) is a noncriminal traffic  
 145 infraction, punishable as a moving violation as provided in

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146 chapter 318. If a violation of subsection (1) contributed to the  
 147 bodily injury of a vulnerable user of a public roadway, the law  
 148 enforcement officer issuing the citation for the violation shall  
 149 note such information on the citation.

150 Section 6. Subsection (3) of section 316.0875, Florida  
 151 Statutes, is amended to read:

152 316.0875 No-passing zones.—

153 (3) This section does not apply:

154 (a) When an obstruction exists making it necessary to drive  
 155 to the left of the center of the highway; ~~nor~~

156 (b) To the driver of a vehicle turning left into or from an  
 157 alley, private road, or driveway; or

158 (c) When the driver of a motor vehicle is required to cross  
 159 pavement striping indicating a no-passing zone when passing a  
 160 vulnerable user of a public roadway in order to provide at least  
 161 3 feet between the motor vehicle and the vulnerable user.

162 Section 7. Section 316.1921, Florida Statutes, is created  
 163 to read:

164 316.1921 Harassing, taunting, or throwing object at person  
 165 riding a bicycle.—It is unlawful to harass, taunt, or  
 166 maliciously throw an object at or in the direction of a person  
 167 riding a bicycle. A person who violates this section commits a  
 168 misdemeanor of the first degree, punishable by a fine of at  
 169 least \$250 or by imprisonment of not more than 30 days, or both.

170 Section 8. Section 316.1925, Florida Statutes, is amended  
 171 to read:

172 316.1925 Careless driving.—

173 (1) ~~A~~ Any person operating a vehicle upon the streets or  
 174 highways within the state shall drive the same in a careful and

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175 prudent manner, having regard for the width, grade, curves,  
 176 corners, traffic, and all other attendant circumstances, so as  
 177 not to endanger the life, limb, or property of any person. A  
 178 person who fails ~~Failure~~ to drive in such manner commits shall  
 179 ~~constitute~~ careless driving and ~~a violation of this section.~~

180 ~~(2) Any person who violates this section shall be cited for~~  
 181 ~~a moving violation, punishable as provided in chapter 318.~~

182 (2) If a violation under this section contributed to the  
 183 bodily injury of a vulnerable user of a public roadway, the law  
 184 enforcement officer issuing the citation for the violation shall  
 185 note such information on the citation.

186 Section 9. Section 318.142, Florida Statutes, is created to  
 187 read:

188 318.142 Infractions contributing to bodily injury of a  
 189 vulnerable user of a public roadway.-In addition to any other  
 190 penalty imposed for a violation under s. 316.083, s. 316.0833,  
 191 or s. 316.1925, if the violation contributed to the bodily  
 192 injury of a vulnerable user of a public roadway as defined in s.  
 193 316.003, the designated official shall impose a fine of not more  
 194 than \$2,000.

195 Section 10. Section 318.19, Florida Statutes, is amended to  
 196 read:

197 318.19 Infractions requiring a mandatory hearing.-Any  
 198 person cited for the infractions listed in this section shall  
 199 not have the provisions of s. 318.14(2), (4), and (9) available  
 200 to him or her but must appear before the designated official at  
 201 the time and location of the scheduled hearing:

202 (1) Any infraction which results in a crash that causes the  
 203 death of another;

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204 (2) Any infraction which results in a crash that causes  
 205 "serious bodily injury" of another as defined in s. 316.1933(1);

206 (3) Any infraction of s. 316.172(1)(b);

207 (4) Any infraction of s. 316.520(1) or (2); ~~or~~

208 (5) Any infraction of s. 316.183(2), s. 316.187, or s.

209 316.189 of exceeding the speed limit by 30 m.p.h. or more; or

210 (6) Any infraction of s. 316.083, s. 316.0833, or s.  
 211 316.1925 which contributes to bodily injury of a vulnerable user  
 212 of a public roadway as defined in s. 316.003.

213 Section 11. Subsection (2) of section 322.0261, Florida  
 214 Statutes, is amended to read:

215 322.0261 Driver improvement course; requirement to maintain  
 216 driving privileges; failure to complete; department approval of  
 217 course.-

218 (2) With respect to an operator convicted of, or who  
 219 pleaded nolo contendere to, a traffic offense giving rise to a  
 220 crash identified in paragraph (1)(a) or paragraph (1)(b), the  
 221 department shall require that the operator, in addition to other  
 222 applicable penalties, attend a department-approved driver  
 223 improvement course in order to maintain his or her driving  
 224 privileges. The department shall include in the course  
 225 curriculum instruction specifically addressing the rights of  
 226 vulnerable ~~road~~ users as defined in s. 316.003 ~~s. 316.027~~  
 227 relative to vehicles on the roadway. If the operator fails to  
 228 complete the course within 90 days after receiving notice from  
 229 the department, the operator's driver license shall be canceled  
 230 by the department until the course is successfully completed.

231 Section 12. Subsection (10) is added to section 322.26,  
 232 Florida Statutes, to read:

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233 322.26 Mandatory revocation of license by department.-The  
234 department shall forthwith revoke the license or driving  
235 privilege of any person upon receiving a record of such person's  
236 conviction of any of the following offenses:

237 (10) A violation of s. 316.0275.

238 Section 13. This act shall take effect October 1, 2015.

239

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4-6-15

Meeting Date

98

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name MIKE FEWLES

Job Title CAPTAIN

Address 2500 W. COLONIAL DRIVE

Phone \_\_\_\_\_

Street

ORLANDO

City

FL

State

32804

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4-7-15

Meeting Date

908

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850 274 3599

Street

Tallahassee

City

FL

State

32308

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)

4/7/15

Meeting Date

908

Bill Number (if applicable)

Topic Transportation

Amendment Barcode (if applicable)

Name Laura Cantwell

Job Title \_\_\_\_\_

Address 400 Carillon Pkwy, Suite 100

Phone 850-570-2110

Street St Pete City FL State 33712 Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing AARP

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4-7-15

Meeting Date

908

Bill Number (if applicable)

Topic Vulnerable Users of the Roadways

Amendment Barcode (if applicable)

Name Jeffrey Michelland

Job Title Attorney

Address 16720 Crowsburg Way

Phone 239 223-6980

Street

Fort Myers, FL 33908

City

State

Zip

Email

Speaking:  For  Against  Information

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

Representing Vulnerable Users of S.W. Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/7/15

Meeting Date

CB1SB 908

Bill Number (if applicable)

Topic Traffic Safety

Amendment Barcode (if applicable)

Name Alexandra Page

Job Title \_\_\_\_\_

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Abate of Florida, Inc. (James D. "Doc" Richardson III)

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4 / 17 / 2015

Meeting Date

Topic \_\_\_\_\_

Bill Number 908

(if applicable)

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG      FLORIDA      33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

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 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

908

Bill Number (if applicable)

Meeting Date

Amendment Barcode (if applicable)

Topic TRANSPORTATION

Name KEVIN SWEENEY

Job Title \_\_\_\_\_

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing FLORIDA JUSTICE ASSO

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**

4-7-2015

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

908

Meeting Date

Bill Number (if applicable)

Topic Vulnerable Users of Road safety

Amendment Barcode (if applicable)

Name Tish Kelly

Job Title -

Address 73 Ridge dr

Phone 239 860 1627

Street

Naples

City

FL

State

34108

Zip

Email saukbona5@aol.com

Speaking:  For  Against  Information

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

Representing Naples, FL Cycling Club

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:

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

April 7, 2015

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

Dear Chairman Evers,

Senate Bill 908, related to *Traffic Safety* is on the Criminal Justice Committee agenda today, April 7, 2015. Since I will be chairing the Committee on Finance and Tax, I will be unable to attend.

Please recognize my Legislative Assistant Rick Kendust to present SB ~~590~~ on my behalf. Please feel free to contact me if you have any questions.

908

Sincerely,

A handwritten signature in cursive script that reads "Thad Altman".

Thad Altman

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

TA/dmw

#### 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

Tallahassee, Florida 32399-1100

### COMMITTEES:

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

**SENATOR THAD ALTMAN**  
16th District

March 30, 2015

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 CS/SB 0908, related to *Traffic Safety*, 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/syb

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 1178

INTRODUCER: Senator Richter

SUBJECT: Drone Surveillance

DATE: April 6, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Pre-meeting</b>
2.			ACJ	
3.			AP	

---

**I. Summary:**

SB 1178 creates a new section of law which specifies when it is lawful or unlawful to capture an image using a drone.

The bill provides eighteen specific lawful uses of drones and of the images captured by drones.

The bill defines the term “image” and adopts the definition of “drone” found in s. 943.50(2)(a), F.S.

The bill makes unlawful: capturing images of an individual or of privately owned real property, with the intent to conduct surveillance on the individual or property; and the possession, disclosure, display, distribution, or other use of unlawfully captured images. The bill creates misdemeanor offenses relating to the unlawful capture and use of certain images by a person operating a drone.

The bill provides defenses to the offenses if the person destroys the image or stops disclosing, displaying, distributing, or otherwise using the image as soon as the person has knowledge that that image was unlawfully captured.

Unlawfully captured images or images that are incidental to the lawful capturing of an image may not be used as evidence in criminal, juvenile, civil, or administrative proceedings or actions. Such images are not subject to discovery, subpoena, or other means of legally-compelled release.

Civil and injunctive remedies are provided for certain persons whose image is unlawfully captured while on the property designated in the bill, or if the image of the privately owned property is unlawfully captured by a person using a drone.

Law enforcement agencies located in a county with a population greater than 150,000 that use drones are required to report certain related information to FDLE annually. FDLE is required to summarize the information and report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. FDLE is also required to develop guidelines for the use of drones by law enforcement.

## II. Present Situation:

The definition of “drone” provided in s. 934.50(2)(a), F.S., is a powered aerial vehicle that:

- Is unmanned;
- Is capable of flying autonomously or being piloted remotely;
- Uses aerodynamic forces to provide lift;
- Can be expendable or recoverable; and
- Can carry a lethal or nonlethal payload.

Section 934.50, F.S., limits the use of drones by state and local law enforcement. Currently there is not any such limitation of or provisions related to the non-law enforcement use of drones in Florida law.

Drones typically range in size from wingspans of 6 inches to 246 feet and can weigh from approximately 4 ounces to over 25,600 pounds.<sup>1</sup> They may be controlled manually or through an autopilot which uses a data link to connect the drone’s pilot to the drone.<sup>2</sup> Although “drone” has become almost a household word, the devices are also called Unmanned Aerial Vehicles (UAV) and Unmanned Aerial Systems (UAS).

Drones have been used in a multitude of tasks by U.S. government agencies and other public entities including law enforcement. The U.S. Customs and Border Patrol began using them in 2004.<sup>3</sup> In February 2010, the U.S. Customs and Border Patrol began operating a center in Cocoa Beach flying eight drones along Florida’s shorelines and the Gulf Coast.<sup>4</sup> Other documented non-military tasks include earthquake damage assessment at Japan’s Fukushima power plant, volcano activity assessment of Mount St. Helens in Washington for the U.S. Geological Survey, and surveying wild fires in Texas.<sup>5</sup> At the University of Florida, the Unmanned Aerial Systems Research Group has been developing an 11 pound drone having a 9 foot wingspan, which is called “Nova 2.1.” According to researchers, it can be used to safely and accurately gather data that will be helpful to wildlife biologists and many others.<sup>6</sup>

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<sup>1</sup> 14 CFR Part 91, Docket No. FAA-2006-25714, Department of Transportation, Federal Aviation Administration, Unmanned Aircraft Operations in the National Airspace System, February 6, 2007.

<sup>2</sup> *Id.*

<sup>3</sup> *Unmanned Aerial Vehicles Support Border Security*, Customs and Border Protection Today, July 2004, [www.cbp.gov/xp/CustomsToday/2004/Aug/other/aerial\\_vehicles.xml](http://www.cbp.gov/xp/CustomsToday/2004/Aug/other/aerial_vehicles.xml).

<sup>4</sup> Howard Altman, *Space Florida Probing Drone’s Future Potential*, Tampa Bay Online, August 5, 2012, [www2.tbo.com/news/breaking-news/2012/aug/05/space-florida-probing-drones-future-potential-ar-453511/](http://www2.tbo.com/news/breaking-news/2012/aug/05/space-florida-probing-drones-future-potential-ar-453511/).

<sup>5</sup> James Chiles, *Drones for Hire*, Air & Space Smithsonian, January 2013, [www.airspacemag.com/flight-today/Drones-for-Hire-179517781.html](http://www.airspacemag.com/flight-today/Drones-for-Hire-179517781.html).

<sup>6</sup> James Dean, *Florida Hopes to Fill Its Skies with Unmanned Aircraft*, Florida Today, June 23, 2012, <http://usatoday30.usatoday.com/news/nation/story/2012-06-23/increased-drone-use-privacy-concerns/55783066/1>; *UF Team’s Work Pays Off With Unmanned-flight System that Captures Valuable Data*, Phys Org, October 20, 2010, <http://phys.org/news/2010-10-uf-team-unmanned-flight-captures-valuable.html>.

The drone industry is motivated to move into more civilian markets.<sup>7</sup> It also appears that civilian markets are ready to adopt the drone industry. According to the Consumer Electronics Association, drone shipments will increase from 250,000 units in 2014 to nearly a million in 2018.<sup>8</sup>

In February 2012, Congress passed the FAA Modernization and Reform Act of 2012, which required the FAA to safely open the nation's airspace to drones by September 2015.<sup>9</sup> The FAA authorized the testing of UAS at six sites around the country as part of its efforts. Amazon Logistics, Inc. was issued an "experimental airworthiness certificate" by the FAA on March 19, 2015, which will enable Amazon to conduct research and development and crew training using its own UAS at one of the FAA testing sites.<sup>10</sup> Amazon is working on a package delivery system called "Prime Air."<sup>11</sup>

Although it seems to be outside the congressional mandate and beyond the scope of the FAA's airspace-safety responsibilities, the FAA notified Congress in late 2012 that "privacy issues" are a concern as drones are integrated into the airspace.<sup>12</sup> On February 15, 2015, the President of the United States issued a Memorandum entitled Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems. Among other directives, the Presidential Memorandum requires the Department of Commerce, through the National Telecommunications and Information Administration, and in consultation with other interested agencies, to initiate a multi-stakeholder engagement process within 90 days to develop a framework for privacy, accountability, and transparency issues concerning the commercial and private use of UAS in the National Air Space.<sup>13</sup>

Also on February 15, 2015, the FAA issued its Proposed Rule for Operation and Certification of Small Unmanned Aircraft Systems.<sup>14</sup> The proposed rule, upon implementation, will enable small UAS operation to begin for civil non-hobby or non-recreational use.

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<sup>7</sup> *Drones for Hire*, Air & Space Smithsonian, James Chiles, January 2013, [www.airspacemag.com/flight-today/Drones-for-Hire-179517781.html](http://www.airspacemag.com/flight-today/Drones-for-Hire-179517781.html).

<sup>8</sup> Harvard Business News, March 2, 2015, Larry Downes, "What's Wrong with the FAA's New Drone Rules."

<sup>9</sup> Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; *Drones in Domestic Surveillance Operations*, Congressional Research Service, September 6, 2012, [www.fas.org/sgp/crs/natsec/R42701.pdf](http://www.fas.org/sgp/crs/natsec/R42701.pdf).

<sup>10</sup> <http://www.faa.gov/news/updates> (last visited March 19, 2015). Additionally, realtors and real estate-related drone operators in Texas, California, and Pennsylvania have been issued testing certificates by the FAA.

<sup>11</sup> <http://www.inman.com/2015/03/09/faa-approves-more-real-estate-drone-flights> (visited March 12, 2015).

<sup>12</sup> <http://www.theatlantic.com/business/archive/2015/02/faa-drone-regulations> (visited March 12, 2015).

<sup>13</sup> A Bloomberg report quotes the FAA Acting Chief as having written to members of the Congressional Unmanned Systems Caucus: "However, increasing the use of UAS in our airspace also raises privacy issues, and these issues will need to be addressed as unmanned aircraft are safely integrated." Alan Levine, *FAA Going Slow on Drones as Privacy Concerns Studied*, Bloomberg, November 26, 2012, <http://go.bloomberg.com/political-capital/2012-11-26/faa-going-slow->.

<sup>14</sup> President's Memorandum issued February 15, 2015, The White House, Office of the Press Secretary. <https://www.whitehouse.gov/the-press-office/2015/02/15/presidential-memorandum-promoting-economic-competitiveness-while-safegua> (last visited April 1, 2015).

<sup>14</sup> Federal Register, Vol. 80, No. 35.

### III. Effect of Proposed Changes:

#### Lawful Uses of Drones Designated

The bill provides the following eighteen specific lawful uses of drones and of the images which may be captured:

- Professional or scholarly research and development connected with a college or university;
- In airspace designated by the Federal Aviation Administration as a test site or range for drones;
- Military operations, missions, or exercises;
- Images captured by a satellite for mapping purposes;
- Images captured by or for an electric or natural gas utility for limited purposes;
- Images captured with the consent of the owner or lawful occupant of the real property;
- Use by law enforcement in conformity with s. 934.50(4), F.S.;
- Law enforcement use related to disasters, catastrophes, and states of emergency;
- At the scene of potential or actual hazardous material spills;
- Images captured for the purpose of fire suppression;
- Rescuing persons from imminent danger;
- Real estate marketing, sale, or financing;
- Persons and property within 25 miles of the United States border;
- In public places, from a height of no more than 8 feet above ground level, without amplification;
- Public property or persons on public property;
- By owners or operators of oil, gas, water, or other type of pipeline or facility for purposes of inspection, maintenance, or repair;
- For purposes of oil pipeline safety and rig protection; or
- For port authority security and surveillance.

“Image” is defined by the bill as “any capturing of sound waves; thermal, infrared, ultraviolet, or visible light; or other electromagnetic waves, odor, or other conditions existing on or about real property in this state or an individual located on that property.” “Drone” is defined by reference to the definition in s. 934.50, F.S.

The provisions of the bill do not apply to manufacture, sale, assembly, or distribution of drones.

#### Prohibited Use of Drones

The bill prohibits a person from capturing images or using images captured by a drone under certain circumstances.

#### *Capturing Certain Images*

If a person uses a drone to capture an image of an individual or of privately owned real property, with the intent to conduct surveillance on the individual or property, he or she may be charged with a second degree misdemeanor.

However, it is a defense to the charge if he or she destroys the image upon becoming aware that the image was captured and he or she destroys it without disclosing, displaying, or distributing the image to a third party.

### ***Possessing or Using Images Unlawfully Captured***

If the image of an individual or private property captured with the intent to conduct surveillance is possessed by the person who captured the image, it is a second degree misdemeanor under the bill. If that image is disclosed, displayed, distributed, or otherwise used by the person who captured the image, it is a first degree misdemeanor. Each image unlawfully possessed, disclosed, displayed, distributed, or otherwise used by the person constitutes the basis for a separate criminal charge.

It is a defense to the possession, disclosure, display, distribution, or other use of unlawfully captured images if the person destroys the image or stops disclosing, displaying, distributing, or otherwise using the image as soon as the person has knowledge that that image was unlawfully captured.

### **Protection of Unlawfully or Incidentally Captured Images**

The bill provides that unlawfully captured images or images that are incidental to the lawful capturing of an image may not be used as evidence in criminal, juvenile, civil, or administrative proceedings or actions. Such images are not subject to discovery, subpoena, or other means of legally-compelled release.

The images may, however, be released and used as evidence in a prosecution for any violation of the newly-created s. 934.55, F.S. It is unclear whether the term “in a prosecution for any violation” would include pursuit of the civil remedies provided in the bill.

### **Civil Actions**

If the image of an owner or tenant of privately owned real property is unlawfully captured while he or she is on the property, or if an image of the property itself is unlawfully captured, he or she may bring an action against the person who captured the image using a drone. The bill provides actions for injunctions or civil penalties.

Civil penalties provided for in the bill are:

- \$5,000 for all images unlawfully captured in a single episode;
- \$10,000 for unlawful disclosure, display, distribution, or other use of all unlawfully captured images during a single episode; and
- Actual damages if the person who unlawfully captured the image also disclosed, displayed, or distributed the image with malice.

The prevailing party may recover court costs and reasonable attorney fees. There is two year statute of limitation on commencing an action for injunction, civil penalties, or damages.

The newly-created criminal and civil actions apply only to images captured on or after the effective date of the bill which is October 1, 2015.

### **Law Enforcement Drone Use Reporting Requirements**

The bill amends s. 934.50, F.S., to create a law enforcement reporting requirement regarding the use of drones. State, local, and municipal law enforcement agencies are directed to report the information listed below to the Florida Department of Law Enforcement for the preceding year:

- The number of times a drone was used and for what type of incident;
- The number of criminal investigations aided by the drone's use and how the investigation was aided;
- The number of times a drone was used for a law enforcement operation that was not a criminal investigation and how the drone aided the operation;
- The frequency with which information was collected on an individual, residence, property or area when those persons or places were not the subject of a criminal investigation, and what type of information was collected; and
- The total cost of acquiring, maintaining, repairing, and operating or using each drone.

FDLE is directed to summarize and report the information provided by law enforcement agencies to the Governor, the President of the Senate, and the Speaker of the House of Representatives on an annual basis.

FDLE is also directed to adopt guidelines for law enforcement drone use in accordance with s. 934.50, F.S.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

Although unquantifiable, the industry and commercial applications deemed “lawful” by the bill should experience a positive fiscal impact.<sup>15</sup>

**C. Government Sector Impact:**

The FDLE will expend resources gathering and summarizing the annual law enforcement drone-use reports required by the bill. The fiscal report filed by FDLE on the bill states: “This bill creates a technology impact for the agency however, until further reporting requirements are gathered within the agency, FDLE Information Technology Section cannot estimate any fiscal impact as it relates to building or buying a system to track and report on the drone requirements in this bill.”

**VI. Technical Deficiencies:**

On line 204, after the word “juvenile” it is suggested that the word “delinquency” be inserted for clarification.

In order to pursue a civil action the aggrieved party will need the use of evidence obtained from an unlawfully or incidentally captured image, therefore line 209 could be clarified to read “and used as evidence in a *criminal* prosecution *or in a civil action brought* for any violation of this.”

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 934.50 of the Florida Statutes.

This bill creates section 934.55 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.

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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>15</sup> <http://www.theatlantic.com/business/archive/2015/02/faa-drone-regulations> . (visited March 12, 2015).





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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/07/2015	.	
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The Committee on Criminal Justice (Bradley) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 330.60, Florida Statutes, is created to  
read:

330.60 Unmanned Aerial Systems.—

(1) SHORT TITLE.—This act may be cited as the “Florida  
Privacy Act.”

(2) DEFINITIONS.—As used in this section, the term:



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- 11           (a) "Drone" has the same meaning as provided in s. 934.50.
- 12           (b) "Image" means any capturing of sound waves; thermal,  
13 infrared, ultraviolet, or visible light; or other  
14 electromagnetic waves or odor or other conditions existing on or  
15 about real property in this state or an individual located on  
16 that property.
- 17           (3) LAWFUL USES.—It is lawful to capture an image using a  
18 drone in this state:
- 19           (a) For purposes of professional or scholarly research and  
20 development by a person acting on behalf of a college or  
21 university, as defined in s. 1005.02, including a person who is:
- 22           1. A professor, employee, or student of the college or  
23 university; or
- 24           2. Under contract with or otherwise acting under the  
25 direction or on behalf of the college or university;
- 26           (b) In airspace designated as a test site or range  
27 authorized by the Federal Aviation Administration for the  
28 purpose of integrating drone systems into the national airspace;
- 29           (c) As part of an operation, an exercise, or a mission of  
30 any branch of the United States military;
- 31           (d) If the image is captured by a satellite for the purpose  
32 of mapping;
- 33           (e) If the image is captured by or for an electric or  
34 natural gas utility for:
- 35           1. Operating and maintaining utility facilities, including  
36 facilities used in the generation, transmission, or distribution  
37 of electricity, gas, or water for the purpose of ensuring  
38 utility system reliability and integrity;
- 39           2. Inspecting utility facilities to determine repair,



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40 maintenance, or replacement needs during and after construction  
41 of such facilities;

42 3. Assessing vegetation growth for the purpose of  
43 maintaining clearances on utility easements or right-of-ways;

44 4. Utility facility routing, siting, or permitting for the  
45 purpose of constructing utility facilities or providing utility  
46 service;

47 5. Inspecting utility facilities to determine construction,  
48 repair, maintenance, or replacement needs before, during, and  
49 after construction of such facilities;

50 6. Conducting environmental monitoring, as provided by  
51 federal, state, or local law, rule, or permit;

52 (f) With the consent of the individual who owns or lawfully  
53 occupies the real property captured in the image;

54 (g) If the image is captured by a law enforcement agency in  
55 compliance with s. 934.50(4);

56 (h) If the image is captured by state or local law  
57 enforcement authorities, or a person who is under contract with  
58 or otherwise acting under the direction or on behalf of such  
59 authorities, for the purpose of:

60 1. Surveying the scene of a catastrophe or other damage to  
61 determine whether a state of emergency should be declared, use  
62 of drones before, during, and after manmade or natural  
63 disasters, or in exercises with local, state, or federal  
64 organizations that have emergency management roles and missions;

65 2. Preserving public safety, protecting property, or  
66 surveying damage or contamination during a lawfully declared  
67 state of emergency; or

68 3. Conducting routine air quality sampling and monitoring,



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69 as provided by state or local law;  
70 (i) At the scene of a spill, or a suspected spill, of  
71 hazardous materials;  
72 (j) For the purpose of fire suppression;  
73 (k) For the purpose of rescuing a person whose life or  
74 well-being is in imminent danger;  
75 (l) If the image is captured by a real estate broker  
76 licensed in this state in connection with the marketing, sale,  
77 or financing of real property, provided that no individual is  
78 identifiable in the image;  
79 (m) Of real property or a person on real property that is  
80 within 25 miles of the United States border;  
81 (n) From a height of no more than 8 feet above ground level  
82 in a public place, if the image was captured without using any  
83 electronic, mechanical, or other means to amplify the image  
84 beyond normal human perception;  
85 (o) Of public real property or a person on such property;  
86 (p) If the image is captured by the owner or operator of an  
87 oil, gas, water, or other pipeline for the purpose of  
88 inspecting, maintaining, or repairing the pipeline or other  
89 related facility, provided that the image is captured without  
90 the intent to conduct surveillance on an individual or real  
91 property located in this state;  
92 (q) In connection with oil pipeline safety and rig  
93 protection;  
94 (r) In connection with port authority surveillance and  
95 security;  
96 (s) If the image is captured in connection with a claim  
97 handling or underwriting practice or procedure of a Florida



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98 licensed insurer, an eligible surplus lines insurer, an  
99 accredited reinsurer, or a joint underwriting association; or

100 (t) If the image is captured by the owner or developer of  
101 real property in connection with the development, marketing,  
102 sale, or financing of such real property, provided that no  
103 individual is identifiable in the image.

104 (4) ILLEGAL USE OF DRONE TO CAPTURE IMAGE.-

105 (a) Except as provided in subsection (3), a person may not  
106 use a drone to capture an image of an individual or privately  
107 owned real property in this state with the intent to conduct  
108 surveillance on the individual or property captured in the  
109 image.

110 (b) A violation of this subsection is a misdemeanor of the  
111 second degree, punishable as provided in s. 775.082 or s.  
112 775.083.

113 (c) It is a defense to prosecution under this subsection  
114 that the person destroys the image as soon as the person has  
115 knowledge that the image is captured in violation of this  
116 subsection and that the person does so without disclosing,  
117 displaying, or distributing the image to a third party.

118 (5) POSSESSION, DISCLOSURE, DISPLAY, DISTRIBUTION, OR USE  
119 OF IMAGE.-

120 (a) A person may not:

121 1. Capture an image in violation of subsection (4);

122 and

123 2. Possess, disclose, display, distribute, or otherwise use  
124 that image.

125 (b)1. A violation of paragraph (a) for the possession of an  
126 image is a misdemeanor of the second degree, punishable as



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127 provided in s. 775.082 or s. 775.083.

128 2. A violation of paragraph (a) for the disclosure,  
129 display, distribution, or other use of an image is a misdemeanor  
130 of the first degree, punishable as provided in s. 775.082 or s.  
131 775.083.

132 (c) Each image that a person possesses, discloses,  
133 displays, distributes, or otherwise uses in violation of this  
134 subsection is a separate offense.

135 (d) It is a defense to prosecution under this subsection  
136 for the possession of an image that the person destroys the  
137 image as soon as the person has knowledge that the image is  
138 captured in violation of subsection (4).

139 (e) It is a defense to prosecution under this subsection  
140 for the disclosure, display, distribution, or other use of an  
141 image that the person stops disclosing, displaying,  
142 distributing, or otherwise using the image as soon as the person  
143 has knowledge that the image is captured in violation of  
144 subsection (4).

145 (6) ILLEGALLY OR INCIDENTALY CAPTURED IMAGES NOT SUBJECT  
146 TO DISCLOSURE.—

147 (a) Except as otherwise provided in paragraph (b), an image  
148 captured in violation of subsection (4), or an image captured by  
149 a drone which was incidental to the lawful capturing of an  
150 image:

151 1. May not be used as evidence in any criminal or juvenile  
152 proceeding, civil action, or administrative proceeding; and

153 2. Is not subject to discovery, subpoena, or other means of  
154 legal compulsion for its release.

155 (b) An image described in paragraph (a) may be disclosed



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156 and used as evidence in a prosecution for any violation of this  
157 section and is subject to discovery, subpoena, or other means of  
158 legal compulsion for that purpose.

159 (7) CIVIL ACTION.-

160 (a) An owner or tenant of a privately owned real property  
161 located in this state may bring against a person, who in  
162 violation of subsection (4) captured an image of the property or  
163 the owner or tenant while on the property, an action to:

164 1. Enjoin a violation or imminent violation of subsection  
165 (4) or subsection (5).

166 2. Recover a civil penalty of:

167 a. Five thousand dollars for all images captured in a  
168 single episode in violation of subsection (4); or

169 b. Ten thousand dollars for disclosure, display,  
170 distribution, or other use of all images captured in a single  
171 episode in violation of subsection (5).

172 3. Recover actual damages if the person who captured the  
173 image in violation of subsection (4) discloses, displays, or  
174 distributes the image with malice.

175 (b) For purposes of recovering the civil penalty or actual  
176 damages under paragraph (a), all owners of a parcel of real  
177 property are considered to be a single owner and all tenants of  
178 a parcel of real property are considered to be a single tenant.

179 (c) In addition to any civil penalties authorized under  
180 this subsection, the court shall award court costs and  
181 reasonable attorney fees to the prevailing party.

182 (d) Notwithstanding s. 95.11, an action brought under this  
183 subsection must be commenced within 2 years after the date that  
184 the image was:



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185       1. Captured in violation of subsection (4); or  
186       2. Initially disclosed, displayed, distributed, or  
187 otherwise used in violation of subsection (5).

188       (8) APPLICABILITY.—This section does not apply to the  
189 manufacture, assembly, distribution, or sale of a drone.

190       Section 2. Section 330.60, Florida Statutes, as created by  
191 this act, applies only to images captured on or after October 1,  
192 2015.

193       Section 3. If any provision of this act or its application  
194 to any person or circumstance is held invalid, the invalidity  
195 does not affect other provisions or applications of the act  
196 which can be given effect without the invalid provision or  
197 application, and to this end the provisions of this act are  
198 severable.

199       Section 4. This act shall take effect October 1, 2015.

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

202 And the title is amended as follows:

203       Delete everything before the enacting clause  
204 and insert:

205                               A bill to be entitled  
206       An act relating to drone privacy; creating s. 330.60,  
207       F.S.; providing a short title; defining terms;  
208       specifying situations in which it is lawful to capture  
209       an image with a drone; prohibiting the capture of an  
210       image of an individual or privately owned real  
211       property using a drone in certain circumstances;  
212       providing penalties; providing a defense to  
213       prosecution; prohibiting the possession, disclosure,





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214 display, distribution, or use of such illegally  
215 captured images; providing penalties; providing  
216 defenses to prosecution; prohibiting the use or  
217 discovery of such images in legal proceedings;  
218 providing exceptions; providing for civil actions for  
219 damages relating to violations; providing for court  
220 costs and attorney fees; specifying a limitations  
221 period for such actions; providing applicability;  
222 providing severability; providing an effective date.

By Senator Richter

23-00818-15

20151178\_\_

A bill to be entitled

An act relating to drone surveillance; providing a short title; amending s. 934.50, F.S.; conforming a cross-reference for purposes of a short title; requiring the Department of Law Enforcement to develop guidelines for the use of drones by state or local law enforcement agencies; requiring such law enforcement agencies to annually report to the department, and requiring the department to annually report to the Governor and Legislature, regarding drone usage; creating s. 934.55, F.S.; providing definitions; specifying situations in which it is lawful to capture an image with a drone; prohibiting the capture of an image of an individual or privately owned real property using a drone in certain circumstances; providing criminal penalties; prohibiting possession, disclosure, display, distribution, or use of such illegally captured images; providing criminal penalties; providing defenses to prosecution; prohibiting the use or discovery of such images in legal proceedings; providing exceptions; providing for civil actions for damages relating to violations; providing for court costs and attorney fees; specifying a limitations period for such actions; providing applicability; providing an effective date.

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

Section 1. This act may be cited as the "Florida Drone

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

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Privacy Act."

Section 2. Subsection (1) of section 934.50, Florida Statutes, is amended, and subsections (7) and (8) are added to that section, to read:

934.50 Law enforcement use of drones ~~Searches and seizure using a drone.~~

(1) SHORT TITLE.—This section ~~act~~ may be cited as the "Freedom from Unwarranted Surveillance Act."

(7) GUIDELINES.—The Department of Law Enforcement shall adopt guidelines for the use of a drone by state or local law enforcement agencies in accordance with this section.

(8) REPORTING.—

(a) Each January 15, a state law enforcement agency and a county or municipal law enforcement agency located in a county or municipality, as applicable, with a population greater than 150,000 that used or operated a drone during the preceding year shall report, to the extent such information is not exempt from disclosure under chapter 119, to the Department of Law Enforcement:

1. The number of times a drone was used by that reporting entity, organized by date, time, location, and type of incident for each use.

2. The number of criminal investigations aided by the use of a drone and a description of how the drone aided in each investigation.

3. The number of times a drone was used for a law enforcement operation other than a criminal investigation, the dates and locations of those operations, and a description of how the drone aided in each operation.

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59 4. The type of information collected on the individual,  
 60 residence, property, or area that was not the subject of a law  
 61 enforcement operation and the frequency of the collection of  
 62 this information.

63 5. The total cost of acquiring, maintaining, repairing, and  
 64 operating or otherwise using each drone for the preceding year.

65 (b) Each April 1, the Department of Law Enforcement shall  
 66 report to the Governor, the President of the Senate, and the  
 67 Speaker of the House of Representatives, summarizing the  
 68 information received under paragraph (a) concerning the use of  
 69 drones in the state, including summary totals for each  
 70 jurisdiction reporting the information received under paragraph  
 71 (a).

72 Section 3. Section 934.55, Florida Statutes, is created to  
 73 read:

74 934.55 Use of drones to capture images; generally.—

75 (1) DEFINITIONS.—As used in this section, the term:

76 (a) "Drone" has the same meaning as provided in s. 934.50.

77 (b) "Image" means any capturing of sound waves; thermal,  
 78 infrared, ultraviolet, or visible light; or other  
 79 electromagnetic waves, odor, or other conditions existing on or  
 80 about real property in this state or an individual located on  
 81 that property.

82 (2) APPLICABILITY.—

83 (a) It is lawful to capture an image using a drone in this  
 84 state:

85 1. For purposes of professional or scholarly research and  
 86 development by a person acting on behalf of a college or  
 87 university, as defined in s. 1005.02, including a person who:

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

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88 a. Is a professor, employee, or student of the institution;

89 or

90 b. Is under contract with or otherwise acting under the  
 91 direction or on behalf of the institution;

92 2. In airspace designated as a test site or range  
 93 authorized by the Federal Aviation Administration for the  
 94 purpose of integrating drone systems into the national airspace;

95 3. As part of an operation, an exercise, or a mission of  
 96 any branch of the United States military;

97 4. If the image is captured by a satellite for the purpose  
 98 of mapping;

99 5. If the image is captured by or for an electric or  
 100 natural gas utility:

101 a. For operations and maintenance of utility facilities for  
 102 the purpose of maintaining utility system reliability and  
 103 integrity;

104 b. For inspecting utility facilities to determine repair,  
 105 maintenance, or replacement needs during and after construction  
 106 of such facilities;

107 c. For assessing vegetation growth for the purpose of  
 108 maintaining clearances on utility easements; and

109 d. For utility facility routing and siting for the purpose  
 110 of providing utility service;

111 6. With the consent of the individual who owns or lawfully  
 112 occupies the real property captured in the image;

113 7. If the image is captured by a law enforcement agency in  
 114 compliance with s. 934.50(4);

115 8. If the image is captured by state or local law  
 116 enforcement authorities, or a person who is under contract with

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117 or otherwise acting under the direction or on behalf of such  
 118 authorities, for the purpose of:

119 a. Surveying the scene of a catastrophe or other damage to  
 120 determine whether a state of emergency should be declared,  
 121 allowing for the use of drones before, during, and after manmade  
 122 or natural disasters, and in exercises with local, state, and  
 123 federal organizations that have emergency management roles and  
 124 missions;

125 b. Preserving public safety, protecting property, or  
 126 surveying damage or contamination during a lawfully declared  
 127 state of emergency; or

128 c. Conducting routine air quality sampling and monitoring,  
 129 as provided by state or local law;

130 9. At the scene of a spill, or a suspected spill, of  
 131 hazardous materials;

132 10. For the purpose of fire suppression;

133 11. For the purpose of rescuing a person whose life or  
 134 well-being is in imminent danger;

135 12. If the image is captured by a real estate broker  
 136 licensed in this state in connection with the marketing, sale,  
 137 or financing of real property, provided that no individual is  
 138 identifiable in the image;

139 13. Of real property or a person on real property that is  
 140 within 25 miles of the United States border;

141 14. From a height of no more than 8 feet above ground level  
 142 in a public place, if the image was captured without using any  
 143 electronic, mechanical, or other means to amplify the image  
 144 beyond normal human perception;

145 15. Of public real property or a person on such property;

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146 16. If the image is captured by the owner or operator of an  
 147 oil, gas, water, or other pipeline for the purpose of  
 148 inspecting, maintaining, or repairing the pipeline or other  
 149 related facility, provided that the image is captured without  
 150 the intent to conduct surveillance on an individual or real  
 151 property located in this state;

152 17. In connection with oil pipeline safety and rig  
 153 protection; or

154 18. In connection with port authority surveillance and  
 155 security.

156 (b) This section does not apply to the manufacture,  
 157 assembly, distribution, or sale of a drone.

158 (3) ILLEGAL USE OF DRONE TO CAPTURE IMAGE.—

159 (a) A person violates this subsection if the person uses a  
 160 drone to capture an image of an individual or privately owned  
 161 real property in this state with the intent to conduct  
 162 surveillance on the individual or property captured in the  
 163 image.

164 (b) A violation of this subsection is a misdemeanor of the  
 165 second degree, punishable as provided in s. 775.082 or s.  
 166 775.083.

167 (c) It is a defense to prosecution under this subsection  
 168 that the person destroyed the image as soon as the person had  
 169 knowledge that the image was captured in violation of this  
 170 subsection and did so without disclosing, displaying, or  
 171 distributing the image to a third party.

172 (4) POSSESSION, DISCLOSURE, DISPLAY, DISTRIBUTION, OR USE  
 173 OF IMAGE.—

174 (a) A person violates this subsection if the person:

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175 1. Captures an image in violation of subsection (3);  
 176 and  
 177 2. Possesses, discloses, displays, distributes, or  
 178 otherwise uses that image.  
 179 (b)1. A violation of paragraph (a) for the possession of an  
 180 image is a misdemeanor of the second degree, punishable as  
 181 provided in s. 775.082 or s. 775.083.  
 182 2. A violation of paragraph (a) for the disclosure,  
 183 display, distribution, or other use of an image is a misdemeanor  
 184 of the first degree, punishable as provided in s. 775.082 or s.  
 185 775.083.  
 186 (c) Each image that a person possesses, discloses,  
 187 displays, distributes, or otherwise uses in violation of this  
 188 subsection is a separate offense.  
 189 (d) It is a defense to prosecution under this subsection  
 190 for the possession of an image that the person destroyed as soon  
 191 as the person had knowledge that the image was captured in  
 192 violation of subsection (3).  
 193 (e) It is a defense to prosecution under this subsection  
 194 for the disclosure, display, distribution, or other use of an  
 195 image that the person stopped disclosing, displaying,  
 196 distributing, or otherwise using the image as soon as the person  
 197 had knowledge that the image was captured in violation of  
 198 subsection (3).  
 199 (5) ILLEGALLY OR INCIDENTALLY CAPTURED IMAGES NOT SUBJECT  
 200 TO DISCLOSURE.-  
 201 (a) Except as otherwise provided in paragraph (b), an image  
 202 captured in violation of subsection (3), or an image captured by  
 203 a drone that was incidental to the lawful capturing of an image:

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204 1. May not be used as evidence in any criminal or juvenile  
 205 proceeding, civil action, or administrative proceeding; and  
 206 2. Is not subject to discovery, subpoena, or other means of  
 207 legal compulsion for its release.  
 208 (b) An image described in paragraph (a) may be disclosed  
 209 and used as evidence in a prosecution for any violation of this  
 210 section and is subject to discovery, subpoena, or other means of  
 211 legal compulsion for that purpose.  
 212 (6) CIVIL ACTION.-  
 213 (a) An owner or tenant of privately owned real property  
 214 located in this state may bring against a person, who in  
 215 violation of subsection (3) captured an image of the property or  
 216 the owner or tenant while on the property, an action to:  
 217 1. Enjoin a violation or imminent violation of subsection  
 218 (3) or subsection (4).  
 219 2. Recover a civil penalty of:  
 220 a. Five thousand dollars for all images captured in a  
 221 single episode in violation of subsection (3); or  
 222 b. Ten thousand dollars for disclosure, display,  
 223 distribution, or other use of all images captured in a single  
 224 episode in violation of subsection (4).  
 225 3. Recover actual damages if the person who captured the  
 226 image in violation of subsection (3) discloses, displays, or  
 227 distributes the image with malice.  
 228 (b) For purposes of recovering the civil penalty or actual  
 229 damages under paragraph (a), all owners of a parcel of real  
 230 property are considered to be a single owner and all tenants of  
 231 a parcel of real property are considered to be a single tenant.  
 232 (c) In addition to any civil penalties authorized under

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233 this subsection, the court shall award court costs and  
234 reasonable attorney fees to the prevailing party.

235 (d) Notwithstanding s. 95.11, an action brought under this  
236 subsection must be commenced within 2 years after the date that  
237 the image was:

238 1. Captured in violation of subsection (3); and  
239 2. Initially disclosed, displayed, distributed, or  
240 otherwise used in violation of subsection (4).

241 Section 4. Section 934.55, Florida Statutes, as created by  
242 this act, applies only to images captured on or after October 1,  
243 2015.

244 Section 5. This act shall take effect October 1, 2015.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/7/2015

Meeting Date

Topic \_\_\_\_\_

Bill Number 1178  
*(if applicable)*

Name BRIAN PITTS

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

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

*Street*

SAINT PETERSBURG      FLORIDA      33705

*City*

*State*

*Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

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 (10/20/11)



The Florida Senate

## Committee Agenda Request

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

**Subject:** Committee Agenda Request

**Date:** March 19, 2015

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I respectfully request that **Senate Bill #1178**, relating to Drone Surveillance, be placed on the:

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

A handwritten signature in cursive script, appearing to read "Garrett Richter".

---

Senator Garrett Richter  
Florida Senate, District 23



**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 1306

INTRODUCER: Banking and Insurance Committee and Senator Bradley

SUBJECT: Insurance Fraud

DATE: April 6, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
3.	_____	_____	<u>AP</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1306 provides that knowing, unlawful claims for reimbursement made by an unlicensed clinic or a clinic operating in violation of the Health Care Clinic Act or an administrative rule of the Agency for Health Care Administration (AHCA) are considered theft, regardless of whether payments are made. The bill creates two new criminal penalties within the Health Care Clinic Act. The first prohibits offering or advertising services that require licensure under the Health Care Clinic Act or the Health Care Licensing Procedures Act. The second applies when a person knowingly fails to report a change in information contained in the most recent health care clinic license application or a change regarding required insurance or bonds, as set forth by s. 408.810(3), F.S.

In 2012, the Department of Financial Services (DFS) established a direct-support organization to support the prosecution, investigation, and prevention of motor vehicle insurance fraud. The direct support organization has engaged in limited organizational activity during its existence. The bill repeals the statute authorizing the direct support organization.

**II. Present Situation:**

**Unlicensed Clinics and Unlawful Charges**

Section 627.736(5)(h), F.S., requires all entities meeting the definition of a “clinic” in s. 400.9905(4), F.S., to be licensed by the Agency for Health Care Administration (AHCA) as a

health care clinic in order to receive reimbursement pursuant to the Florida Motor Vehicle No-Fault Law,<sup>1</sup> unless the entity is wholly owned by a doctor, dentist, chiropractor, or hospital, or is a hospital, ambulatory surgical center, or clinical facility affiliated with a medical school. Under s. 400.9935(6), F.S., these exempted entities may voluntarily apply to the AHCA for a certificate of exemption from licensure or may self-exempt and operate a health care clinic.

Section 408.812, F.S., prohibits an unlicensed clinic from offering or advertising services that require licensure by the AHCA and prohibits a person or entity from owning, operating, or maintaining an unlicensed provider. Violations of s. 408.812, F.S., are punished as a third degree felony<sup>2</sup> for a first offense and a second degree felony<sup>3</sup> for a second or subsequent offense.<sup>4</sup> Section 408.812(3), F.S., requires any health care provider who is aware of the operation of an unlicensed clinic to report that facility to the AHCA. Failure to report a clinic that the provider knows or has reasonable cause to suspect is unlicensed shall be reported to the provider's licensing board.<sup>5</sup>

Section 400.9935(3), F.S., provides that the charges and reimbursement claims made by a health care clinic that is required to be licensed under ss. 400.990-400.995, F.S., but is not licensed or is operating in violation of the referenced statutes, are unlawful, noncompensable, and unenforceable. According to the DFS, s. 400.9935(3), F.S., has routinely been applied in the civil context to permit insurance companies and third parties to deny paying, or to recover payments for, such unlawful charges. However, the DFS believes that prosecutors have been reluctant to file criminal theft charges because the theft statute does not specifically name such unlawful charges as theft.<sup>6</sup>

### **Automotive Insurance Fraud Strike Force**

Section 626.9895, F.S., authorizes the division to establish a direct-support organization, known as the "Automobile Insurance Fraud Strike Force" (DSO). The DSO's sole purpose is to support the prosecution, investigation, and prevention of motor vehicle insurance fraud. The DSO is authorized to raise funds, conduct programs and activities, hold, invest, and administer assets in its name, and make grants and expenditures to state attorneys' offices, the statewide prosecutor, the AHCA, and the Department of Health to be used exclusively to prosecute, investigate, or prevent motor vehicle insurance fraud.

The Strike Force filed its incorporation with the Department of State on April 25, 2012. The Strike Force has engaged in limited organizational activity during its existence. The DFS reported to Banking and Insurance Committee staff that the Strike Force has not: taken in any

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<sup>1</sup> See ss. 627.730–627.7405, F.S.

<sup>2</sup> A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentenced points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction would present a danger to the public. Section 775.082(10), F.S.

<sup>3</sup> A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both. Sections 775.082 and 775.083, F.S.

<sup>4</sup> See s. 400.993, F.S. Each day of continued operation is a separate offense.

<sup>5</sup> See s. 400.993(3), F.S.

<sup>6</sup> See Department of Financial Services, *Agency Bill Analysis SB 1306*, March 13, 2015 (on file with the Banking and Insurance Committee and Criminal Justice Committee).

donations, paid any grants, established a bank account, or made any transfers into the Insurance Regulatory Trust Fund.

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

#### **Unlicensed Clinic Activity and Unlawful Charges**

**Section 1** of the bill repeals s. 400.993, F.S. Those provisions are moved to s. 400.9935, F.S.

**Section 2** of the bill amends s. 400.9935, F.S., to provide that unlawful claims for reimbursement made by an unlicensed clinic or a clinic operating in violation of the Health Care Clinic Act or an administrative rule of the Agency for Health Care Administration are considered theft under s. 812.014, F.S., regardless of whether payments are made.

Two new criminal penalties within the Health Care Clinic Act are created:

- It is a third degree felony to offer or advertise services that require licensure under the Health Care Clinic Act or the Health Care Licensing Procedures Act; and
- It is a third degree felony to knowingly fail to report a change in information contained in the most recent health care clinic license application or a change regarding the required insurance or bonds, as required by s. 408.810(3), F.S.

The bill also consolidates existing criminal offense provisions (the third degree felony and second degree felony in s. 400.993, F.S.) into s. 400.9935, F.S.

The bill requires a health care provider who is aware of the operation of an unlicensed clinic to report the clinic to the agency. The agency must report to the provider's licensing board a failure to report a clinic that the provider knows or has reasonable cause to suspect is unlicensed.

**Section 5** of the bill amends s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to rank in Level 3 the third degree felonies created in or added to s. 400.9935, F.S. The bill also ranks in Level 6, the second degree felony added to s. 400.9935, F.S.

#### **Repeal of the Automobile Insurance Fraud Strike Force**

**Section 4** of the bill repeals, s. 626.9895, F.S., which created the Automobile Insurance Fraud Strike Force direct support organization.

**Section 3** of the bill makes a conforming change to s. 626.9894(5), F.S.

#### **Effective Date**

**Section 6** of the bill provides the bill takes effect on July 1, 2015.

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

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

None.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The DFS reports there could be an indeterminate increase in expenditures for rulemaking and administrative litigation related to this bill.<sup>7</sup>

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation estimates that the bill will have a positive insignificant prison bed impact (an increase of 10 or fewer prison beds per year).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 400.9935, 626.9894, and 921.0022.

This bill repeals the following sections of the Florida Statutes: 400.993 and 626.9895.

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<sup>7</sup> *Id.*

**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 Banking and Insurance on March 31, 2015:**

The bill removes provisions relating to insurance company special investigative units and removes provisions requiring insurers to report anti-fraud plans and statistical information to the Department of Financial Services. The bill also removes a provision requiring a separate certificate of exemption for each clinic location.

- 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 Banking and Insurance; and Senator Bradley

597-03196-15

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1 A bill to be entitled  
 2 An act relating to insurance fraud; repealing s.  
 3 400.993, F.S., relating to criminal penalties  
 4 applicable to unlicensed health care clinics and the  
 5 reporting of unlicensed health care clinics; amending  
 6 s. 400.9935, F.S.; revising provisions related to  
 7 unlawful, noncompensable, and unenforceable health  
 8 care clinic charges or reimbursement claims; revising  
 9 and providing criminal penalties for making unlawful  
 10 charges, operating or failing to report an unlicensed  
 11 clinic, filing false or misleading information related  
 12 to a clinic license application, and other violations;  
 13 defining the term "convicted"; amending s. 626.9894,  
 14 F.S.; conforming provisions to changes made by the  
 15 act; repealing s. 626.9895, F.S., relating to the  
 16 establishment of a motor vehicle insurance fraud  
 17 direct-support organization; amending s. 921.0022,  
 18 F.S.; conforming provisions of the offense severity  
 19 ranking chart of the Criminal Punishment Code to  
 20 changes made by the act; providing an effective date.

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

22 Section 1. Section 400.993, Florida Statutes, is repealed.  
 23 Section 2. Subsections (3) and (4) of section 400.9935,  
 24 Florida Statutes, are amended to read:  
 25 400.9935 Clinic responsibilities.—  
 26 (3) A charge ~~All charges~~ or reimbursement claim ~~claims~~ made  
 27 by or on behalf of a clinic that is required to be licensed  
 28  
 29

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30 under this part, but that is not so licensed, or that is  
 31 otherwise operating in violation of this part or rules of the  
 32 agency, regardless of whether a service is rendered or whether  
 33 the charge or reimbursement claim is paid, is an ~~are~~ unlawful  
 34 charge ~~charges~~, and is therefore ~~are~~ noncompensable and  
 35 unenforceable. A person who knowingly makes or causes to be made  
 36 an unlawful charge commits theft within the meaning of, and  
 37 punishable as provided in, s. 812.014.

38 (4) (a) Regardless of whether notification is provided by  
 39 the agency under ~~In addition to the requirements of s. 408.812,~~  
 40 a any person commits a felony of the third degree, punishable as  
 41 provided in s. 775.082, s. 775.083, or s. 775.084, if the person  
 42 knowingly:

43 1. Establishes, owns, operates, manages, or maintains  
 44 establishing, operating, or managing an unlicensed clinic  
 45 ~~otherwise~~ required to be licensed under this part or part II of  
 46 chapter 408; ~~r~~ or

47 2. Offers or advertises services that require licensure as  
 48 a clinic under this part or part II of chapter 408 without a  
 49 license.

50 (b) If the agency provides notification under s. 408.812  
 51 of, or if a person is arrested for, a violation of subparagraph  
 52 (a)1. or subparagraph (a)2., each day during which a violation  
 53 of subparagraph (a)1. or subparagraph (a)2. occurs constitutes a  
 54 separate offense.

55 (c) A person convicted of a second or subsequent violation  
 56 of subparagraph (a)1. or subparagraph (a)2. commits a felony of  
 57 the second degree, punishable as provided in s. 775.082, s.  
 58 775.083, or s. 775.084. If the agency provides notification of,

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59 or if a person is arrested for, a violation of this paragraph,  
 60 each day that this paragraph is violated thereafter constitutes  
 61 a separate offense. For purposes of this paragraph, the term  
 62 "convicted" means a determination of guilt which is the result  
 63 of a trial or the entry of a plea of guilty or nolo contendere,  
 64 regardless of whether adjudication is withheld.

65 (d) In addition to the requirements of part II of chapter  
 66 408, a health care provider who is aware of the operation of an  
 67 unlicensed clinic shall report the clinic to the agency. The  
 68 agency shall report to the provider's licensing board a failure  
 69 to report a clinic that the provider knows or has reasonable  
 70 cause to suspect is unlicensed.

71 (e) A person commits a felony of the third degree,  
 72 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,  
 73 if the any person who knowingly:

74 1. Files a false or misleading license application or  
 75 license renewal application, or files false or misleading  
 76 information related to such application or agency department  
 77 rule; or

78 2. Fails to report information to the agency as required by  
 79 s. 408.810(3), commits a felony of the third degree, punishable  
 80 as provided in s. 775.082, s. 775.083, or s. 775.084.

81 Section 3. Subsection (5) of section 626.9894, Florida  
 82 Statutes, is amended to read:  
 83 626.9894 Gifts and grants.-

84 (5) Notwithstanding s. 216.301 and pursuant to s. 216.351,  
 85 any balance of moneys deposited into the Insurance Regulatory  
 86 Trust Fund pursuant to this section ~~or s. 626.9895~~ remaining at  
 87 the end of any fiscal year is available for carrying out the

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88 duties and responsibilities of the division. The department may  
 89 request annual appropriations from the grants and donations  
 90 received pursuant to this section ~~or s. 626.9895~~ and cash  
 91 balances in the Insurance Regulatory Trust Fund for the purpose  
 92 of carrying out its duties and responsibilities related to the  
 93 division's anti-fraud efforts, including the funding of  
 94 dedicated prosecutors and related personnel.

95 Section 4. Section 626.9895, Florida Statutes, is repealed.

96 Section 5. Paragraphs (c) and (f) of subsection (3) of  
 97 section 921.0022, Florida Statutes, are amended to read:

98 921.0022 Criminal Punishment Code; offense severity ranking  
 99 chart.-

100 (3) OFFENSE SEVERITY RANKING CHART

101 (c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude

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 law enforcement officer in  
 patrol vehicle with siren and  
 lights activated.  
 108  
 319.30(4) 3rd Possession by junkyard of  
 motor vehicle with  
 identification number plate  
 removed.  
 109  
 319.33(1) (a) 3rd Alter or forge any certificate  
 of title to a motor vehicle or  
 mobile home.  
 110  
 319.33(1) (c) 3rd Procure or pass title on  
 stolen vehicle.  
 111  
 319.33(4) 3rd With intent to defraud,  
 possess, sell, etc., a blank,  
 forged, or unlawfully obtained  
 title or registration.  
 112  
 327.35(2) (b) 3rd Felony BUI.  
 113  
 328.05(2) 3rd Possess, sell, or counterfeit  
 fictitious, stolen, or  
 fraudulent titles or bills of  
 sale of vessels.  
 114  
 328.07(4) 3rd Manufacture, exchange, or

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 possess vessel with  
 counterfeit or wrong ID  
 number.  
 115  
 376.302(5) 3rd Fraud related to reimbursement  
 for cleanup expenses under the  
 Inland Protection Trust Fund.  
 116  
 379.2431 3rd Taking, disturbing,  
 (1) (e) 5. mutilating, destroying,  
 causing to be destroyed,  
 transferring, selling,  
 offering to sell, molesting,  
 or harassing marine turtles,  
 marine turtle eggs, or marine  
 turtle nests in violation of  
 the Marine Turtle Protection  
 Act.  
 117  
 379.2431 3rd Soliciting to commit or  
 (1) (e) 6. conspiring to commit a  
 violation of the Marine Turtle  
 Protection Act.  
 118  
 400.9935(4) (a) or 3rd Operating a clinic, or  
(b) offering services requiring  
licensure, without a license  
~~or filing false license~~  
~~application or other required~~



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~~information.~~  
 119 400.9935(4)(e) 3rd Filing a false license  
application or other required  
information or failing to  
report information.  
 120 440.1051(3) 3rd False report of workers'  
 compensation fraud or  
 retaliation for making such a  
 report.  
 121 501.001(2)(b) 2nd Tampers with a consumer  
 product or the container using  
 materially false/misleading  
 information.  
 122 624.401(4)(a) 3rd Transacting insurance without  
 a certificate of authority.  
 123 624.401(4)(b)1. 3rd Transacting insurance without  
 a certificate of authority;  
 premium collected less than  
 \$20,000.  
 124 626.902(1)(a) & 3rd Representing an unauthorized  
 (b) insurer.  
 125 697.08 3rd Equity skimming.

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 126 790.15(3) 3rd Person directs another to  
 discharge firearm from a  
 vehicle.  
 127 806.10(1) 3rd Maliciously injure, destroy,  
 or interfere with vehicles or  
 equipment used in  
 firefighting.  
 128 806.10(2) 3rd Interferes with or assaults  
 firefighter in performance of  
 duty.  
 129 810.09(2)(c) 3rd Trespass on property other  
 than structure or conveyance  
 armed with firearm or  
 dangerous weapon.  
 130 812.014(2)(c)2. 3rd Grand theft; \$5,000 or more  
 but less than \$10,000.  
 131 812.0145(2)(c) 3rd Theft from person 65 years of  
 age or older; \$300 or more but  
 less than \$10,000.  
 132 815.04(5)(b) 2nd Computer offense devised to  
 defraud or obtain property.  
 133

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	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
134			
	817.233	3rd	Burning to defraud insurer.
135			
	817.234	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
	(8)(b) & (c)		
136			
	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
137			
	817.236	3rd	Filing a false motor vehicle insurance application.
138			
	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
139			
	817.413(2)	3rd	Sale of used goods as new.
140			
	817.505(4)	3rd	Patient brokering.
141			
	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury,

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

	597-03196-15		20151306c1
			or death.
142			
	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
143			
	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
144			
	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
145			
	843.19	3rd	Injure, disable, or kill police dog or horse.
146			
	860.15(3)	3rd	Overcharging for repairs and parts.
147			
	870.01(2)	3rd	Riot; inciting or encouraging.
148			
	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).

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149 893.13(1)(d)2. 2nd Sell, manufacture, or deliver  
s. 893.03(1)(c), (2)(c)1.,  
(2)(c)2., (2)(c)3., (2)(c)5.,  
(2)(c)6., (2)(c)7., (2)(c)8.,  
(2)(c)9., (3), or (4) drugs  
within 1,000 feet of  
150 university.

893.13(1)(f)2. 2nd Sell, manufacture, or deliver  
s. 893.03(1)(c), (2)(c)1.,  
(2)(c)2., (2)(c)3., (2)(c)5.,  
(2)(c)6., (2)(c)7., (2)(c)8.,  
(2)(c)9., (3), or (4) drugs  
151 within 1,000 feet of public  
housing facility.

893.13(6)(a) 3rd Possession of any controlled  
substance other than felony  
152 possession of cannabis.

893.13(7)(a)8. 3rd Withhold information from  
practitioner regarding  
previous receipt of or  
prescription for a controlled  
substance.

153 893.13(7)(a)9. 3rd Obtain or attempt to obtain  
controlled substance by fraud,

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154 forgery, misrepresentation,  
etc.

893.13(7)(a)10. 3rd Affix false or forged label to  
package of controlled  
155 substance.

893.13(7)(a)11. 3rd Furnish false or fraudulent  
material information on any  
document or record required by  
chapter 893.

156 893.13(8)(a)1. 3rd Knowingly assist a patient,  
other person, or owner of an  
animal in obtaining a  
controlled substance through  
deceptive, untrue, or  
157 fraudulent representations in  
or related to the  
practitioner's practice.

893.13(8)(a)2. 3rd Employ a trick or scheme in  
the practitioner's practice to  
assist a patient, other  
person, or owner of an animal  
in obtaining a controlled  
substance.

158 893.13(8)(a)3. 3rd Knowingly write a prescription

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	597-03196-15		20151306c1
			for a controlled substance for a fictitious person.
159	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
160	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
161	944.47	3rd	Introduce contraband to correctional facility.
162	(1)(a)1. & 2.		
	944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
163	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
164	(f) LEVEL 6		
165			
166	Florida	Felony	Description

	597-03196-15		20151306c1
	Statute	Degree	
167	316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
168	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
169	<u>400.9935(4)(c)</u>	<u>2nd</u>	<u>Operating a clinic, or offering services requiring licensure, without a license.</u>
170	499.0051(3)	2nd	Knowing forgery of pedigree papers.
171	499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
172	499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
173	775.0875(1)	3rd	Taking firearm from law enforcement officer.
174	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.

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175	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
176	784.041	3rd	Felony battery; domestic battery by strangulation.
177	784.048(3)	3rd	Aggravated stalking; credible threat.
178	784.048(5)	3rd	Aggravated stalking of person under 16.
179	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
180	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
181	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
182	784.081(2)	2nd	Aggravated assault on specified official or employee.
183	784.082(2)	2nd	Aggravated assault by detained person on visitor or other

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184			detainee.
185	784.083(2)	2nd	Aggravated assault on code inspector.
186	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
187	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
188	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
189	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
190	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
190	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.

	597-03196-15		20151306c1
191	794.05(1)	2nd	Unlawful sexual activity with specified minor.
192	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
193	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
194	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
195	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
196	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
197	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.

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

	597-03196-15		20151306c1
198	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
199	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
200	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
201	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
202	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
203	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
204	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
205	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.

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	597-03196-15		20151306c1
206	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
207	827.03(2)(c)	3rd	Abuse of a child.
208	827.03(2)(d)	3rd	Neglect of a child.
209	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
210	836.05	2nd	Threats; extortion.
211	836.10	2nd	Written threats to kill or do bodily injury.
212	843.12	3rd	Aids or assists person to escape.
213	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
214	847.012	3rd	Knowingly using a minor in the production of materials

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

	597-03196-15		20151306c1
			harmful to minors.
215	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
216	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
217	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
218	944.40	2nd	Escapes.
219	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
220	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
221	951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county

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597-03196-15

20151306c1

facility.

222

223

Section 6. 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)

1306  
Bill Number (if applicable)

Meeting Date \_\_\_\_\_  
Topic INSURANCE FRAUD  
Name KEVIN SWENY

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

Job Title \_\_\_\_\_

Address \_\_\_\_\_  
Street \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing FLORIDA JUSTICE 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  
**APPEARANCE RECORD**

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

4-7-15

Meeting Date

SB 1306

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Elizabeth Boyd

Job Title Legislative Affairs Director

Address 400 N. Monroe St

Phone 850-413-2863

Street

Tallahassee FL 32399

Email Elizabeth.Boyd@myfloridachamber.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing CFO Attorney

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

## Committee Agenda Request

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

**Subject:** Committee Agenda Request

**Date:** April 2, 2015



---

I respectfully request that **Senate Bill # 1306**, relating to Insurance Fraud, be placed on the:

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

A handwritten signature in cursive script, appearing to read "Rob Bradley", written over a horizontal line.

Senator Rob Bradley  
Florida Senate, District 7

**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 1482

INTRODUCER: Senator Bean

SUBJECT: Cold Case Task Force

DATE: April 6, 2015

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

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

---

**I. Summary:**

SB 1482 creates a Cold Case Task Force within the Florida Department of Law Enforcement (FDLE). The purpose of the task force is to examine policies and procedures used by law enforcement agencies in this state in investigating recent homicides and cold case homicides.

The task force is composed of 19 members and is chaired by the executive director of the FDLE or the director's designee. The FDLE provides staff support. The bill specifies membership of the task force, authorizes reimbursement for per diem and travel expenses, and prescribes duties of the task force.

The task force must submit a report of its findings to the Governor and the Legislature by December 1, 2016. Upon submission of the report, the task force expires.

**II. Present Situation:**

There is no universally recognized definition of "cold case." One dictionary definition of "cold case" is "[a]n unsolved criminal investigation which remains open pending the discovery of new evidence."<sup>1</sup>

The FDLE, which provided an analysis of the bill, states:

Cold cases are investigated using the same sound, thorough investigative skill set used for all investigation types. The cases do not fall into cookie-cutter practices and rely on sound investigative performance following all possible leads. Getting the victim identified and maintaining contact with surviving victims and witnesses are keys to investigative success. Cyclical/annual reviews and evaluation of cold cases allow

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<sup>1</sup> See [http://www.oxforddictionaries.com/us/definition/american\\_english/cold-case](http://www.oxforddictionaries.com/us/definition/american_english/cold-case) (last viewed on April 1, 2015).

agencies to ensure all leads have been followed, to follow any new leads and to identify any new technology available for evidence evaluation/analysis.<sup>2</sup>

The FDLE notes that the department “offers cold case reviews, investigative and forensic assistance and guidance as requested by local agencies.”<sup>3</sup>

While local law enforcement agencies are investigating cold cases in their localities, there does not appear to be any comprehensive review and evaluation of policies and procedures being used by these agencies in investigating cold cases or best practices for such investigations.

A 2011 technical report by the Rand Center on Quality Policing identified three types of cold case investigations based on its research:

... The first type is the classic cold-case investigation, in which a detective picks up a case file because of a family or media inquiry or during a procedural review of cases that have remained unsolved for a specified length of time. These are the least common types of cold-case investigations.

The second type is based on availability of forensic tests. Forensic material from old cases once thought not to be amenable to DNA testing might now be testable due to advances in DNA technology. Federal funds are making this type of cold-case investigation increasingly common.

The third type consists of those cases opened because an individual charged with a crime confesses to the outstanding crime as part of a plea deal or because an eyewitness announces a willingness to finger a suspect in return for leniency after the witness is arrested for participating in a crime.<sup>4</sup>

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

The bill creates a Cold Case Task Force within the Florida Department of Law Enforcement (FDLE). The purpose of the task force is to examine policies and procedures used by law enforcement agencies in this state in investigating recent homicides and cold case homicides.

The task force is composed of the following 19 members:

- The executive director of the FDLE or his or her designee, who shall serve as chair of the task force;
- The Attorney General or his or her designee;
- Three state attorneys appointed by the Attorney General, who shall be appointed in a manner that ensures equitable representation of urban, suburban, and rural areas of the state;
- Two representatives from victim advocacy organizations appointed by the Governor;

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<sup>2</sup> Analysis of SB 1482 (February 27, 2015), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice). This analysis is further cited as “FDLE Analysis.”

<sup>3</sup> *Id.*

<sup>4</sup> Davis, Robert C.; Jensen, Carl; and Kitchens, Karin E. *Cold Case Investigations: An Analysis of Current Practices and Factors Associated with Successful Outcomes* (Arlington, VA: Rand Center on Quality Policing, 2011), xiii.

- Two county sheriffs, one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives;
- Two municipal police chiefs, one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives;
- Three representatives from victims' families, one appointed by the Governor, one appointed by the President of the Senate, and one appointed by the Speaker of the House of Representatives;
- A crime scene evidence technician appointed by the executive director of the FDLE;
- A forensic pathologist appointed by the executive director of the FDLE;
- A representative of a law enforcement agency with experience investigating and preserving homicides and cold case homicides appointed by the executive director of the FDLE;
- A representative of the Florida Police Chiefs Association selected by the president of the executive board of the Florida Police Chiefs Association; and
- A representative of the Florida Sheriffs Association selected by the executive director of the Florida Sheriffs Association.

Duties of the task force include:

- Reviewing and evaluating policies and procedures currently used by law enforcement agencies in this state in investigating recent homicides and cold case homicides; and
- Identifying best practices and recommend proposals for legislation that may improve the effectiveness of such investigatory policies and procedures.

To accomplish its duties, the task force may take testimony from members of victims' families and members of the public. The FDLE provides the task force with staff necessary to assist the task force in the performance of its duties.

Members of the task force serve without compensation, but are entitled to reimbursement for per diem and travel expenses pursuant to s. 112.061, F.S.

The task force must convene for its first meeting by September 1, 2015. By December 1, 2016, the task force must submit a report of its findings to the Governor and the Legislature. Upon submission of the report, the task force expires.

The bill takes effect on July 1, 2015.

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

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

None.

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

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The FDLE states that the bill will have the following fiscal impact on the department:

Estimating that each meeting of the task force will cost \$500/member x 19 members plus 3 FDLE staff = \$11,000. Meeting space for each meeting is estimated at \$4,000 for a total estimated cost of \$15,000 per meeting. If the task force meets quarterly for 18 months (at which time the bill specifies dissolution of the task force) the cost will be \$90,000 (\$15,000 x 6 quarters). Additionally the task force may need to pay for expert testimony in forensic pathology, evidence, homicide investigation, technology or other relevant expertise. FDLE estimates an allotment of \$10,000 to cover these consultant fees. **Total estimated fiscal impact = \$100,000.**<sup>5</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates a new and not yet numbered section of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

None.

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<sup>5</sup> FDLE Analysis.

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 Senator Bean

4-00512-15

20151482\_\_

A bill to be entitled

An act relating to the Cold Case Task Force; creating the task force within the Department of Law Enforcement; specifying membership of the task force; authorizing reimbursement for per diem and travel expenses; prescribing duties of the task force; requiring the task force to submit a report to the Governor and the Legislature by a specified date; providing for expiration of the task force; providing for staffing; providing an effective date.

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

Section 1. Cold Case Task Force.—The Cold Case Task Force, a task force as defined in s. 20.03, Florida Statutes, is created within the Department of Law Enforcement. The task force is created for the express purpose of examining policies and procedures used by law enforcement agencies in this state in investigating recent homicides and cold case homicides.

(1) The task force is composed of 19 members as follows:

(a) The executive director of the Department of Law Enforcement or his or her designee, who shall serve as chair of the task force.

(b) The Attorney General or his or her designee.

(c) Three state attorneys appointed by the Attorney General, who shall be appointed in a manner that ensures equitable representation of urban, suburban, and rural areas of the state.

(d) Two representatives from victim advocacy organizations

Page 1 of 3

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

4-00512-15

20151482\_\_

appointed by the Governor.

(e) Two county sheriffs, one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives.

(f) Two municipal police chiefs, one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives.

(g) Three representatives from victims' families, one appointed by the Governor, one appointed by the President of the Senate, and one appointed by the Speaker of the House of Representatives.

(h) A crime scene evidence technician appointed by the executive director of the Department of Law Enforcement.

(i) A forensic pathologist appointed by the executive director of the Department of Law Enforcement.

(j) A representative of a law enforcement agency with experience investigating and preserving homicides and cold case homicides appointed by the executive director of the Department of Law Enforcement.

(k) A representative of the Florida Police Chiefs Association selected by the president of the executive board of the Florida Police Chiefs Association.

(l) A representative of the Florida Sheriffs Association selected by the executive director of the Florida Sheriffs Association.

(2) Members of the task force shall serve without compensation, but are entitled to reimbursement for per diem and travel expenses pursuant to s. 112.061, Florida Statutes.

(3) The task force shall convene for its first meeting by

Page 2 of 3

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

4-00512-15

20151482\_\_

59 September 1, 2015. The task force shall review and evaluate  
60 policies and procedures currently used by law enforcement  
61 agencies in this state in investigating recent homicides and  
62 cold case homicides. The task force shall identify best  
63 practices and recommend proposals for legislation that may  
64 improve the effectiveness of such investigatory policies and  
65 procedures. To accomplish its duties, the task force may take  
66 testimony from members of victims' families and members of the  
67 public.

68 (4) The task force shall submit a report of its findings  
69 and recommendations to the Governor, the President of the  
70 Senate, and the Speaker of the House of Representatives by  
71 December 1, 2016. Upon submission of the report, the task force  
72 shall expire.

73 (5) The Department of Law Enforcement shall provide the  
74 task force with staff necessary to assist the task force in the  
75 performance of its duties.

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4 / 7 / 2015

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 1482  
*(if applicable)*

Name BRIAN PITTS

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

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH  
*Street*

Phone 727-897-9291

SAINT PETERSBURG      FLORIDA      33705  
*City*                                      *State*                                      *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

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 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/7/15

Meeting Date

1482

Bill Number (if applicable)

Topic Cold Case Task Force

Amendment Barcode (if applicable)

Name Ryan Backmann

Job Title Exec Director

Address 1471 Laurel Way  
Street

Phone 904-514-9847

Atlantic Beach FL 32233  
City State Zip

Email ryamb@projectcoldcase.org

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



The Florida Senate

## Committee Agenda Request

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

**Subject:** Committee Agenda Request

**Date:** March 18, 2015

---

I respectfully request that **Senate Bill # 1482**, relating to Cold Case Task Force, be placed on the:

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

A handwritten signature in cursive script that reads "Aaron Bean".

---

Senator Aaron Bean  
Florida Senate, District 4

# CourtSmart Tag Report

Room: LL 37

Case:

Type:

Caption: Senate Criminal Justice Committee Judge:

Started: 4/7/2015 10:10:21 AM

Ends: 4/7/2015 12:00:05 PM

Length: 01:49:45

10:10:33 AM Meeting called to order. Roll call  
10:12:01 AM Tab 6 - SB 1178 by Senator Richter—Drone Surveillance  
10:12:18 AM Amendment Barcode 133542 D S CJ, Senator Bradley  
10:14:37 AM Back on bill as amended.  
10:15:02 AM Senator Clemens asks a question. Senator Richter responds.  
10:15:26 AM Senator Brandes asks a question. Senator Richter responds.  
10:17:18 AM Senator Gibson asks a question. Senator Richter responds.  
10:20:30 AM Senator Brandes asks a question. Senator Richter responds.  
10:22:05 AM Senator Bradley asks a question. Senator Richter responds.  
10:23:25 AM Brian Pitts, Justice-2-Jesus, St. Petersburg, FL  
10:27:06 AM Senator Brandes makes a statement about bill.  
10:29:53 AM Senator Richter makes a comment about tp'ing the bill  
10:30:37 AM Senator Bradley asks question about meeting next week. Senator Evers responded.  
10:32:16 AM SB 1178 TP'D  
10:34:45 AM Senator Richter speaks on bill.  
10:35:12 AM Senator Evers makes comments on the bill.  
10:35:42 AM Senator Gibson asks a question. Senator Evers and Senator Clemens responds.  
10:37:26 AM Tab 8 - SB 1482 by Senator Bean—Cold Case Task Force  
10:38:34 AM Ryan Bachmann, Atlantic Beach, FL  
10:41:17 AM Brian Pitts, Justice-2-Jesus, St. Petersburg, FL  
10:43:02 AM Senator Brandes asks a question of staff.  
10:43:28 AM Roll Call for SB 1482  
10:44:15 AM Tab 2 - Senate Confirmation Hearing: Secretary of Corrections - Julie Jones  
10:44:44 AM Secretary Julie Jones speaks.  
10:45:36 AM Senator Gibson asks a question of Secretary Jones.  
10:48:56 AM Senator Gibson asks a question about chain of command.  
10:49:17 AM Secretary Jones responds.  
10:50:02 AM Senator Clemens makes a comment about complaints.  
10:51:48 AM Secretary Jones responds to questions about what to do about complaints.  
10:56:59 AM Senator Evers asks Secretary a question about Inmate Trust Fund. Secretary responds  
10:58:23 AM Barney Bishop III, Florida Smart Justice Alliance, Tallahassee, FL  
11:00:55 AM Brian Pitts, Justice-2-Jesus, St. Petersburg, FL  
11:04:54 AM Senator Brandes moves to confirm Secretary Jones.  
11:04:55 AM Roll call for confirmation of Julie Jones  
11:06:02 AM Tab 4 - SB 134 by Senator Diaz de la Portilla - Lifetime Electronic Monitoring of Sex Offenders  
11:09:39 AM Senator Diaz de la Portilla speaks on the bill.  
11:10:50 AM Jose Diaz, Miami-Dade Commissioner, Miami-Dade County.  
11:13:52 AM SB 134 TP'd  
11:14:42 AM Tab 5 - CS/SB 908 by Transportation / Senator Altman—Traffic Safety  
11:17:14 AM Handwritten Amendment (763146) by Senator Brandes  
11:18:42 AM Senator Bradley speaks on amendment.  
11:20:00 AM Handwritten Amendment (255866) by Senator Brandes.  
11:20:52 AM Senator Bradley asks a question of staff.  
11:21:45 AM Mike Fewless, Captain, Orlando, FL Law Enforcement speaks  
11:22:22 AM Senator Gibson asks a question of Law Enforcement.  
11:24:10 AM Handwritten Amendment (331138) by Senator Brandes.  
11:26:58 AM Tish Kelly, Naples, Florida Cycling Club.  
11:29:53 AM Senator Gibson asks a question of Kevin Sweeny, Florida Justice Assn.  
11:30:22 AM Mr. Sweeny responds.  
11:32:01 AM Alexander Page, Abate of Florida, Inc.  
11:33:12 AM Jeffrey MichelLand, Attorney, Ft. Myers  
11:35:10 AM Roll Call for CS/SB 908

**11:35:54 AM** Tab 7 - CS/SB 1306 by Banking and Insurance / Senator Bradley—Insurance Fraud  
**11:37:25 AM** Roll Call for CS/SB 1306  
**11:37:54 AM** Tab 3 - SPB 7080 by Criminal Justice—Law Enforcement Officer Body Cameras (Mike Erickson explains the SPB)  
**11:39:46 AM** Chair turned over to Senator Gibson.  
**11:40:03 AM** Amendment 877704 explained by Senator Evers.  
**11:40:20 AM** Back on Bill as amended  
**11:40:42 AM** Senator Evers takes the Chair back  
**11:41:07 AM** Senator Brandes asked a question of Mike Erickson. Mike responded.  
**11:48:04 AM** Senator Clemens asks a question. Mike responds.  
**11:48:43 AM** Senator Gibson asks a question. Mike responds.  
**11:54:30 AM** Jeremiah Hawkess, Pasco Sheriff's Office.  
**11:55:12 AM** Gary Bradford, Florida Police Benevolent Assn.  
**11:56:06 AM** Senator Gibson asks a question. Mr. Bradford responds.  
**11:56:54 AM** Brian Pitts, Justice-2-Jesus, St. Petersburg, FL  
**11:58:49 AM** Greg Pound, Pinellas County  
**11:59:15 AM** Roll Call for SPB 7080  
**11:59:36 AM** Meeting Adjourned