

Tab 1	SB 122 by Joyner, Bradley; (Identical to H 0331) Compensation of Victims of Wrongful Incarceration					
264680	T	S	RCS	CJ, Clemens	In title, delete L.10 -	11/02 03:43 PM

Tab 2	SB 298 by Evers; (Similar to H 0151) Installation of Tracking Devices or Tracking Applications					
925560	A	S	RCS	CJ, Brandes	Delete L.18 - 33:	11/02 03:43 PM
252238	A	S	WD	CJ, Evers	Delete L.22 - 33:	10/30 11:33 AM

Tab 3	SB 314 by Diaz de la Portilla; (Similar to H 0129) Juvenile Justice					
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Tab 4	SB 386 by Detert; (Compare to CS/H 0147) Expunction of Records of Minors					
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Tab 5	SPB 7006 by CJ; Corrections					
976882	A	S		CJ, Gibson	Delete L.47:	10/16 11:36 AM
328176	A	S		CJ, Brandes	btw L.85 - 86:	10/19 10:20 AM
723682	SA	S		CJ, Brandes	btw L.85 - 86:	10/19 05:06 PM

Tab 6	SPB 7022 by CJ; OGSR/Agency Photograph, Video, or Audio Recording/Killing of a Person					
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Evers, Chair
Senator Gibson, Vice Chair

MEETING DATE: Monday, November 2, 2015
TIME: 1:00—3:00 p.m.
PLACE: Mallory Horne Committee Room, 37 Senate Office Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 122 Joyner / Bradley (Identical H 331)	Compensation of Victims of Wrongful Incarceration; Providing that a person is disqualified from receiving compensation under the Victims of Wrongful Incarceration Compensation Act if, before or during the person's wrongful conviction and incarceration, the person was convicted of, pled guilty or nolo contendere to, or was serving a concurrent incarceration for, another violent felony; providing that a wrongfully incarcerated person who commits a violent felony, rather than a felony law violation, which results in revocation of parole or community supervision is ineligible for compensation, etc. CJ 11/02/2015 Fav/CS JU ACJ AP	Fav/CS Yeas 5 Nays 0
2	SB 298 Evers (Similar H 151)	Installation of Tracking Devices or Tracking Applications; Revising an exception to a prohibition on the installation of tracking devices or applications to specify that the exception does not apply to the installation of such devices or applications when done through intentionally deceptive means or when done knowingly in the commission of a crime, etc. CJ 10/20/2015 Not Considered CJ 11/02/2015 Fav/CS ACJ RC	Fav/CS Yeas 5 Nays 0
3	SB 314 Diaz de la Portilla (Similar H 129, Compare H 239, H 293, S 282, S 558)	Juvenile Justice; Revising the circumstances under which a state attorney may file an information when a child of a certain age range commits or attempts to commit specified crimes; revising the crimes and the age of a child who is subject to the jurisdiction of a circuit court; requiring the adult court to render an order including specific findings of fact and the reasons for its decision; removing a provision that requires a court to impose adult sanctions under certain circumstances, etc. CJ 11/02/2015 Favorable ACJ AP	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Monday, November 2, 2015, 1:00—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 386 Detert (Compare CS/H 147)	Expunction of Records of Minors; Decreasing the period of time that a minor's criminal history record must be retained before expunction; deleting a limitation on the period of time within which a minor must submit an application for prearrest or postarrest diversion expunction to the Department of Law Enforcement after successful completion of the diversion program, etc. CJ 11/02/2015 Favorable ACJ FP	Favorable Yeas 5 Nays 0
Consideration of proposed bill:			
5	SPB 7006	Corrections; Requiring the Criminal Justice Estimating Conference to develop projections of prison admissions and populations for elderly felony offenders; revising the definition of "victim injury" by removing a prohibition on assessing certain victim injury sentence points for sexual misconduct by an employee of the Department of Corrections or a private correctional facility with an inmate or an offender supervised by the department; expanding applicability of a current felony offense to include employees of private providers and private correctional facilities, etc.	Not Considered
Consideration of proposed bill:			
6	SPB 7022	OGSR/Agency Photograph, Video, or Audio Recording/Killing of a Person; Amending provisions which provide an exemption from public records requirements for a photograph or video or audio recording held by an agency that depicts or records the killing of a person; removing the scheduled repeal of the exemption, etc.	Not Considered
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 122

INTRODUCER: Criminal Justice Committee and Senators Joyner and Bradley

SUBJECT: Compensation of Victims of Wrongful Incarceration

DATE: November 2, 2015 **REVISED:** _____

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

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

I. Summary:

CS/SB 122 amends ch. 961, F.S. Chapter 961, F.S., provides a process whereby a person who has been wrongfully incarcerated due to a felony conviction may, under limited circumstances, seek a court order finding the person to be eligible for compensation.

Under current law, regardless of the fact of his or her wrongful incarceration, the person is not eligible for compensation if he or she has a criminal history that includes any felony.¹ This is commonly called the “clean hands” provision of Florida’s wrongful incarceration compensation law.

The bill creates a definition of the term “violent felony” in s. 961.02, F.S. The bill provides that in order to be found ineligible for compensation under ss. 961.04(1) or (2), or 961.06(2), F.S., the person must have committed a violent felony, not a simple felony, under the circumstances set forth in those sections.

The practical effect of the bill cannot be determined with any certainty. It appears the bill would increase the pool of people who could seek compensation under the statute based upon the relaxation of the ineligibility standard from “simple felony” to “violent felony.” However, it cannot be known or predicted how many cases of wrongful incarceration currently exist or may

¹ Section 961.04, F.S.

occur in the future, or whether a person in the expanded pool will be or currently is wrongfully incarcerated. Without the existence of a wrongful incarceration, the standard for seeking redress is immaterial.

II. Present Situation:

The Victims of Wrongful Incarceration Compensation Act (the Act) has been in effect since July 1, 2008.² The Act provides a process whereby a person may petition the original sentencing court for an order finding the petitioner to be a wrongfully incarcerated person who is eligible for compensation.

The Department of Legal Affairs administers the eligible person's application process and verifies the validity of the claim.³ The Chief Financial Officer arranges for payment of the claim by securing an annuity or annuities payable to the claimant over at least 10 years, calculated at a rate of \$50,000 for each year of wrongful incarceration up to a total of \$2 million.⁴

To date, four persons have been compensated under the Act for a total of \$4,276,901.⁵

“Clean Hands” Provision of the Act – Section 961.04, Florida Statutes

In cases where sufficient evidence of actual innocence exists, a person is nonetheless *ineligible* for compensation if:

- *Before* the person's wrongful conviction and incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, *any felony offense*, or a crime committed in another jurisdiction the elements of which would constitute a felony in this state, or a crime committed against the United States which is designated a felony, excluding any delinquency disposition;
- *During* the person's wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, *any felony offense*; or
- *During* the person's wrongful incarceration, the person was also serving a *concurrent sentence for another felony* for which the person was not wrongfully convicted.⁶

² Chapter 961, F.S. (2008-39, Laws of Florida). To date, four persons have been compensated under the Act. (correspondence with the Office of the Attorney General, February 18, 2015; Chief Financial Officer, October 23, 2015.)

³ Section 961.05, F.S.

⁴ Additionally, the wrongfully incarcerated person is entitled to: waiver of tuition and fees for up to 120 hours of instruction at any career center established under s. 1001.44, F.S., any community college as defined in s. 1000.21(3), F.S., or any state university as defined in s. 1000.21(6), F.S., if the wrongfully incarcerated person meets and maintains the regular admission requirements of such career center, community college, or state university; remains registered at such educational institution; and makes satisfactory academic progress as defined by the educational institution in which the claimant is enrolled; the amount of any fine, penalty, or court costs imposed and paid by the wrongfully incarcerated person; the amount of any reasonable attorney's fees and expenses incurred and paid by the wrongfully incarcerated person in connection with all criminal proceedings and appeals regarding the wrongful conviction, to be calculated by the department based upon the supporting documentation submitted as specified in s. 961.05, F.S.; and notwithstanding any provision to the contrary in s. 943.0583, F.S., or s. 943.0585, F.S., immediate administrative expunction of the person's criminal record resulting from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. s. 961.06, F.S.

⁵ Correspondence with the Office of the Attorney General, February 18, 2015; Chief Financial Officer, October 23, 2015.

⁶ Section 961.04, F.S.

Of the 30 states that have statutes that provide for compensation for wrongfully incarcerated persons, Florida is the only state with a “clean hands” provision.⁷

Wrongfully Incarcerated - Placed on Parole or Community Supervision for the Offense

A person could be wrongfully incarcerated for a crime and then placed on parole or community supervision for that crime after the incarcerative part of the sentence is served.⁸

Section 961.06(2), F.S., addresses this situation in terms of eligibility for compensation for the period of wrongful incarceration. Under this provision, if a person commits a misdemeanor or some technical violation of his or her supervision that results in revocation of the community supervision or parole, the person is still eligible for compensation. If, however, it is a felony law violation resulting in revocation, the person is no longer eligible for compensation.⁹

III. Effect of Proposed Changes:

The bill amends the Wrongful Incarceration Act so that a person who otherwise meets the statutory criteria¹⁰ for compensation is not ineligible due to a prior felony, a felony committed while wrongfully incarcerated, or a felony committed while on parole or community supervision.

The bill provides that in order to be found *ineligible for compensation* under ss. 961.04(1), (2), or 961.06(2), F.S., the person must have committed a violent felony, not a simple felony, under the circumstances set forth in those sections. Specifically,

- Before the person’s wrongful incarceration, he or she committed a violent felony;
- During the person’s wrongful incarceration, he or she committed a violent felony; or
- During a period of parole or community supervision on the sentence that led to his or her wrongful incarceration, the person committed a violent felony which resulted in the revocation of the parole or community supervision.

“Violent felony” is defined in the bill by cross-referencing ss. 775.084(1)(c)1. and 948.06(8)(c), F.S. The combined list of those violent felony offenses includes attempts to commit the crimes as well as offenses committed in other jurisdictions if the elements of the crimes are substantially similar.

⁷*Making Up for Lost Time*, page 19, The Innocence Project, Benjamin N. Cardozo School of Law, www.innocenceproject.org; (“Clean hands” meaning that a person is ineligible for compensation if he or she has prior felony offenses to the one for which compensation is being sought.). Other states generally take these matters up by “personal bills,” a process much like Florida’s claim bill process.

⁸ Persons are not eligible for parole in Florida unless they were sentenced prior to the effective date of the sentencing guidelines which was October 1, 1983, and only then if they meet the statutory criteria. Ch. 82-171, Laws of Florida; s. 947.16, F.S. The term “community supervision” as used in s. 961.06(2), F.S., could include control release, conditional medical or conditional release under the authority of the Commission on Offender Review (ch. 947, F.S.) or community control or probation under the supervision of the Department of Corrections (ch. 948, F.S.).

⁹ Section 961.06(2), F.S.

¹⁰ The person committed neither the act nor the offense that served as the basis for the conviction and incarceration and that the petitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense. s. 961.03(5) and (6), F.S.

The violent felony offenses which would preclude a wrongfully incarcerated person from being eligible for compensation under the bill are:

- Kidnapping;
- False imprisonment of a child;
- Luring or enticing a child;
- Murder;
- Manslaughter;
- Aggravated manslaughter of a child;
- Aggravated manslaughter of an elderly person or disabled adult;
- Robbery;
- Carjacking;
- Home invasion robbery;
- Sexual Battery;
- Aggravated battery;
- Armed burglary and other burglary offenses that are first or second degree felonies;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Arson;
- Aggravated assault;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Treason;
- Aggravated stalking;
- Aircraft piracy;
- Abuse of a dead human body;
- Poisoning food or water;
- Lewd or lascivious battery, molestation, conduct, exhibition, or exhibition on computer;
- Lewd or lascivious offense upon or in the presence of an elderly or disabled person;
- Sexual performance by a child;
- Computer pornography;
- Transmission of child pornography; and
- Selling or buying of minors.

The bill reorganizes s. 961.02, F.S., the “definitions” section of the Act so the definitions are in alphabetical order. Additionally, the bill reenacts ss. 961.03(1)(a), (2), (3), and (4), F.S., and s. 961.055(1), F.S., to incorporate the amendments to s. 961.04, F.S., made by the bill.

The bill takes effect October 1, 2016.

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:

It is possible that more persons will be eligible for compensation under the provisions of the bill. A person who is entitled to compensation under the Act will be paid at the rate of \$50,000 per year of wrongful incarceration up to a limit of \$2 million. Payment is made from an annuity or annuities purchased by the Chief Financial Officer for the benefit of the wrongfully incarcerated person.

C. Government Sector Impact:

Although the statutory limits on compensation under the Act are clear, the actual fiscal impact of the bill is unquantifiable. The possibility that a person will be compensated for wrongful incarceration is based upon variables that cannot be known, such as the number of wrongful incarcerations that currently exist or might exist in the future.

There have been four successful claims since the Act became effective totaling \$4,276,901.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 961.02, 961.04, 961.06, 961.03, and 961.055.

IX. Additional Information:

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

CS by Criminal Justice on November 2, 2015:
Makes a clarifying change to the title of the bill.

- B. **Amendments:**

None.

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



264680

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/02/2015	.	
	.	
	.	
	.	

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

Senate Amendment

In title, delete lines 10 - 11
and insert:
guilty or nolo contendere to any violent felony, or
was serving a concurrent sentence for another felony;

By Senators Joyner and Bradley

19-00033-16

2016122__

1 A bill to be entitled
2 An act relating to compensation of victims of wrongful
3 incarceration; reordering and amending s. 961.02,
4 F.S.; defining the term "violent felony"; amending s.
5 961.04, F.S.; providing that a person is disqualified
6 from receiving compensation under the Victims of
7 Wrongful Incarceration Compensation Act if, before or
8 during the person's wrongful conviction and
9 incarceration, the person was convicted of, pled
10 guilty or nolo contendere to, or was serving a
11 concurrent incarceration for, another violent felony;
12 amending s. 961.06, F.S.; providing that a wrongfully
13 incarcerated person who commits a violent felony,
14 rather than a felony law violation, which results in
15 revocation of parole or community supervision is
16 ineligible for compensation; reenacting s.
17 961.03(1)(a), (2), (3), and (4), F.S., relating to
18 determination of eligibility for compensation, to
19 incorporate the amendments made to s. 961.04, F.S., in
20 references thereto; reenacting s. 961.055(1), F.S.,
21 relating to application for compensation for a
22 wrongfully incarcerated person and exemption from
23 application by nolle prosequi, to incorporate the
24 amendments made to s. 961.06, F.S., in references
25 thereto; providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Section 961.02, Florida Statutes, is reordered

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30 and amended to read:

31 961.02 Definitions.—As used in ss. 961.01-961.07, the term:

32 (1) "Act" means the Victims of Wrongful Incarceration
33 Compensation Act.

34 (2) "Department" means the Department of Legal Affairs.

35 (3) "Division" means the Division of Administrative
36 Hearings.

37 (7)~~(4)~~ "Wrongfully incarcerated person" means a person
38 whose felony conviction and sentence have been vacated by a
39 court of competent jurisdiction and who is the subject of an
40 order issued by the original sentencing court pursuant to s.
41 961.03, ~~with respect to whom pursuant to the requirements of s.~~
42 ~~961.03,~~ the original sentencing court has issued its order
43 finding that the person did not commit ~~neither committed~~ the act
44 or ~~nor~~ the offense that served as the basis for the conviction
45 and incarceration and that the person did not aid, abet, or act
46 as an accomplice or accessory to a person who committed the act
47 or offense.

48 (4)~~(5)~~ "Eligible for compensation" means that a person
49 meets the definition of the term "wrongfully incarcerated
50 person" and is not disqualified from seeking compensation under
51 the criteria prescribed in s. 961.04.

52 (5)~~(6)~~ "Entitled to compensation" means that a person meets
53 the definition of the term "eligible for compensation" and
54 satisfies the application requirements prescribed in s. 961.05,
55 and may receive compensation pursuant to s. 961.06.

56 (6) "Violent felony" means a felony listed in s.
57 775.084(1)(c)1. or s. 948.06(8)(c).

58 Section 2. Section 961.04, Florida Statutes, is amended to

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59 read:

60 961.04 Eligibility for compensation for wrongful
61 incarceration.—A wrongfully incarcerated person is not eligible
62 for compensation under the act if:

63 (1) Before the person's wrongful conviction and
64 incarceration, the person was convicted of, or pled guilty or
65 nolo contendere to, regardless of adjudication, any violent
66 felony ~~offense~~, or a crime committed in another jurisdiction the
67 elements of which would constitute a violent felony in this
68 state, or a crime committed against the United States which is
69 designated a violent felony, excluding any delinquency
70 disposition;

71 (2) During the person's wrongful incarceration, the person
72 was convicted of, or pled guilty or nolo contendere to,
73 regardless of adjudication, any violent felony ~~offense~~; or

74 (3) During the person's wrongful incarceration, the person
75 was also serving a concurrent sentence for another felony for
76 which the person was not wrongfully convicted.

77 Section 3. Subsection (2) of section 961.06, Florida
78 Statutes, is amended to read:

79 961.06 Compensation for wrongful incarceration.—

80 (2) In calculating monetary compensation under paragraph
81 (1) (a), a wrongfully incarcerated person who is placed on parole
82 or community supervision while serving the sentence resulting
83 from the wrongful conviction and who commits anything less than
84 a violent felony ~~law violation~~ that results in revocation of the
85 parole or community supervision is eligible for compensation for
86 the total number of years incarcerated. A wrongfully
87 incarcerated person who commits a violent felony ~~law violation~~

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88 that results in revocation of the parole or community
89 supervision is ineligible for any compensation under subsection
90 (1).

91 Section 4. For the purpose of incorporating the amendments
92 made by this act to section 961.04, Florida Statutes, in
93 references thereto, paragraph (a) of subsection (1) and
94 subsections (2), (3), and (4) of section 961.03, Florida
95 Statutes, are reenacted to read:

96 961.03 Determination of status as a wrongfully incarcerated
97 person; determination of eligibility for compensation.—

98 (1) (a) In order to meet the definition of a “wrongfully
99 incarcerated person” and “eligible for compensation,” upon entry
100 of an order, based upon exonerating evidence, vacating a
101 conviction and sentence, a person must set forth the claim of
102 wrongful incarceration under oath and with particularity by
103 filing a petition with the original sentencing court, with a
104 copy of the petition and proper notice to the prosecuting
105 authority in the underlying felony for which the person was
106 incarcerated. At a minimum, the petition must:

107 1. State that verifiable and substantial evidence of actual
108 innocence exists and state with particularity the nature and
109 significance of the verifiable and substantial evidence of
110 actual innocence; and

111 2. State that the person is not disqualified, under the
112 provisions of s. 961.04, from seeking compensation under this
113 act.

114 (2) The prosecuting authority must respond to the petition
115 within 30 days. The prosecuting authority may respond:

116 (a) By certifying to the court that, based upon the

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117 petition and verifiable and substantial evidence of actual
118 innocence, no further criminal proceedings in the case at bar
119 can or will be initiated by the prosecuting authority, that no
120 questions of fact remain as to the petitioner's wrongful
121 incarceration, and that the petitioner is not ineligible from
122 seeking compensation under the provisions of s. 961.04; or

123 (b) By contesting the nature, significance, or effect of
124 the evidence of actual innocence, the facts related to the
125 petitioner's alleged wrongful incarceration, or whether the
126 petitioner is ineligible from seeking compensation under the
127 provisions of s. 961.04.

128 (3) If the prosecuting authority responds as set forth in
129 paragraph (2) (a), the original sentencing court, based upon the
130 evidence of actual innocence, the prosecuting authority's
131 certification, and upon the court's finding that the petitioner
132 has presented clear and convincing evidence that the petitioner
133 committed neither the act nor the offense that served as the
134 basis for the conviction and incarceration, and that the
135 petitioner did not aid, abet, or act as an accomplice to a
136 person who committed the act or offense, shall certify to the
137 department that the petitioner is a wrongfully incarcerated
138 person as defined by this act. Based upon the prosecuting
139 authority's certification, the court shall also certify to the
140 department that the petitioner is eligible for compensation
141 under the provisions of s. 961.04.

142 (4) (a) If the prosecuting authority responds as set forth
143 in paragraph (2) (b), the original sentencing court shall make a
144 determination from the pleadings and supporting documentation
145 whether, by a preponderance of the evidence, the petitioner is

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146 ineligible for compensation under the provisions of s. 961.04,
147 regardless of his or her claim of wrongful incarceration. If the
148 court finds the petitioner ineligible under the provisions of s.
149 961.04, it shall dismiss the petition.

150 (b) If the prosecuting authority responds as set forth in
151 paragraph (2)(b), and the court determines that the petitioner
152 is eligible under the provisions of s. 961.04, but the
153 prosecuting authority contests the nature, significance or
154 effect of the evidence of actual innocence, or the facts related
155 to the petitioner's alleged wrongful incarceration, the court
156 shall set forth its findings and transfer the petition by
157 electronic means through the division's website to the division
158 for findings of fact and a recommended determination of whether
159 the petitioner has established that he or she is a wrongfully
160 incarcerated person who is eligible for compensation under this
161 act.

162 Section 5. For the purpose of incorporating the amendments
163 made by this act to section 961.06, Florida Statutes, in
164 references thereto, subsection (1) of section 961.055, Florida
165 Statutes, is reenacted to read:

166 961.055 Application for compensation for a wrongfully
167 incarcerated person; exemption from application by nolle
168 prosequi.—

169 (1) A person alleged to be a wrongfully incarcerated person
170 who was convicted and sentenced to death on or before December
171 31, 1979, is exempt from the application provisions of ss.
172 961.03, 961.04, and 961.05 in the determination of wrongful
173 incarceration and eligibility to receive compensation pursuant
174 to s. 961.06 if:

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175 (a) The Governor issues an executive order appointing a
176 special prosecutor to review the defendant's conviction; and

177 (b) The special prosecutor thereafter enters a nolle
178 prosequi for the charges for which the defendant was convicted
179 and sentenced to death.

180 Section 6. This act shall take effect October 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR ARTHENIA L. JOYNER

Democratic Leader
19th District

✓
August 25, 2015

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

Dear Chairman Evers:

This is to request that Senate Bill 122, Wrongful Incarceration Compensation, be placed on the agenda for the Committee on Criminal Justice. Your consideration of this request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Arthenia L. Joyner".

Arthenia L. Joyner
State Senator, District 19

REPLY TO:

- 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
- 200 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

122

November 2, 2015

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

314

Meeting Date

Bill Number (if applicable)

Topic Compensation of Victims of Wrongful Incarceration

Amendment Barcode (if applicable)

Name Honorable Nancy Daniels

Job Title Public Defender, 2nd Judicial Circuit

Address 301 South Monroe Street, Suite 401

Phone 850.606.100

Street

Tallahassee

Florida

32301

Email nancy.daniels@flpd2.com

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)

11/2/15

Meeting Date

SB 122 #

Bill Number (if applicable)

Topic Compensation of Victims

Amendment Barcode (if applicable)

Name Greg Pound

Job Title

Address 9166 Sunrise Dr.

Phone

Street

Largo

City

Fla.

State

33773

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)

11-2-2015

Meeting Date

122

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S.

Phone 727/897-9291

Street

St. Petersburg

City

FL

State

33705

Zip

Email justice2jesus@yahoo.com

Speaking: For Against Information

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

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 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 298

INTRODUCER: Criminal Justice Committee and Senator Evers

SUBJECT: Installation of Tracking Devices or Tracking Applications

DATE: November 3, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/CS
2.			ACJ	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 298 amends s. 934.425, F.S., which generally prohibits the installation of tracking devices and tracking applications without the consent of the property owner. Currently, the law prohibits private investigators from installing tracking devices or tracking applications unless the law authorizes the investigator's client to perform such installation. The bill provides three additional circumstances in which the private investigator may perform such installation: pursuant to a court order; to locate a fugitive from justice; and to locate lost or stolen property or locate assets awarded by the court.

Unless one of these circumstances applies, the private investigator may not install a tracking device or tracking application. Additionally, a private investigator may not install a tracking device or tracking application on behalf of a client who is subject to a no contact order or an injunction for protection, or if the private investigator knows or has reason to know that the client is involved in the commission of a crime or an unlawful act.

The bill also authorizes the Department of Corrections and the Department of Juvenile Justice to install a tracking device or tracking application as part of a criminal investigation, and authorizes separated or divorced parents or legal guardians to install a tracking device or tracking application on their child's property if authorized by the separation or divorce decree.

II. Present Situation:

The General Prohibition on Installation of Tracking Devices or Tracking Applications and Exceptions to This Prohibition

Section 934.425, F.S., was created by ch. 2015-137, L.O.F. Section 934.425(2), F.S., generally prohibits a person¹ from knowingly installing a tracking device² or tracking application³ on another person's property without the other person's consent.⁴ A person who violates s. 934.425, F.S., commits a second degree misdemeanor.⁵

Section 934.425(4), provides that the section does not apply to:

- A law enforcement officer (as defined in s. 943.10, F.S.) or any local, state, federal, or military law enforcement agency, that lawfully installs a tracking device or tracking application on another person's property as part of a criminal investigation.
- A parent or legal guardian of a minor child who installs a tracking device or tracking application on the minor child's property if:
 - The parents or legal guardians are lawfully married to each other and are not separated or otherwise living apart, and either parent or legal guardian consents to the installation of the tracking device or tracking application;
 - The parent or legal guardian is the sole surviving parent or legal guardian of the minor child;
 - The parent or legal guardian has sole custody of the minor child; or
 - The parents or legal guardians are divorced, separated, or otherwise living apart and both consent to the installation of the tracking device or tracking application.
- A caregiver of an elderly person or disabled adult (as those terms are defined in s. 825.101, F.S.), if the elderly person's or disabled adult's treating physician certifies that the installation of a tracking device or tracking application onto the elderly person's or disabled adult's property is necessary to ensure the safety of the elderly person or disabled adult.
- A person acting in good faith on behalf of a business entity⁶ for a legitimate business purpose. *However, relevant to the bill, this "good faith" exception does not apply to a person engaged in a private investigation (as defined in s. 493.6101, F.S.) on behalf of another person unless such activities would otherwise be exempt under subsection (4) if performed by the person engaging the private investigator.*

¹ "Person" means an individual but does not include a business entity. Section 934.425(1)(d), F.S.

² "Tracking device" means any device whose primary purpose is to reveal its location or movement by the transmission of electronic signals. Section 934.425(1)(c), F.S.

³ "Tracking application" means any software program whose primary purpose is to track or identify the location or movement of an individual. Section 934.425(1)(b), F.S.

⁴ Section 943.425(3), F.S., provides that a person's consent is presumed to be revoked if: (a) The consenting person and the person to whom consent was given are lawfully married and one person files a petition for dissolution of marriage from the other; or (b) The consenting person or the person to whom consent was given files an injunction for protection against the other person pursuant to s. 741.30, F.S., s. 741.315, F.S., s. 784.046, F.S., or s. 784.0485, F.S.

⁵ Section 934.425(5), F.S. A second degree misdemeanor is punishable by up to 60 days in a county jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

⁶ "Business entity" means any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in this state. Section 934.425(1)(a), F.S.

- An owner or lessee of a motor vehicle that installs, or directs the installation of, a tracking device or tracking application on such vehicle during the period of ownership or lease, provided that:
 - The tracking device or tracking application is removed before the vehicle's title is transferred or the vehicle's lease expires;
 - The new owner of the vehicle, in the case of a sale, or the lessor of the vehicle, in the case of an expired lease, consents in writing to the nonremoval of the tracking device or tracking application; or
 - The owner of the vehicle at the time of the installation of the tracking device or tracking application was the original manufacturer of the vehicle.

Grounds for Disciplinary Action

Section 493.6118, F.S., specifies grounds for which disciplinary action may be taken by the Department of Agriculture and Consumer Services against any licensee, agency, or applicant regulated by ch. 493, F.S. (private investigative, private security, and repossession services), or any unlicensed person engaged in activities regulated under this chapter. One of the grounds for disciplinary action is the installation of a tracking device or tracking application in violation of s. 934.425, F.S.⁷

III. Effect of Proposed Changes:

Section 934.425, F.S., generally prohibits a person from knowingly installing a tracking device or tracking application on another person's property without the other person's consent. This section also provides that the prohibition does not apply to certain persons. Relevant to the bill, this prohibition does not apply to a person "acting in good faith on behalf of a business entity for a legitimate business purpose." However, this "good faith" exemption does not apply to a private investigator conducting an investigation on behalf of another person unless such activities would otherwise be exempt if performed by the person engaging the private investigator.

The bill amends s. 934.425, F.S., to authorize private investigators to install a tracking device or tracking application in the following circumstances:

- If the client is already authorized to install the tracking device or tracking application under an existing exemption (current law);
- If authorized by an order issued by a court of this state;
- To locate a person who is a fugitive from justice; or
- To locate lost or stolen property or locate assets awarded by the court.

Unless one of these circumstances applies, the private investigator may not install a tracking device or tracking application. Additionally, a private investigator may not install a tracking device or tracking application on behalf of a client who is subject to a no contact order or an injunction for protection, or if the private investigator knows or has reason to know that the client is involved in the commission of a crime or an unlawful act.

⁷ See ch. 2015-137, L.O.F.

The bill also authorizes the Department of Corrections and the Department of Juvenile Justice to install a tracking device or tracking application as part of a criminal investigation, and authorizes separated or divorced parents or legal guardians to install a tracking device or tracking application on their child's property if authorized by the separation or divorce decree.

The bill also reenacts s. 493.6118(1)(y), F.S., for the purpose of incorporating the amendment made by this act to s. 934.425, F.S.

The effective date of the bill is July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 934.425 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on November 2, 2015:

- Authorizes private investigators to install a tracking device or tracking application in the following circumstances:
 - If the client is already authorized to install the tracking device or tracking application under an existing exemption (current law);
 - If authorized by an order issued by a court of this state;
 - To locate a person who is a fugitive from justice; or
 - To locate lost or stolen property or locate assets awarded by the court.
- Prohibits a private investigator from installing a tracking device or tracking application on behalf of a client who is subject to a no contact order or an injunction for protection, or if the private investigator knows or has reason to know that the client is involved in the commission of a crime or an unlawful act.
- Authorizes the Department of Corrections and the Department of Juvenile Justice to install a tracking device or tracking application as part of a criminal investigation.
- Authorizes separated or divorced parents or legal guardians to install a tracking device or tracking application on their child's property if authorized by the separation or divorce decree.

- B. **Amendments:**

None.



925560

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/02/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 18 - 33

and insert:

Section 1. Paragraphs (a), (b), and (d) of subsection (4) of section 934.425, Florida Statutes, are amended to read:

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

(4) This section does not apply to:

(a) A law enforcement officer as defined in s. 943.10, or



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11 any local, state, federal, or military law enforcement agency,
12 the Florida Department of Corrections, or the Florida Department
13 of Juvenile Justice that lawfully installs a tracking device or
14 tracking application on another person's property as part of a
15 criminal investigation.

16 (b) A parent or legal guardian of a minor child who
17 installs a tracking device or tracking application on the minor
18 child's property if:

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

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

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

27 4. The parents or legal guardians are divorced, separated,
28 or otherwise living apart and both consent to the installation
29 of the tracking device or tracking application, or if a
30 separation or divorce decree authorizes such installation.

31 (d) A person acting in good faith on behalf of a business
32 entity for a legitimate business purpose. This paragraph does
33 not apply to:

34 1. A person engaged in private investigation, as defined in
35 s. 493.6101, on behalf of another person, unless any of the
36 following circumstances apply:

37 a. Such activities would otherwise be exempt under this
38 subsection if performed by the person engaging the private
39 investigator;—



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40 b. The installation of a tracking device or tracking
41 application on another person's property is authorized by an
42 order issued by a court of this state;

43 c. The installation of a tracking device or tracking
44 application is for the purpose of locating a person known to be
45 a fugitive from justice; or

46 d. The installation of a tracking device or tracking
47 application is for the purpose of locating lost or stolen
48 property or locating assets that have been awarded by the court.

49 2. A private investigator who is working on behalf of a
50 client who is subject to a no contact order or an injunction for
51 protection, or a private investigator who knows or has reason to
52 know that a person seeking his or her investigative services is
53 involved in the commission of a crime or an unlawful act.

54
55 ===== T I T L E A M E N D M E N T =====

56 And the title is amended as follows:

57 Delete lines 4 - 11

58 and insert:

59 revising exceptions to the prohibition on installation
60 of tracking devices or tracking applications;
61 authorizing the Florida Department of Corrections and
62 the Florida Department of Juvenile Justice to lawfully
63 install a tracking device or tracking application on
64 another person's property as part of a criminal
65 investigation; authorizing parents or legal guardians
66 who are separated or divorced to install a tracking
67 device or tracking application on their minor child's
68 property if a separation or divorce decree authorizes



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69 such installation; specifying circumstances in which a
70 private investigator is authorized to or prohibited
71 from installing a tracking device or tracking
72 application; reenacting s. 493.6118(1)(y), F.S.,



252238

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
10/30/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 22 - 33

and insert:

(4) This section does not apply to:

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

This paragraph does not apply to:

1. A person engaged in private investigation, as defined in s. 493.6101, on behalf of another person, unless any of the



252238

11 following circumstances apply:

12 a. Such activities would otherwise be exempt under this
13 subsection if performed by the person engaging the private
14 investigator; or-

15 b. The installation or use of a tracking device or tracking
16 application was for the purpose of:

17 I. Securing evidence to be used before a court, board,
18 officer, or investigation committee;

19 II. Obtaining information to determine if a crime has been
20 committed or attempted against the United States, a territory of
21 the United States, a state, a person, or a legal business
22 entity;

23 III. Locating a person known to be a fugitive from justice;
24 or

25 IV. Locating lost or stolen property or locating assets
26 that have been awarded by the court.

27 2. A private investigator who is working on behalf of a
28 client who is subject to a protective order or a private
29 investigator who knows or has reason to know that a person
30 seeking his or her investigative services is involved in the
31 commission of a crime or an unlawful act.

32
33 ===== T I T L E A M E N D M E N T =====

34 And the title is amended as follows:

35 Delete lines 6 - 11

36 and insert:

37 specify circumstances in which the exception applies
38 and does not apply to private investigators;
39 reenacting s. 493.6118(1)(y), F.S.,

By Senator Evers

2-00354-16

2016298__

1 A bill to be entitled
2 An act relating to installation of tracking devices or
3 tracking applications; amending s. 934.425, F.S.;
4 revising an exception to a prohibition on the
5 installation of tracking devices or applications to
6 specify that the exception does not apply to the
7 installation of such devices or applications when done
8 through intentionally deceptive means or when done
9 knowingly in the commission of a crime; deleting a
10 provision concerning persons engaged in private
11 investigation; reenacting s. 493.6118(1)(y), F.S.,
12 relating to grounds for disciplinary action, to
13 incorporate the amendment made to s. 934.425, F.S., in
14 a reference thereto; providing an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Paragraph (d) of subsection (4) of section
19 934.425, Florida Statutes, is amended to read:

20 934.425 Installation of tracking devices or tracking
21 applications; exceptions; penalties.—

22 (4) This section does not apply to:

23 (d) A person acting in good faith on behalf of a business
24 entity for a legitimate business purpose. This paragraph does
25 not apply to a person who, on behalf of a business entity or an
26 individual, installs or places an electronic tracking device or
27 application through intentionally deceptive means and without
28 consent or installs or places an electronic tracking device or
29 application knowingly in the commission of a crime ~~engaged in~~

2-00354-16

2016298__

30 ~~private investigation, as defined in s. 493.6101, on behalf of~~
31 ~~another person unless such activities would otherwise be exempt~~
32 ~~under this subsection if performed by the person engaging the~~
33 ~~private investigator.~~

34 Section 2. For the purpose of incorporating the amendment
35 made by this act to section 934.425, Florida Statutes, in a
36 reference thereto, paragraph (y) of subsection (1) of section
37 493.6118, Florida Statutes, is reenacted to read:

38 493.6118 Grounds for disciplinary action.—

39 (1) The following constitute grounds for which disciplinary
40 action specified in subsection (2) may be taken by the
41 department against any licensee, agency, or applicant regulated
42 by this chapter, or any unlicensed person engaged in activities
43 regulated under this chapter.

44 (y) Installation of a tracking device or tracking
45 application in violation of s. 934.425.

46 Section 3. This act shall take effect July 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

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

11-2-2015

Meeting Date

SB-298

Bill Number (if applicable)

Topic GPS-Tracking Devices

Amendment Barcode (if applicable)

Name Rick Kolodgy

Job Title Private Investigator

Address P.O. Box 13984
Street

Phone 850-877-7700

Tallahassee, FL 32317
City State Zip

Email Tallahasseeipi@aol.com

Speaking: For Against Information

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

Representing Self

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)

11.2.15
Meeting Date

55298
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Burt Hodge

Job Title Investigator

Address 842 E Park Av

Phone 850.581.3996

Tallahassee FL 32301
City State Zip

Email burt842@gmail.com

Speaking: For Against Information

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

Representing Florida Association of Licensed Investigators

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)

2 Nov 2015
Meeting Date

298
Bill Number (if applicable)

Topic Tracking Devices

Amendment Barcode (if applicable)

Name Cynthia Henderson

Job Title _____

Address 1082 Jefferson St

Phone 850 559 0855

Tall FL 32301

Email _____

City State Zip

Speaking: For Against Information

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

Representing FALI

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 314

INTRODUCER: Senator Diaz de la Portilla

SUBJECT: Juvenile Justice

DATE: October 30, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.			ACJ	
3.			AP	

I. Summary:

SB 314 substantially amends two of Florida's current methods for transferring a juvenile to adult court for criminal prosecution. These transfer methods are indictment and direct file. It also amends current provisions requiring the court to impose juvenile and adult sanctions upon juveniles transferred to adult court.

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

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

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

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

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

The bill provides that a juvenile transferred to adult court by direct file who is found to have committed a violation of law or a lesser included offense may be sentenced as an adult, a

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

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

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

This bill has an effective date of July 1, 2016.

II. Present Situation:

Transferring Juveniles to Adult Court

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

Judicial Waiver of Juvenile Court Jurisdiction

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

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

If the state attorney files a motion to transfer a juvenile to adult court, the court must hold a hearing to determine whether the juvenile should be transferred.⁵ The court must consider a variety of statutorily articulated factors when determining whether transfer is appropriate (including, in part, the seriousness of the offense, the sophistication and maturity of the juvenile, the record and previous history of the juvenile, and whether the alleged offense was committed

¹ Section 985.556(1), F.S.

² Section 985.556(2), F.S.

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

⁴ Section 985.556(3), F.S.

⁵ Section 985.556(4), F.S.

in an aggressive, violent, premeditated, or willful manner).⁶ The court must also provide an order specifying the reasons for its decision to impose adult sanctions.⁷

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

Indictment by Grand Jury

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

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

Direct Filing an Information by the State Attorney

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

Discretionary Direct File

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

- 14 or 15 years old and charged with one of the following felony offenses:

⁶ Section 985.556(4)(c), F.S.

⁷ Section 985.556(4)(e), F.S.

⁸ Section 985.565(4)(a)2., F.S.

⁹ Section 985.565(4)(a)3., F.S.

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

¹¹ Section 985.565(4)(a)1., F.S.

¹² *Id.*

¹³ In Fiscal Year 2014-2015, 1,282 juveniles were transferred to the adult system. Approximately 98% of those were transferred by direct file. Department of Juvenile Justice, *2015 Bill Analysis for SB 314 (2015)* (on file with the Senate Criminal Justice Committee).

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

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

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

Mandatory Direct File

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

- 16 or 17 years old at the time of the alleged offense and:
 - Has been previously adjudicated delinquent for an enumerated felony¹⁹ and the juvenile is currently charged with a second or subsequent violent crime against a person;
 - Is currently charged with a forcible felony²⁰ and has been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred within 45 days of each other;²¹ or

¹⁵ Section 985.557(1)(a), F.S.

¹⁶ Section 985.557(1)(b), F.S.

¹⁷ *Id.*

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

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

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

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

- Is charged with committing or attempting to commit an offense listed in s. 775.087(2)(a)1.a.-q., F.S.,²² and during the commission of the offense the juvenile actually possessed or discharged a firearm or destructive device;²³ or
- Any age and is alleged to have committed an act that involves stealing a vehicle in which the juvenile caused serious bodily injury or death to a person who was not involved in the underlying offense while possessing the vehicle.²⁴

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

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

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

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

Imposing Adult or Juvenile Sanctions

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

- The seriousness of the offense to the community and whether the community would best be protected by juvenile or adult sanctions;

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

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

²⁴ Section 985.557(2)(c), F.S.

²⁵ Section 985.565(4)(a)2., F.S.

²⁶ Section 985.565(4)(a)3., F.S.

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

The court is required to consider a presentence investigation (PSI) report prepared by DOC regarding the suitability of a juvenile for disposition as an adult or juvenile.²⁹ The PSI report must include a comments section prepared by the DJJ, with its recommendations as to disposition.³⁰ The court must give all parties³¹ present at the disposition hearing an opportunity to comment on the issue of sentence and any proposed rehabilitative plan, and may receive and consider any other relevant and material evidence.³²

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

- Place the juvenile in a probation program under the supervision of the DJJ for an indeterminate period of time until he or she reaches the age of 19 years or sooner if discharged by order of the court;
- Commit the juvenile to the DJJ for treatment in an appropriate program for an indeterminate period of time until he or she is 21 or sooner if discharged by the DJJ;³⁴ or

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

²⁸ Section 985.565(1)(b), F.S.

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

³⁰ *Id.*

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

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

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

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

- Order disposition under ss. 985.435,³⁵ 985.437,³⁶ 985.439,³⁷ 985.441,³⁸ 985.45,³⁹ and 985.455⁴⁰, F.S., as an alternative to youthful offender or adult sentencing if the court determines not to impose youthful offender or adult sanctions.⁴¹

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

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

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

Effect of Transferring a Juvenile to Adult Court

If a juvenile transferred to adult court for prosecution is found to have committed the offense or a lesser included offense, the juvenile must have any subsequent violations of law handled thereafter in every respect as an adult.⁴⁵ The court must also immediately transfer and certify all unresolved⁴⁶ felony cases pertaining to the juvenile to adult court for prosecution.⁴⁷

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

Juvenile Transfer Statistics from the DJJ

Statistics made available by the DJJ's Office of Research and Data Integrity show a downward trend in adult court transfers between FY 2010-11 and FY 2014-15, which exceeded the decline

³⁵ Probation and postcommitment probation or community service.

³⁶ Restitution.

³⁷ Violation of probation or postcommitment probation.

³⁸ Commitment.

³⁹ Work program liability and remuneration.

⁴⁰ Other dispositional issues.

⁴¹ Section 985.565(4)(b), F.S.

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

⁴³ Section 985.565(4)(a)4., F.S.

⁴⁴ Section 985.565(4)(b), F.S.

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

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

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

⁴⁸ *Id.*

in felony arrests. Transfers declined 46 percent over the 5-year period, while felony arrests declined 20 percent.⁴⁹

During FY 2014-15, a total of 1,282 individual youth were transferred to the adult court in Florida.⁵⁰ The majority of them were 16 or 17 years of age.⁵¹

The youth had a total of 1,607 arrests that resulted in transfer to the adult court. For this population, the most common offenses that resulted in transfer included the following:

- Burglary (430 arrests-26.8%);
- Armed robbery (258 arrests-16.1%);
- Aggravated assault or battery (198 arrests-12.3%);
- Weapon/Firearm offenses (117 arrests-7.3%);
- Auto theft (77 arrests-4.8%)
- Other robbery (72 arrests-4.5%)
- Sexual battery (68 arrests-4.2%);
- Drug-related felonies (55 arrests-3.4%);
- Murder/manslaughter (49 arrests-3.0%); and
- Grand larceny (42 arrests-2.6%).⁵²

III. Effect of Proposed Changes:

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

Direct Filing an Information by the State Attorney

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

Tier One

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

- The juvenile is 16 years of age or older and less than 18 years of age at the time of the alleged offense; and
- The juvenile committed, or attempted to commit, one of the following enumerated offenses:

⁴⁹ Department of Juvenile Justice, *2015 Bill Analysis for SB 314* (2015) (on file with Senate Criminal Justice Committee).

⁵⁰ *Id.*

⁵¹ 331 youth were 16 years old (25.8%) and 674 youth (52.6%) were 17 years old. There were also 103 (8.0%) 18 year olds, 12 (0.9%) 19 year olds, 4 (.3%) 20 year olds, 6 (.5%) 21 year olds, 123 (9.6%) 15 year olds, 25 (2.0%) 14 year olds, 3 (.2%) 13 year olds, and 1 (.1%) 12 year old. Email from Department of Juvenile Justice (October 29, 2015) (on file with Senate Criminal Justice Committee).

⁵² Email from Department of Juvenile Justice (October 29, 2015) (on file with Senate Criminal Justice Committee).

- Murder;
- Manslaughter;
- Sexual battery as defined in s. 794.011(3), F.S.;
- Armed robbery;
- Aggravated assault with a firearm;
- Aggravated child abuse;
- Aggravated stalking;
- Kidnapping;
- Unlawful throwing, placing, or discharging of a destructive device and bomb;
- Aggravated battery resulting in great bodily harm, permanent disability, or permanent disfigurement to a person;
- Carrying, displaying, using, or threatening or attempting to use a weapon or firearm in furtherance of the commission of a felony, provided the use or threatened use does not include the mere acquisition of a deadly weapon or firearm during the felony;
- Possessing or discharging a firearm on school property in violation of s. 790.115, F.S.;
- Home invasion robbery;
- Carjacking;
- Aggravated animal cruelty by intentional acts;
- DUI or BUI resulting in fatality, great bodily harm, permanent disability, or permanent disfigurement to a person; or
- Arson in violation of s. 806.031, F.S.

Tier Two

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

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

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

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

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

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

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

- Age;
- Race and ethnicity;
- Gender;
- Circuit and county of residence;
- Circuit and county of offense;
- Prior adjudicated offenses;
- Prior periods of probation;
- Previous contacts with law enforcement agencies or the courts;
- Initial charges;
- Charges at disposition;
- Whether adult codefendants were involved;
- Whether child codefendants were involved who were transferred to adult court;
- Whether the child was represented by counsel;
- Whether the child had waived counsel;
- Risk assessment instrument score;
- The child's medical, mental health, substance abuse, or trauma history;
- The child's history of physical or mental impairment or disability-related accommodations;
- The child's history of abuse or neglect;
- The child's history of foster care placements, including the number of prior placements;
- Whether the child has experienced a failed adoption;
- Whether the child has fetal alcohol syndrome or was exposed to controlled substances at birth;
- Whether the child has below-average intellectual functioning or is eligible for exceptional student education services;
- Whether the child has received mental health services or treatment;
- Whether the child has been the subject of a Children in Need of Services or Family in Need of Services (CINS/FINS) petition or a dependency petition;
- Plea offers made by the state and the outcome of any plea offers;
- Whether the child was transferred for criminal prosecution as an adult;
- The case resolution in juvenile court;
- The case resolution in adult court; and
- Disposition data, including, but not limited to, whether the child received adult sanctions, juvenile sanctions, or diversion, and, if sentenced to prison, length of prison sentence or enhanced sentence.

Indictment by Grand Jury

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

- Limiting the state attorney's authority to convene a grand jury to apply to juveniles who are 14 years of age or older (currently available for juveniles of any age charged with an offense punishable by death or life imprisonment).

- Allowing, rather than requiring, the court to transfer any unresolved felony cases upon a returned indictment; and
- Prohibiting a juvenile who is eligible for indictment from being transferred to adult court for criminal prosecution if the juvenile is pending a competency hearing in juvenile court or has been previously found to be incompetent and has not been restored to competency by a court.

Imposing Adult or Juvenile Sanctions

Unlike current law, the bill does not require the court to impose adult sanctions. It amends s. 985.565, F.S., to provide that a juvenile who is transferred by direct file or judicial waiver and is found to have committed a violation of law or a lesser included offense may be sentenced as:

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

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

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

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

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

- The sophistication and maturity of the juvenile, including:
 - The juvenile's age, intellectual capacity, and mental and emotional health at the time of the offense;
 - The juvenile's background, including his or her family, home, and community environment;
 - The effect, if any, of immaturity, impetuosity, or failure to appreciate the risks and consequences on the juvenile's participation in the offense; and
 - The effect, if any, of characteristics attributable to the juvenile's age on his or her judgment.
- The record and previous history of the juvenile, including:
 - Previous contacts with the DOC, the DJJ, HRS, and the DCF and the adequacy and appropriateness of any services provided to address the juvenile's needs;
 - Previous contacts with law enforcement agencies and the courts;
 - History of abuse, abandonment, or neglect; and
 - Identification of the juvenile as having a mental, physical, or intellectual or developmental disability or having previously received mental health services or treatment.

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

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

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

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

The bill amends this section by removing the prohibition on imposing both adult and juvenile sanctions. It also removes the requirement that the DJJ return the juvenile to the sentencing court for further proceedings if the department determines that the juvenile sanction is unsuitable for the juvenile. (Current law still requires the DJJ to provide the sentencing court with written reasons upon determining that a juvenile is not suitable to a commitment program, juvenile probation program, or a treatment program within the department. If that occurs, the court must then determine whether to resentence the juvenile.)

The effective date of the bill is July 1, 2016.

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:

This bill has the effect of increasing the number of juveniles committed to the DJJ and reducing the number of juveniles handled by the DOC (probation and state prison).

Impact to DJJ (need for additional beds)

According to the DJJ, the bill is likely to reduce the number of juveniles transferred to the adult system and increase the number of juveniles within the juvenile justice system. The DJJ estimates that this will result in at least 644 additional youth remaining in the juvenile system who would be diverted into the adult system under current practice. Based on the population of youth recently transferred to the adult system, the DJJ estimates that 17.7% of these youth (114) would be placed in probation, 17.7% (114) would be placed in non-secure commitment, 34.18% (220) would be placed in high-risk secure commitment and 30.38% (196) would be placed in maximum-risk secure commitment. Based upon these estimates and using the average per diem rates and average cost per youth supervision rates for Fiscal Year 2014-2015, the DJJ estimates the fiscal impact to be a minimum of \$35.8 million in the first year and \$44.5 million annually in subsequent years.⁵³

According to the department, this fiscal impact estimate does not take into consideration the need to procure additional programs, staff needed to monitor or administer additional programs, or the need to build or procure facilities to accommodate this additional population. The DJJ currently has an operating capacity of just over 2,100 residential beds and has a current utilization rate of 92%. If sufficient beds are not made available, youth awaiting placement in a residential program would be housed in secure detention or in their home communities, creating a significant back log of youth awaiting placement. Alternately, the department would require funding to procure additional programs and to retrofit current facilities, build or procure new facilities to house these youth in addition to the per diem fiscal addressed previously. The department could address the need for non-secure beds by retrofitting current facilities for use, which would require nearly \$2.3 million. Construction costs could exceed \$100 million to provide bed space sufficient for the high-risk and maximum-risk residential programs. The per diem rates used are based on per diems for programs that utilize DJJ (state-owned) facilities. Per diem rates for programs that do not utilize state-owned facilities are potentially higher.⁵⁴

The bill also requires the DJJ to collect and report on specific data that will require modification of the Juvenile Justice Information (JJIS) System, which the DJJ estimates will cost \$93,600.⁵⁵

⁵³ Department of Juvenile Justice, *2015 Bill Analysis for SB 314* (2015) (on file with Senate Criminal Justice Committee).

⁵⁴ *Id.*

⁵⁵ *Id.*

Impact to DOC (cost savings)

The Criminal Justice Impact Conference (CJIC) has not met on this bill, but last session it determined that very similar legislation would have a negative indeterminate prison bed impact on the DOC (i.e., an unquantifiable reduction in the need for prison beds).⁵⁶

In addition to cost savings from the need for less prison beds, there should also be an indeterminate degree of savings from fewer adult probation placements.

VI. Technical Deficiencies:

The bill appears to delete language that mandates how the court must sentence a juvenile who has been transferred to adult court by indictment. The word “indictment” may need to be added on line 352 to ensure that the court has authority to sentence such a juvenile as an adult, a youthful offender, or a juvenile.

VII. Related Issues:

The DJJ indicates that the reconfiguration of the JJIS system that will be required to capture the pertinent data elements under the bill may take up to 6 months to complete, making implementation by the effective date (July 1, 2016) difficult.⁵⁷

VIII. Statutes Affected:

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

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

IX. Additional Information:

A. Committee Substitute – Statement of 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.

⁵⁶ CJIC made this determination on March 11, 2015 about HB 783.

⁵⁷ Department of Juvenile Justice, *2015 Bill Analysis for SB 314* (2015) (on file with Senate Criminal Justice Committee). Additional items required by the bill that the DJJ does not currently capture include whether adult codefendants were involved, whether child codefendants were involved who were transferred to adult court, whether the child was represented by counsel, whether the child waived counsel, whether the child has fetal alcohol syndrome or was exposed to controlled substances at birth, whether the child has below-average intellectual functioning or is eligible for exceptional student education services, any plea offers and resulting outcomes, and length of prison sentence or enhanced sentence. *Id.*

By Senator Diaz de la Portilla

40-00398-16

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1 A bill to be entitled
2 An act relating to juvenile justice; amending s.
3 985.557, F.S.; revising the circumstances under which
4 a state attorney may file an information when a child
5 of a certain age range commits or attempts to commit
6 specified crimes; deleting a requirement that a state
7 attorney file an information under certain
8 circumstances; deleting a provision that prohibits
9 physical contact with adult offenders under certain
10 circumstances; revising the effects of the direct
11 filing of a child; prohibiting the transfer of a child
12 under certain circumstances based on the child's
13 competency; authorizing a child to request a hearing
14 to determine whether he or she must remain in adult
15 court; requiring the court to consider certain factors
16 after a written request is made for a hearing;
17 authorizing the court to waive the case back to
18 juvenile court; requiring the Department of Juvenile
19 Justice to collect specified data under certain
20 circumstances; requiring the department to provide an
21 annual report to the Legislature; amending s. 985.56,
22 F.S.; revising the crimes and the age of a child who
23 is subject to the jurisdiction of a circuit court;
24 prohibiting the transfer of a child under certain
25 circumstances based on the child's competency;
26 removing provisions regarding sentencing of a child;
27 authorizing, rather than requiring, a court to
28 transfer a child indicted under certain circumstances;
29 making technical changes; amending s. 985.565, F.S.;

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

57
58 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Section 985.557, Florida Statutes, is amended to read:

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

985.557 Direct filing of an information.—

(1) DIRECT FILE.—

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

1. Murder;

2. Manslaughter;

3. Sexual battery in violation of s. 794.011(3);

4. Armed robbery;

5. Aggravated assault with a firearm;

6. Aggravated child abuse;

7. Arson in violation of s. 806.031;

8. Kidnapping;

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

10. Aggravated battery resulting in great bodily harm, permanent disability, or permanent disfigurement to a person;

11. Carrying, displaying, using, or threatening or attempting to use a weapon or firearm in furtherance of the commission of a felony, if the use or threatened use does not

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88 include the mere acquisition of a deadly weapon or firearm
89 during the felony;

90 12. Possessing or discharging a firearm on school property
91 in violation of s. 790.115;

92 13. Home invasion robbery;

93 14. Aggravated stalking;

94 15. Carjacking;

95 16. Aggravated animal cruelty by intentional acts; or

96 17. DUI or BUI resulting in fatality, great bodily harm,
97 permanent disability, or permanent disfigurement to a person.

98 (b) With respect to a child who was 14 or 15 years of age
99 at the time the alleged offense was committed, the state
100 attorney may file an information if, in the state attorney's
101 judgment and discretion, the public interest requires that adult
102 sanctions be considered and the offense charged is for the
103 commission of or attempt to commit:

104 1. Murder;

105 2. Manslaughter; or

106 3. Sexual battery in violation of s. 794.011(3).

107 (2) EFFECT OF DIRECT FILE.—

108 (a) If a child is transferred for criminal prosecution as
109 an adult, the court may transfer and certify to the adult
110 circuit court for prosecution of the child as an adult all
111 related felony cases pertaining to the child which have not yet
112 resulted in a plea of guilty or nolo contendere or in which a
113 finding of guilt has not been made. If the child is acquitted of
114 all charged offenses or lesser included offenses contained in
115 the original case transferred to adult court, any felony cases
116 that were transferred to adult court under this subsection are

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117 subject to the same penalties they were subject to before their
118 transfer.

119 (b) If a child has been convicted and sentenced to adult
120 sanctions pursuant to this section, he or she shall be handled
121 as an adult for any subsequent violation of state law, unless
122 the court imposes juvenile sanctions under s. 985.565.

123 (3) TRANSFER PROHIBITION.—Notwithstanding any other law, a
124 child who is eligible for direct file and who is pending a
125 competency hearing in juvenile court or who has previously been
126 found to be incompetent and has not been restored to competency
127 by a court may not be transferred to adult court for criminal
128 prosecution.

129 (4) REVERSE WAIVER.—A child who is transferred to adult
130 court pursuant to this section may request, in writing, a
131 hearing to determine whether he or she shall remain in adult
132 court. The adult court, in determining whether public safety
133 would be best served by retaining jurisdiction, shall consider
134 the seriousness of the offense, the extent of the child's
135 alleged participation or role in the offense, the sophistication
136 and maturity of the child, and any prior offenses the child has
137 committed. The adult court may, based on these considerations,
138 waive the case back to juvenile court.

139 (5) DATA COLLECTION RELATING TO DIRECT FILE.—

140 (a) The department shall collect data regarding children
141 who qualify for direct file under subsection (1), including, but
142 not limited to:

143 1. Age.

144 2. Race and ethnicity.

145 3. Gender.

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- 146 4. Circuit and county of residence.
- 147 5. Circuit and county of offense.
- 148 6. Prior adjudicated offenses.
- 149 7. Prior periods of probation.
- 150 8. Previous contacts with law enforcement agencies or the
151 courts.
- 152 9. Initial charges.
- 153 10. Charges at disposition.
- 154 11. Whether adult codefendants were involved.
- 155 12. Whether child codefendants were involved who were
156 transferred to adult court.
- 157 13. Whether the child was represented by counsel.
- 158 14. Whether the child has waived counsel.
- 159 15. Risk assessment instrument score.
- 160 16. The child's medical, mental health, substance abuse, or
161 trauma history.
- 162 17. The child's history of physical or mental impairment or
163 disability-related accommodations.
- 164 18. The child's history of abuse or neglect.
- 165 19. The child's history of foster care placements,
166 including the number of prior placements.
- 167 20. Whether the child has fetal alcohol syndrome or was
168 exposed to controlled substances at birth.
- 169 21. Whether the child has below-average intellectual
170 functioning or is eligible for exceptional student education
171 services.
- 172 22. Whether the child has received mental health services
173 or treatment.
- 174 23. Whether the child has been the subject of a Children in

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175 Need of Services or Family in Need of Services (CINS/FINS)
176 petition or a dependency petition.

177 24. Plea offers made by the state and the outcome of any
178 plea offers.

179 25. Whether the child was transferred for criminal
180 prosecution as an adult.

181 26. The case resolution in juvenile court.

182 27. The case resolution in adult court.

183 (b) If a child is transferred for criminal prosecution as
184 an adult, the department shall also collect disposition data,
185 including, but not limited to, whether the child received adult
186 sanctions, juvenile sanctions, or diversion, and, if sentenced
187 to prison, length of prison sentence or enhanced sentence.

188 (c) The department shall annually provide a report
189 analyzing this aggregated data to the President of the Senate
190 and the Speaker of the House of Representatives.

191 Section 2. Section 985.56, Florida Statutes, is amended to
192 read:

193 985.56 Indictment of a juvenile.—

194 (1) A child 14 years of age or older ~~of any age~~ who is
195 charged with a violation of state law punishable by death or by
196 life imprisonment is subject to the jurisdiction of the court as
197 set forth in s. 985.0301(2) unless and until an indictment on
198 the charge is returned by the grand jury. When such indictment
199 is returned, the petition for delinquency, if any, must be
200 dismissed and the child must be tried ~~and handled in every~~
201 ~~respect~~ as an adult:

202 (a) On the indicting offense ~~punishable by death or by life~~
203 ~~imprisonment~~; and

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204 (b) On all other felonies or misdemeanors charged in the
205 indictment which are based on the same act or transaction as the
206 indicting offense ~~punishable by death or by life imprisonment or~~
207 ~~on one or more acts or transactions connected with the offense~~
208 ~~punishable by death or by life imprisonment.~~

209 (2) An adjudicatory hearing may not be held until 21 days
210 after the child is taken into custody and charged with having
211 committed an indictable offense ~~punishable by death or by life~~
212 ~~imprisonment~~, unless the state attorney advises the court in
213 writing that he or she does not intend to present the case to
214 the grand jury, or has presented the case to the grand jury and
215 the grand jury has not returned an indictment. If the court
216 receives such a notice from the state attorney, or if the grand
217 jury fails to act within the 21-day period, the court may
218 proceed as otherwise authorized under this part.

219 (3) Notwithstanding any other law, a child who is eligible
220 for indictment and who is pending a competency hearing in
221 juvenile court or who has been previously found to be
222 incompetent and has not been restored to competency by a court
223 may not be transferred to adult court for criminal prosecution
224 ~~If the child is found to have committed the offense punishable~~
225 ~~by death or by life imprisonment, the child shall be sentenced~~
226 ~~as an adult. If the juvenile is not found to have committed the~~
227 ~~indictable offense but is found to have committed a lesser~~
228 ~~included offense or any other offense for which he or she was~~
229 ~~indicted as a part of the criminal episode, the court may~~
230 ~~sentence under s. 985.565.~~

231 (4) (a) If ~~Once~~ a child has been indicted pursuant to this
232 section and has been found to have committed any offense for

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233 which he or she was indicted as a part of the criminal episode,
234 the child shall be handled thereafter ~~in every respect~~ as if an
235 adult for any subsequent violation of state law, unless the
236 court imposes juvenile sanctions under s. 985.565.

237 (b) ~~If~~ ~~When~~ a child has been indicted pursuant to this
238 section, the court may ~~shall immediately~~ transfer and certify to
239 the adult circuit court all related felony cases pertaining to
240 the child, for prosecution of the child as an adult, which have
241 not yet resulted in a plea of guilty or nolo contendere or in
242 which a finding of guilt has not been made. If the child is
243 acquitted of all charged offenses or lesser included offenses
244 contained in the indictment case, any ~~all~~ felony cases that were
245 transferred to adult court pursuant to this paragraph shall be
246 subject to the same penalties such cases were subject to before
247 being transferred to adult court.

248 Section 3. Subsection (1), paragraph (c) of subsection (3),
249 and subsection (4) of section 985.565, Florida Statutes, are
250 amended to read:

251 985.565 Sentencing powers; procedures; alternatives for
252 juveniles prosecuted as adults.—

253 (1) POWERS OF DISPOSITION.—

254 (a) A child who is found to have committed a violation of
255 law may, as an alternative to adult dispositions, be committed
256 to the department for treatment in an appropriate program for
257 children outside the adult correctional system or be placed on
258 juvenile probation.

259 (b) In determining whether to impose juvenile or ~~sanctions~~
260 ~~instead of~~ adult sanctions, the court shall consider the
261 following criteria:

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262 1. The seriousness of the offense to the community and
263 whether the protection of the community would be best served ~~be~~
264 ~~protected~~ by juvenile or adult sanctions.

265 2. The extent of the child's participation in the offense.

266 3. The effect, if any, of familial or peer pressure on the
267 child's actions.

268 4.2. Whether the offense was committed in an aggressive,
269 violent, premeditated, or willful manner.

270 5.3. Whether the offense was against persons or against
271 property, with greater weight being given to offenses against
272 persons, especially if personal injury resulted.

273 6.4. The sophistication and maturity of the child,
274 including: offender

275 a. The child's age, maturity, intellectual capacity, and
276 mental and emotional health at the time of the offense.

277 b. The child's background, including his or her family,
278 home, and community environment.

279 c. The effect, if any, of immaturity, impetuosity, or
280 failure to appreciate the risks and consequences on the child's
281 participation in the offense.

282 d. The effect, if any, of characteristics attributable to
283 the child's age on the child's judgment.

284 7.5. The record and previous history of the child offender,
285 including:

286 a. Previous contacts with the Department of Corrections,
287 the Department of Juvenile Justice, the former Department of
288 Health and Rehabilitative Services, or the Department of
289 Children and Families, and the adequacy and appropriateness of
290 the services provided to address the child's needs ~~law~~

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291 ~~enforcement agencies, and the courts.~~

292 b. Prior periods of probation.

293 c. Prior adjudications that the offender committed a
294 delinquent act or violation of law as a child.

295 d. Prior commitments to the Department of Juvenile Justice,
296 the former Department of Health and Rehabilitative Services, the
297 Department of Children and Families, or other facilities or
298 institutions, and the adequacy and appropriateness of the
299 services provided to address the child's needs.

300 e. Previous contacts with law enforcement agencies and the
301 courts.

302 f. History of abuse, abandonment or neglect, foster care
303 placements, failed adoption, fetal alcohol syndrome, exposure to
304 controlled substances at birth, and below-average intellectual
305 functioning.

306 g. Identification of the child as having a disability or
307 having previously received mental health services or treatment.

308 ~~8.6.~~ The prospects for adequate protection of the public
309 and the likelihood of deterrence and reasonable rehabilitation
310 of the offender if assigned to services and facilities of the
311 Department of Juvenile Justice.

312 ~~9.7.~~ Whether the Department of Juvenile Justice has
313 appropriate programs, facilities, and services immediately
314 available.

315 ~~8.~~ ~~Whether adult sanctions would provide more appropriate~~
316 ~~punishment and deterrence to further violations of law than the~~
317 ~~imposition of juvenile sanctions.~~

318 10. Whether the Department of Corrections has appropriate
319 programs, facilities, and services immediately available.

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320 (c) The adult court shall render an order including
321 specific findings of fact and the reasons for its decision. The
322 order shall be reviewable on appeal under s. 985.534 and the
323 Florida Rules of Appellate Procedure.

324 (3) SENTENCING HEARING.—

325 (c) The court may receive and consider any other relevant
326 and material evidence, including other reports, written or oral,
327 in its effort to determine the action to be taken with regard to
328 the child, and may rely upon such evidence to the extent of its
329 probative value even if the evidence would not be competent in
330 an adjudicatory hearing. The court shall consider any reports
331 that may assist it, including prior predisposition reports,
332 psychosocial assessments, individualized educational programs,
333 developmental assessments, school records, abuse or neglect
334 reports, home studies, protective investigations, and
335 psychological and psychiatric evaluations. The child, the
336 child's defense counsel, and the state attorney have the right
337 to examine these reports and to question the parties responsible
338 for them at the hearing.

339 (4) SENTENCING ALTERNATIVES.—

340 (a) ~~Adult Sanctions.~~—

341 ~~1. Cases prosecuted on indictment. If the child is found to~~
342 ~~have committed the offense punishable by death or life~~
343 ~~imprisonment, the child shall be sentenced as an adult. If the~~
344 ~~juvenile is not found to have committed the indictable offense~~
345 ~~but is found to have committed a lesser included offense or any~~
346 ~~other offense for which he or she was indicted as a part of the~~
347 ~~criminal episode, the court may sentence as follows:~~

348 ~~a. As an adult;~~

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349 ~~b. Under chapter 958; or~~

350 ~~e. As a juvenile under this section.~~

351 ~~2. Other cases.~~—If a child who has been transferred for

352 criminal prosecution pursuant to information or waiver of

353 juvenile court jurisdiction is found to have committed a

354 violation of state law or a lesser included offense for which he

355 or she was charged as a part of the criminal episode, the court

356 may sentence as follows:

357 1.a. As an adult;

358 2.b. As a youthful offender under chapter 958; or

359 3.e. As a juvenile under this section.

360 ~~3. Notwithstanding any other provision to the contrary, if~~

361 ~~the state attorney is required to file a motion to transfer and~~

362 ~~certify the juvenile for prosecution as an adult under s.~~

363 ~~985.556(3) and that motion is granted, or if the state attorney~~

364 ~~is required to file an information under s. 985.557(2)(a) or~~

365 ~~(b), the court must impose adult sanctions.~~

366 (b)4. Findings.—~~The court must~~ Any sentence imposing adult

367 ~~sanctions is presumed appropriate, and the court is not required~~

368 ~~to set forth specific findings or enumerate the criteria in this~~

369 ~~subsection as any basis for its decision to impose adult~~

370 ~~sanctions.~~

371 (c)5. Restitution.—When a child has been transferred for

372 criminal prosecution as an adult and has been found to have

373 committed a violation of state law, the disposition of the case

374 may include the enforcement of any restitution ordered in any

375 juvenile proceeding.

376 (d)(b) Juvenile sanctions.—If a juvenile sentence is ~~For~~

377 ~~juveniles transferred to adult court but who do not qualify for~~

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378 ~~such transfer under s. 985.556(3) or s. 985.557(2) (a) or (b),~~
379 ~~the court may impose juvenile sanctions under this paragraph. If~~
380 ~~juvenile sentences are imposed, the court shall, under this~~
381 ~~paragraph, adjudge the child to have committed a delinquent act.~~
382 ~~Adjudication of delinquency shall not be deemed a conviction,~~
383 ~~nor shall it operate to impose any of the civil disabilities~~
384 ~~ordinarily resulting from a conviction. The court shall impose~~
385 ~~an adult sanction or a juvenile sanction and may not sentence~~
386 ~~the child to a combination of adult and juvenile punishments. An~~
387 ~~adult sanction or a juvenile sanction may include enforcement of~~
388 ~~an order of restitution or probation previously ordered in any~~
389 ~~juvenile proceeding. However, if the court imposes a juvenile~~
390 ~~sanction and the department determines that the sanction is~~
391 ~~unsuitable for the child, the department shall return custody of~~
392 ~~the child to the sentencing court for further proceedings,~~
393 ~~including the imposition of adult sanctions. Upon adjudicating a~~
394 ~~child delinquent under subsection (1), the court may:~~

395 1. Place the child in a probation program under the
396 supervision of the department for an indeterminate period of
397 time until the child reaches the age of 19 years or sooner if
398 discharged by order of the court.

399 2. Commit the child to the department for treatment in an
400 appropriate program for children for an indeterminate period of
401 time until the child is 21 or sooner if discharged by the
402 department. The department shall notify the court of its intent
403 to discharge no later than 14 days prior to discharge. Failure
404 of the court to timely respond to the department's notice shall
405 be considered approval for discharge.

406 3. Order disposition under ss. 985.435, 985.437, 985.439,

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407 985.441, 985.45, and 985.455 as an alternative to youthful
408 offender or adult sentencing if the court determines not to
409 impose youthful offender or adult sanctions.

410 (e)~~(e)~~ *Adult sanctions upon failure of juvenile sanctions.*—
411 If a child proves not to be suitable to a commitment program,
412 juvenile probation program, or treatment program under paragraph
413 (d) ~~(b)~~, the department shall provide the sentencing court with
414 a written report outlining the basis for its objections to the
415 juvenile sanction and shall simultaneously provide a copy of the
416 report to the state attorney and the defense counsel. The
417 department shall schedule a hearing within 30 days. Upon
418 hearing, the court may revoke the previous adjudication, impose
419 an adjudication of guilt, and impose any sentence which it may
420 lawfully impose, giving credit for all time spent by the child
421 in the department. The court may also classify the child as a
422 youthful offender under s. 958.04, if appropriate. For purposes
423 of this paragraph, a child may be found not suitable to a
424 commitment program, community control program, or treatment
425 program under paragraph (d) ~~(b)~~ if the child commits a new
426 violation of law while under juvenile sanctions, if the child
427 commits any other violation of the conditions of juvenile
428 sanctions, or if the child's actions are otherwise determined by
429 the court to demonstrate a failure of juvenile sanctions.

430 (f)~~(d)~~ *Further proceedings heard in adult court.*—When a
431 child is sentenced to juvenile sanctions, further proceedings
432 involving those sanctions shall continue to be heard in the
433 adult court.

434 (g)~~(e)~~ *School attendance.*—If the child is attending or is
435 eligible to attend public school and the court finds that the

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436 victim or a sibling of the victim in the case is attending or
437 may attend the same school as the child, the court placement
438 order shall include a finding pursuant to the proceeding
439 described in s. 985.455(2), regardless of whether adjudication
440 is withheld.

441
442 It is the intent of the Legislature that the criteria and
443 guidelines in this subsection are mandatory and that a
444 determination of disposition under this subsection is subject to
445 the right of the child to appellate review under s. 985.534.

446 Section 4. Subsection (1) of section 985.556, Florida
447 Statutes, is amended to read:

448 985.556 Waiver of juvenile court jurisdiction; hearing.—

449 (1) VOLUNTARY WAIVER.—The court shall transfer and certify
450 a child's criminal case for trial as an adult if the child is
451 alleged to have committed a violation of law and, before ~~prior~~
452 ~~to~~ the commencement of an adjudicatory hearing, the child,
453 joined by a parent or, in the absence of a parent, by the
454 guardian or guardian ad litem, demands in writing to be tried as
455 an adult. Once a child has been transferred for criminal
456 prosecution pursuant to a voluntary waiver hearing and has been
457 found to have committed the presenting offense or a lesser
458 included offense, the child shall be handled thereafter in every
459 respect as an adult for any subsequent violation of state law,
460 unless the court imposes juvenile sanctions under s.
461 985.565(4)(d) ~~s. 985.565(4)(b)~~.

462 Section 5. Subsection (2) of section 985.04, Florida
463 Statutes, is amended to read:

464 985.04 Oaths; records; confidential information.—

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465 (2) Notwithstanding any other provisions of this chapter,
466 the name, photograph, address, and crime or arrest report of a
467 child:

468 (a) Taken into custody if the child has been taken into
469 custody by a law enforcement officer for a violation of law
470 which, if committed by an adult, would be a felony;

471 (b) Found by a court to have committed three or more
472 violations of law which, if committed by an adult, would be
473 misdemeanors;

474 (c) Transferred to the adult system under s. 985.557,
475 indicted under s. 985.56, or waived under s. 985.556; or

476 ~~(d) Taken into custody by a law enforcement officer for a
477 violation of law subject to s. 985.557(2) (b) or (d); or~~

478 (d)~~(e)~~ Transferred to the adult system but sentenced to the
479 juvenile system under s. 985.565

480

481 shall not be considered confidential and exempt from s.
482 119.07(1) solely because of the child's age.

483 Section 6. For the purpose of incorporating the amendment
484 made by this act to section 985.557, Florida Statutes, in a
485 reference thereto, subsection (1) of section 985.15, Florida
486 Statutes, is reenacted to read:

487 985.15 Filing decisions.—

488 (1) The state attorney may in all cases take action
489 independent of the action or lack of action of the juvenile
490 probation officer and shall determine the action that is in the
491 best interest of the public and the child. If the child meets
492 the criteria requiring prosecution as an adult under s. 985.556,
493 the state attorney shall request the court to transfer and

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494 certify the child for prosecution as an adult or shall provide
495 written reasons to the court for not making such a request. In
496 all other cases, the state attorney may:

- 497 (a) File a petition for dependency;
498 (b) File a petition under chapter 984;
499 (c) File a petition for delinquency;
500 (d) File a petition for delinquency with a motion to
501 transfer and certify the child for prosecution as an adult;
502 (e) File an information under s. 985.557;
503 (f) Refer the case to a grand jury;
504 (g) Refer the child to a diversionary, pretrial
505 intervention, arbitration, or mediation program, or to some
506 other treatment or care program if such program commitment is
507 voluntarily accepted by the child or the child's parents or
508 legal guardian; or
509 (h) Decline to file.

510 Section 7. For the purpose of incorporating the amendment
511 made by this act to section 985.557, Florida Statutes, in a
512 reference thereto, subsection (5) of section 985.265, Florida
513 Statutes, is reenacted to read:

514 985.265 Detention transfer and release; education; adult
515 jails.-

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

- 518 (a) When the child has been transferred or indicted for
519 criminal prosecution as an adult under part X, except that the
520 court may not order or allow a child alleged to have committed a
521 misdemeanor who is being transferred for criminal prosecution
522 pursuant to either s. 985.556 or s. 985.557 to be detained or

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523 held in a jail or other facility intended or used for the
524 detention of adults; however, such child may be held temporarily
525 in a detention facility; or

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

528

529 The child shall be housed separately from adult inmates to
530 prohibit a child from having regular contact with incarcerated
531 adults, including trustees. "Regular contact" means sight and
532 sound contact. Separation of children from adults shall permit
533 no more than haphazard or accidental contact. The receiving jail
534 or other facility shall contain a separate section for children
535 and shall have an adequate staff to supervise and monitor the
536 child's activities at all times. Supervision and monitoring of
537 children includes physical observation and documented checks by
538 jail or receiving facility supervisory personnel at intervals
539 not to exceed 10 minutes. This subsection does not prohibit
540 placing two or more children in the same cell. Under no
541 circumstances shall a child be placed in the same cell with an
542 adult.

543 Section 8. For the purpose of incorporating the amendment
544 made by this act to section 985.557, Florida Statutes, in a
545 reference thereto, subsection (3) of section 985.556, Florida
546 Statutes, is reenacted to read:

547 985.556 Waiver of juvenile court jurisdiction; hearing.—

548 (3) INVOLUNTARY MANDATORY WAIVER.—

549 (a) If the child was 14 years of age or older, and if the
550 child has been previously adjudicated delinquent for an act
551 classified as a felony, which adjudication was for the

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552 commission of, attempt to commit, or conspiracy to commit
553 murder, sexual battery, armed or strong-armed robbery,
554 carjacking, home-invasion robbery, aggravated battery,
555 aggravated assault, or burglary with an assault or battery, and
556 the child is currently charged with a second or subsequent
557 violent crime against a person; or

558 (b) If the child was 14 years of age or older at the time
559 of commission of a fourth or subsequent alleged felony offense
560 and the child was previously adjudicated delinquent or had
561 adjudication withheld for or was found to have committed, or to
562 have attempted or conspired to commit, three offenses that are
563 felony offenses if committed by an adult, and one or more of
564 such felony offenses involved the use or possession of a firearm
565 or violence against a person;

566

567 the state attorney shall request the court to transfer and
568 certify the child for prosecution as an adult or shall provide
569 written reasons to the court for not making such request, or
570 proceed under s. 985.557(1). Upon the state attorney's request,
571 the court shall either enter an order transferring the case and
572 certifying the case for trial as if the child were an adult or
573 provide written reasons for not issuing such an order.

574 Section 9. For the purpose of incorporating the amendment
575 made by this act to section 985.565, Florida Statutes, in a
576 reference thereto, subsection (3) of section 985.514, Florida
577 Statutes, is reenacted to read:

578 985.514 Responsibility for cost of care; fees.—

579 (3) When the court under s. 985.565 orders any child
580 prosecuted as an adult to be supervised by or committed to the

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581 department for treatment in any of the department's programs for
582 children, the court shall order the child's parents to pay fees
583 as provided in s. 985.039.

584 Section 10. For the purpose of incorporating the amendment
585 made by this act to section 985.565, Florida Statutes, in a
586 reference thereto, paragraph (a) of subsection (5) of section
587 985.556, Florida Statutes, is reenacted to read:

588 985.556 Waiver of juvenile court jurisdiction; hearing.—

589 (5) EFFECT OF ORDER WAIVING JURISDICTION.—

590 (a) Once a child has been transferred for criminal
591 prosecution pursuant to an involuntary waiver hearing and has
592 been found to have committed the presenting offense or a lesser
593 included offense, the child shall thereafter be handled in every
594 respect as an adult for any subsequent violation of state law,
595 unless the court imposes juvenile sanctions under s. 985.565.

596 Section 11. This act shall take effect July 1, 2016.



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

November 2, 2015

November 2, 2015

The Honorable Greg Evers
Chairman
Senate Criminal Justice Committee

Via Email

Dear Chairman Evers:

Senate Bill 314, which I sponsor, is on the Criminal Justice agenda today. My flight will not arrive until this evening. I respectfully request that you allow the sponsor of the House companion (HB129), Representative Katie Edwards, to present the bill.

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

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

11/2/15

Meeting Date

5314

Bill Number (if applicable)

Topic DIRECT FILE

Amendment Barcode (if applicable)

Name SEN NUZZO

Job Title VP POLICY

Address 100 N OVRZ ST.
Street

Phone 830-322-9941

TALL. FL 323
City State Zip

Email SNUZZO@JAMESMADISON.ORG

Speaking: For Against Information

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

Representing THE JAMES MADISON INSTITUTE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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11/2/15

314

Meeting Date

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Tania Galloni

Job Title Managing Attorney Southern Poverty Law Center

Address 4770 Biscayne Blvd., Ste 760

Phone (305) 537-0573

Miami FL 33137

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Southern Poverty Law Center

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

11-2-15
Meeting Date

314
Bill Number (if applicable)

Topic Children Tied as Adults / Direct file

Amendment Barcode (if applicable)

Name Deborah Brodsky

Job Title Director, Project on Accountable Justice

Address _____
Street

Phone 566-8944

City _____ State _____ Zip _____

Email dbrodsky@fsu.edu

Speaking: For Against Information

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

Representing Project on Accountable and Justice

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

10/2/2015

Meeting Date

314

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S

Phone 727/897-9291

Street

St. Petersburg

FL

33705

City

State

Zip

Email justice2jesus@yahoo.com

Speaking: For Against Information

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

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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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11/2/15

Meeting Date

314

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Greg Howard

Job Title _____

Address 9166 Sande Dr
Street

Phone _____

Largo Fla.
City State 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.

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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)

11/2/15

Meeting Date

SB 314

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Buddy Jacobs

Job Title General Counsel Fla. Prosecuting Attys Assoc.

Address 9616 BT Gateway Blvd.

Phone 904-261-3693

Street

Fernandina Beach Fla. 32034

City

State

Zip

Email bjacobs@comcast.net

Speaking: For Against Information

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

Representing State Attorneys of Fla.

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)

November 2, 2015
Meeting Date

314
Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Honorable Nancy Daniels

Job Title Public Defender, 2nd Judicial Circuit

Address 301 South Monroe Street, Suite 401
Street

Phone 850.606.1000

Tallahassee Florida 32301
City State Zip

Email nancy.daniels@fldpd2.com

Speaking: For Against Information

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

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

11-2-15

Meeting Date

314

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name CHRISTINA SPUDEAS (SPOO-DAY-US)

Job Title Exec. Director

Address 1801 N University Dr.

Phone 954-796-0860

Street

Coal Springs FL 33701

Email CHRISTINA.SPUDEAS@FLORIDACHILDREN.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida's Children First

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)

10/21/15

Meeting Date

314

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Angie Gallo

Job Title Legislation Chair

Address 1747 Central Florida Pkwy

Phone 407-718-9925

Street

Orlando FL 32801

City

State

Zip

Email legislation@FloridaPTA.org

Speaking: For Against Information

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

Representing Florida PTA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

11/2/2015
Meeting Date

314
Bill Number (if applicable)

Topic Direct File

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Phone (850) 681-0024

City Tallahassee State FL Zip 32301

Email jorge@flapartners.com

Speaking: For Against Information

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

Representing Fla Assoc of Criminal Defense Lawyers

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

11/2/15
Meeting Date

314
Bill Number (if applicable)

Topic SB 314

Amendment Barcode (if applicable)

Name Natalie Koto

Job Title _____

Address 201 W. Park ave suite 200
Street
Tallahassee FL 32301
City State Zip

Phone 763 221-3151

Email Natalie@anf-jeldFlorida.com

Speaking: For Against Information

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

Representing Human Rights Watch

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

11/2/15
Meeting Date

314
Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns / Respect Life

Address 201 W Park
Street

Phone

Tallahassee
City State Zip

Email

Speaking: For Against Information

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

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

11/2/2015

Meeting Date

314

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Samantha Sexton

Job Title Director of Government Affairs

Address One West Adams Street, Suite 301

Phone 904-383-9403

Street

Jacksonville

FL

32202

Email samantha.sexton@pacecenter.org

City

State

Zip

Speaking: For Against Information

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

Representing PACE Center Girls, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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11/2/2015
Meeting Date

314
Bill Number (if applicable)

Topic juvenile justice

Amendment Barcode (if applicable)

Name Samantha Sexton

Job Title board member

Address One W. Adams St, Suite 301

Phone 904-383-9403

Jacksonville FL 32202
City State Zip

Email Samantha.Sexton@pacecenter.org

Speaking: For Against Information

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

Representing FJA

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)

11-2-15

Meeting Date

SB 314

Bill Number (if applicable)

Topic Direct File

Amendment Barcode (if applicable)

Name Dawn Steward

Job Title Legislative Liaison

Address 2001 Mercy Drive

Street

Orlando FL

City

State

32808

Zip

Phone 407-645-0273

Email dsteward@bridgesofamerica.org

Speaking: For Against Information

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

Representing Bridges of America

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

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11-2-15
Meeting Date

314
Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Colleen Mackin

Job Title _____

Address 111 S. Magnolia DR.

Phone 727 244 1032

Street

Tallahassee
City

FL
State

Zip

Email cmackin@iamfor
Kids.org

Speaking: For Against Information

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

Representing The Children's Campaign

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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 386

INTRODUCER: Senator Detert

SUBJECT: Expunction of Records of Minors

DATE: October 30, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.			ACJ	
3.			FP	

I. Summary:

SB 386 amends s. 943.0515, F.S., to require all records maintained by the Florida Department of Law Enforcement (FDLE) related to minors who are not classified as serious or habitual juvenile offenders or who have not been committed to a juvenile correctional facility or juvenile prison to be automatically expunged when the minor reaches the age of 21 years with certain exceptions. (Currently this automatic expunction occurs when the minor reaches the age of 24 years.)

The bill also amends s. 943.0582, F.S., by eliminating the time period required for an eligible minor to submit an application requesting the expunction of an arrest record after successfully completing a prearrest, postarrest, or teen court diversion program. (The current time period is no later than 12 months after successfully completing the program.)

II. Present Situation:

Automatic Expunction of Criminal History Records of Minors

Section 943.0515, F.S., requires the FDLE to automatically expunge the criminal history records of specified juveniles at age 24 or 26 years. For juveniles who are classified as serious or habitual juvenile offenders, or that have been committed to a juvenile correctional facility or juvenile prison, the FDLE must retain their record until the age of 26 years, at which time it is automatically expunged.¹ For all other juveniles, FDLE must retain the record until the juvenile reaches the age of 24 years, at which time it is automatically expunged.²

A juvenile's record is prohibited from being automatically expunged if:

- A person 18 years of age or older is charged with or convicted of a forcible felony and the person's criminal history record as a minor has not yet been destroyed;

¹ Section 943.0515(1)(a), F.S.

² Section 943.0515(1)(b), F.S.

- At any time, a minor is adjudicated as an adult for a forcible felony; or
- The record relates to a minor who was adjudicated delinquent for a violation committed on or after July 1, 2007, as provided in s. 943.0435(1)(a)1.d., F.S.^{3,4}

In these three instances, the person's record as a minor must be merged with and retained as part of their adult record.⁵

Juvenile Diversion Expunction

Youth who successfully complete a prearrest, postarrest, or teen court diversion program after being arrested for a nonviolent misdemeanor are eligible to have their arrest expunged, providing they have no other past criminal history.⁶ A nonviolent misdemeanor includes simple assault or battery when the expunction process is approved in writing by the local state attorney. A domestic violence arrest is not eligible for expunction. Receiving a juvenile diversion expunction does not prohibit a youth from requesting a regular sealing or expunction under s. 943.0585 or s. 943.059, F.S., if he or she is otherwise eligible.⁷

The expunged arrest record is available to criminal justice agencies⁸ only under certain enumerated circumstances, such as when it is needed to determine eligibility for the diversion program, when a youth is seeking criminal justice employment, or when it is needed for a criminal investigation. Local criminal justice agency records are treated as if they have been sealed (only available to limited entities for limited purposes⁹).

The FDLE is required to expunge the nonjudicial arrest record of a successful participant in a prearrest, postarrest, or teen court diversion program if the youth does the following: submits a timely filed application signed by the parents or by the minor if he or she is of age by then; submits a statement by the state attorney that the youth has successfully completed a prearrest or postarrest diversion program that was limited to minors arrested for a nonviolent misdemeanor (excluding domestic violence) who have not otherwise been charged with or found to have committed any criminal offense; participates in a diversion program that allows an expunction to occur; and provides that he or she has not been charged with or found to have committed a prior criminal offense.¹⁰ The application must be submitted no later than 12 months after completion of the diversion program.

³ Sections 943.0515(2) and (3), F.S.

⁴ Section 943.0435, F.S., defines a "sexual offender" and proscribes when a sexual offender is required to register with FDLE.

⁵ See *supra* note 3.

⁶ Section 943.0582, F.S.

⁷ *Id.*

⁸ Section 943.045(11), F.S., defines a criminal justice agency as follows: a court; the FDLE; the Department of Juvenile Justice (DJJ); the protective investigations component of the Department of Children and Families (DCF), which investigates the crimes of abuse and neglect; or any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice.

⁹ See s. 943.059(4), F.S.

¹⁰ Section 943.0582(3), F.S.

The FDLE is authorized to charge a \$75 processing fee for each juvenile diversion expunction request, but the executive director can waive the fee.¹¹

III. Effect of Proposed Changes:

Automatic Expunction of Criminal History Records of Minors

The bill amends s. 943.0515, F.S., to require all records maintained by the FDLE related to minors who are not classified as serious or habitual juvenile offenders or who have not been committed to a juvenile correctional facility or juvenile prison to be automatically expunged when the minor reaches the age of 21 years, so long as one of the following exceptions does not apply:

- A person 18 years of age or older is charged with or convicted of a forcible felony and the person's criminal history record as a minor has not yet been destroyed;
- At any time, a minor is adjudicated as an adult for a forcible felony; or
- The record relates to a minor who was adjudicated delinquent for a violation committed on or after July 1, 2007, as provided in s. 943.0435(1)(a)1.d., F.S.¹²

The automatic expunction of records related to juveniles who are classified as serious or habitual juvenile offenders or who have been committed to a juvenile correctional facility or juvenile prison remains at 26 years of age.

Juvenile Diversion Expunction

The bill also amends s. 943.0582, F.S., by eliminating the current time period required for an eligible minor to submit an application requesting an expunction of an arrest record after successfully completing a prearrest, postarrest, or teen court diversion program. (The statute currently requires a minor to submit an application no later than 12 months after successfully completing the program.)

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹¹ Section 943.0582(4), F.S.

¹² See *supra* note 4.

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

None.

B. Private Sector Impact:

Eligible youth will have their arrest records automatically expunged earlier under the bill, resulting in a potentially positive economic benefit as they look for employment.

C. Government Sector Impact:

The bill will require the FDLE to reduce the time period for automatic juvenile record expungement from 24 years to 21 years of age. The department's estimated time to implement the change in its database is 1.5 months at an estimated cost of \$20,000. According to the FDLE, existing staff resources will be used to implement the change.¹³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 943.0515 and 943.0582.

This bill reenacts section 985.125 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.

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

¹³ Florida Department of Law Enforcement, *2016 Bill Analysis for SB 386* (2016) (on file with the Senate Criminal Justice Committee).

By Senator Detert

28-00488-16

2016386__

1 A bill to be entitled
2 An act relating to expunction of records of minors;
3 amending s. 943.0515, F.S.; decreasing the period of
4 time that a minor's criminal history record must be
5 retained before expunction; amending s. 943.0582,
6 F.S.; deleting a limitation on the period of time
7 within which a minor must submit an application for
8 prearrest or postarrest diversion expunction to the
9 Department of Law Enforcement after successful
10 completion of the diversion program; reenacting s.
11 985.125(3), F.S., relating to prearrest and postarrest
12 diversion programs, to incorporate the amendment made
13 to s. 943.0582, F.S., in a reference thereto;
14 providing an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Paragraph (b) of subsection (1) of section
19 943.0515, Florida Statutes, is amended to read:

20 943.0515 Retention of criminal history records of minors.—

21 (1)

22 (b) If the minor is not classified as a serious or habitual
23 juvenile offender or committed to a juvenile correctional
24 facility or juvenile prison under chapter 985, the program shall
25 retain the minor's criminal history record for 2 5 years after
26 the date the minor reaches 19 years of age, at which time the
27 record must ~~shall~~ be expunged unless it meets the criteria of
28 paragraph (2) (a) or paragraph (2) (b).

29 Section 2. Subsection (3) of section 943.0582, Florida

28-00488-16

2016386__

30 Statutes, is amended to read:

31 943.0582 Prearrest, postarrest, or teen court diversion
32 program expunction.—

33 (3) The department shall expunge the nonjudicial arrest
34 record of a minor who has successfully completed a prearrest or
35 postarrest diversion program if that minor:

36 (a) Submits an application for prearrest or postarrest
37 diversion expunction, on a form prescribed by the department,
38 signed by the minor's parent or legal guardian, or by the minor
39 if he or she has reached the age of majority at the time of
40 applying.

41 ~~(b) Submits the application for prearrest or postarrest~~
42 ~~diversion expunction no later than 12 months after completion of~~
43 ~~the diversion program.~~

44 (b)~~(e)~~ Submits to the department, with the application, an
45 official written statement from the state attorney for the
46 county in which the arrest occurred certifying that he or she
47 has successfully completed that county's prearrest or postarrest
48 diversion program, that his or her participation in the program
49 was based on an arrest for a nonviolent misdemeanor, and that he
50 or she has not otherwise been charged by the state attorney
51 with, or found to have committed, any criminal offense or
52 comparable ordinance violation.

53 (c)~~(d)~~ Participated in a prearrest or postarrest diversion
54 program that expressly authorizes or permits such expunction to
55 occur.

56 (d)~~(e)~~ Participated in a prearrest or postarrest diversion
57 program based on an arrest for a nonviolent misdemeanor that
58 would not qualify as an act of domestic violence as that term is

28-00488-16

2016386__

59 defined in s. 741.28.

60 (e)~~(f)~~ Has never been, prior to filing the application for
61 expunction, ~~been~~ charged by the state attorney with, or ~~been~~
62 found to have committed, any criminal offense or comparable
63 ordinance violation.

64 Section 3. For the purpose of incorporating the amendment
65 made by this act to section 943.0582, Florida Statutes, in a
66 reference thereto, subsection (3) of section 985.125, Florida
67 Statutes, is reenacted to read:

68 985.125 Prearrest or postarrest diversion programs.—

69 (3) The prearrest or postarrest diversion program may, upon
70 agreement of the agencies that establish the program, provide
71 for the expunction of the nonjudicial arrest record of a minor
72 who successfully completes such a program pursuant to s.
73 943.0582.

74 Section 4. This act shall take effect July 1, 2016.



The Florida Senate

Committee Agenda Request

To: Senator Greg Evers, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: October 13, 2015

I respectfully request that **Senate Bill #386**, relating to Expunction of Records of Minors, be placed on the:

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

A handwritten signature in cursive script that reads "Nancy C. Detert".

Senator Nancy C. Detert
Florida Senate, District 28



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Commerce and Tourism, *Chair*
Education Pre-K - 12, *Vice Chair*
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Children, Families, and Elder Affairs

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR NANCY C. DETERT

28th District

November 2, 2015

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

Dear Mr. Chair:

I was driving to Tallahassee early this morning when my tire blew out on Interstate 75, damaging my car. I am currently awaiting roadside assistance and will therefore not make it to Tallahassee in time to present my bill this afternoon.

I respectfully request that you allow my aide, Charlie Anderson, to present my SB 386-Expunction of Records of Minors today.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink that reads "Nancy C. Detert".

Nancy C. Detert

NCD/ca

cc: Amanda Cannon, Staff Director

REPLY TO:

- 417 Commercial Court, Suite D, Venice, Florida 34292 (941) 480-3547 FAX: (941) 480-3549
- 416 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5028

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

11/2/15
Meeting Date

SR 0386
Bill Number (if applicable)

Topic Exponction of Records of Minors

Amendment Barcode (if applicable)

Name Thomas Fair

Job Title Former President of FL Youth SHive

Address 280 John Knudsd. Apt 408
Street

Phone (850) 590-1004

Tallahassee Fl. 32303
City State Zip

Email thomas4tally@gmail.com

Speaking: For Against Information

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

Representing All youth w/ a record.

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)

11/2/15
Meeting Date

SB 386
Bill Number (if applicable)

Topic Ex-punction

Amendment Barcode (if applicable)

Name Greg Bond

Job Title _____

Address 9166 Sunrise Dr.
Street

Phone _____

hargo Fla
City State 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.

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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)

11-1-15

Meeting Date

386

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Angie Gallo

Job Title Legislation Chair

Address 1747 Conroe Florida Pkwy

Phone 407 218-9928

Street

Orl

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 Florida PTA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

11/2/15

Meeting Date

386

Bill Number (if applicable)

Topic Expunction of Records of Minor

Amendment Barcode (if applicable)

Name Jennifer C. Pritt

Job Title Assistant Commissioner

Address PO Box 1489

Phone 850 410 7001

Street

Tallahassee

FL

32306

Email jennifer.pritt@fde.state.fl.us

City

State

Zip

Speaking: For Against Information

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

Representing FDE

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)

2 Nov 15
Meeting Date

SB 386
Bill Number (if applicable)

Topic Juvenile Expiration

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 204 S. Monroe St., Ste. 201
Street

Phone 850/577-3032

Tall 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.

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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)

11-2-15

Meeting Date

386

Bill Number (if applicable)

Topic Expunction of Records of Minors

Amendment Barcode (if applicable)

Name CHRISTINA SPUDEAS

Job Title Exec. Director

Address 1801 N. University Drive #3B

Phone 954-796-0860

Street

Cool Springs FL 33071

City

State

Zip

Email CHRISTINA.SPUDEAS@FLORIDASCHILDRENFIRST.ORG

Speaking: For Against Information

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

Representing Florida's Children First

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

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11-2-15
Meeting Date

SB 386
Bill Number (if applicable)

Topic Expunction of Records

Amendment Barcode (if applicable)

Name Davin Steward

Job Title Legislative Liaison

Address 2001 Mercy Drive
Street
Orlando FL 32808
City State Zip

Phone 407-645-0273

Email dsteward@bridgesofamerica.org

Speaking: For Against Information

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

Representing Bridges of America

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)

11-2-15

Meeting Date

386

Bill Number (if applicable)

Topic Juvenile Expunction

Amendment Barcode (if applicable)

Name Colleen Mackin

Job Title _____

Address 111 S. Magnolia Suite 4

Phone 727.244.1032

Street

Callabassoo

City

State

Zip

Email cmackin@iamforkids.org

Speaking: For Against Information

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

Representing The Children's Campaign

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

11/2/15
Meeting Date

SB 386
Bill Number (if applicable)

Topic Expungement

Amendment Barcode (if applicable)

Name Buddy Jacobs

Job Title General Counsel Fla. Prosecuting Attys Assoc.

Address 961687 Gateway Blvd.
Street

Phone 904-261-3693

Fernandina Bch, Fla.
City State Zip

Email ajjacobs@comcast.net

Speaking: For Against Information

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

Representing State Attorneys

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

11/2/15

Meeting Date

5386

Bill Number (if applicable)

Topic EXPUNCTION

Amendment Barcode (if applicable)

Name SAL NUZZO

Job Title VP Policy

Address 100 N Duval St.

Phone 850-322-9941

Street

TALL.

FL

32302

City

State

Zip

Email SNUZZO.JAMES@MADISON.ORG

Speaking: For Against Information

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

Representing THE JAMES MADISON INST.

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)

November 2, 2015

386

Meeting Date

Bill Number (if applicable)

Topic Expunction of Records of Minors

Amendment Barcode (if applicable)

Name Honorable Nancy Daniels

Job Title Public Defender, 2nd Judicial Circuit

Address 301 South Monroe Street, Suite 401

Phone 850.606.1000

Street

Tallahassee

Florida

32301

Email nancy.daniels@flpd2.com

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)

11/2/2015
Meeting Date

3870
Bill Number (if applicable)

Topic juvenile records

Amendment Barcode (if applicable)

Name Samantha Sexton

Job Title board member

Address One W. Adams St, Suite 301
Street

Phone 904-383-9403

Jacksonville FL 32202
City State Zip

Email samantha.sexton@pacecenter.org

Speaking: For Against Information

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

Representing FJA

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)

11/2/2015

Meeting Date

386

Bill Number (if applicable)

Topic Juvenile Records

Amendment Barcode (if applicable)

Name Samantha Sexton

Job Title Board Member

Address 2202 Delta Lane

Phone 321-544-1577

Street

Tallahassee

FL

32303

Email ssexton11@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing Junior Leagues of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE APPEARANCE RECORD

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

11/2/2015

Meeting Date

386

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Samantha Sexton

Job Title Director of Government Affairs

Address One West Adams Street, Suite 301

Phone 904-383-9403

Street

Jacksonville

FL

32202

Email samantha.sexton@pacecenter.org

City

State

Zip

Speaking: For Against Information

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

Representing PACE Center Girls, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

11/2/2015

Meeting Date

386

Bill Number (if applicable)

Topic Expunction of Juvenile Records

Amendment Barcode (if applicable)

Name Jorge Lhamuze

Job Title Attorney

Address 108 South Monroe

Phone (850) 681-0024

Street Tallahassee

Email jorge@flapartners.com

City FL State 32301 Zip

Speaking: For Against Information

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

Representing Fla Association of Criminal Defense Lawyers

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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: SPB 7006

INTRODUCER: For consideration by the Criminal Justice Committee

SUBJECT: Corrections

DATE: October 2, 2015

REVISED: 10/19/15

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Sumner	Cannon		Pre-meeting

I. Summary:

SPB 7006:

- Requires the Criminal Justice Estimating Conference to develop projections of prison admissions and populations for elderly felony offenders;
- Removes the current restriction against assessing victim injury sentencing points against a correctional officer or employee who commits sexual misconduct with an inmate without committing sexual battery;
- Expands the ability of an inmate to get a one-time award of gain-time for educational attainment without violating the requirement for every inmate to serve 85 percent of their court imposed sentence;
- Creates a new felony for Department of Corrections (DOC) employees or employees of a private provider who withhold water, food, and other essential services; and
- Increases the frequency of mental and physical health care surveys conducted by the Correctional Medical Authority at prisons from every three years to every 18 months.

II. Present Situation:

Criminal Justice Estimating Conference

Consensus Estimating Conferences have statutory authority under ss. 216.133 – 216.138, F.S., to forecast economic, demographic, caseload, and revenue information for a variety of governmental planning and budgeting functions. This ensures that the “State meets the constitutional balanced budget requirement.”¹ The forecasts are “primarily used in the development of the constitutionally required Long-Range Financial Outlook, the Governor’s budget recommendations and the General Appropriations Act. Economic and demographic forecasts are also used to support estimates of revenues and demands for state services.”⁴

¹ <http://edr.state.fl.us/Content/conferences/index.cfm>

Specifically, the Criminal Justice Estimating Conference is statutorily tasked under s. 216.136(6), F.S., with developing forecasts of prison admissions and population and of supervised felony offender admissions and population; developing information relating to the number of eligible discharges and the projected number of civil commitments for determining needs for space; and developing information relating to the number of sexual offenders and sexual predators who are required by law to be placed on community control, probation, or conditional release who are subject to electronic monitoring.

Elderly Inmates in Prison

- The majority of elderly inmates in prison on June 30, 2015, were serving time for sex offenses (21.7 percent), murder/manslaughter (21.0 percent), or drug offenses (12.5 percent).
- The 21,620 elderly inmates in prison on June 30, 2014, represented 21.6 percent of the total inmate population.
- 94.4 percent of the elderly inmates in prison were male; 5.6 percent were female.
- 46.1 percent of the elderly inmates in prison had no prior prison commitments.
- On June 30, 2015, the department housed three inmates whose age was 93.²

Though the department does not house or treat inmates based solely on age, the elderly inmates are housed in the following institutions consistent with their custody level and medical status:

- RMC and the South Unit at CFRC house inmates that have intensive long term medical issues. They may not necessarily be elderly;
- Zephyrhills CI houses both inmates who are elderly (age 50 and older) and they also have an intensive medical unit;
- Union CI houses elderly inmates (age 50 and older);
- South Florida South Unit houses elderly inmates (age 59 and older); and
- Lowell CI-Annex has a dormitory designated for female inmates (age 59 and older).³

Increased Costs for Elderly Inmates

Florida Tax Watch in September 2014 reported that the department budget had grown by \$560 million (35 percent) from 2000-2012. The health care cost had grown by \$176 million or 76 percent. The report states that the elderly patients accounted for 49 percent of all hospital in days in 2012. By assuming that hospitalization is a representation of overall prison health care costs, the report states the elderly prison population is responsible for approximately half of the \$408 million in prisoner healthcare costs in 2012.

The DOC reports that the Pew Center on Research estimated that the overall cost of managing an elderly prisoner is \$70,000 annually. This yields a per diem cost of \$192 per inmate compared to the average DOC per diem of \$50 per inmate.⁴

² <http://www.dc.state.fl.us/pub/annual/1314/AnnualReport-1314.pdf>

³ Id.

⁴ Id.

Conditional Medical Release

In 1992, the Florida Legislature created the Conditional Medical Release Program (s. 947.149, F.S.) which is a discretionary release process allowing the Florida Commission on Offender Review (FCOR) to release inmates on supervision who are “terminally ill” or “permanently incapacitated” and who are not a danger to others. The department is charged with the responsibility of recommending to the FCOR inmates who are eligible to be considered for conditional medical release. Upon release, the offender is subject to conditions of supervision set by the FCOR. The FCOR monitors the offender’s progress through periodic medical reviews. Supervision can be revoked and the offender returned to prison if the FCOR determines that a willful and substantial violation of supervision has occurred or if their medical or physical condition improves to the point that the offender no longer meets release criteria. In Fiscal Year 2013-2014, the FCOR granted conditional medical release to eight of the 19 inmates recommended by the department.

Sentencing for Sexual Misconduct with an Inmate or Supervised Offender

Section 944.35(3)(b)2., F.S., prohibits an employee of the department or a private correctional facility from engaging in sexual misconduct with an inmate or an offender on community supervision. “Sexual misconduct” is defined as the “oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object, but does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of the employee’s duty.”⁵ Sexual misconduct is prohibited regardless of whether the activity is non-consensual or consensual. However, if the activity is non-consensual, the more serious offense of sexual battery could be charged. The offense is a third degree felony, punishable by imprisonment for a maximum five years and a potential fine not exceeding \$5,000.

Sexual Misconduct with an Inmate or Supervised Offender is ranked by default as a Level 1 offense, which means that four sentencing points are scored. No victim injury points can be assessed for sexual contact or sexual penetration for a violation of s. 944.35(3)(b)2., F.S., and correctional employees can be expected to have no significant prior offenses for which sentencing points would be added. Therefore, it is unlikely that there would be more than 22 total sentencing points. Because s. 944.35(3)(b)2., F.S., is not a forcible felony and the sentencing points total would likely be 22 or lower, s. 775.082(10), F.S., would limit the sentence to a nonprison sanction.

Gain-Time

Gain-time is authorized in s. 944.275, F.S., and is a means by which eligible inmates can earn a reduction in the sentence that was imposed by the court. Current forms of gain-time are based upon the department’s assessment that the inmate has behaved satisfactorily and engaged in constructive activities. As such, gain-time is a tool by which the department can encourage good behavior and motivate inmates to participate in programs and work assignments. Inmates who are serving life sentences or certain minimum mandatory sentences are not eligible for gain-time

⁵ Section 944.35(3)(b)1., F.S.

during the portion of time that the mandatory sentences are in effect. Incentive gain-time is awarded to inmates for institutional adjustment, work, and participation in programs.

Meritorious gain-time may be considered for an inmate who commits an outstanding deed. The maximum award is 60 days. Examples of outstanding deeds are saving a life or assisting in recapturing an escaped inmate, or in some manner performing an outstanding service.

Educational Achievement gain-time in the amount of 60 days may be awarded to an inmate who receives a General Education Development (GED) diploma or a certificate for completion of a vocational program. Inmates whose offense was committed on or after October 1, 1995, are not eligible for this one-time award.

Criminal Penalties and Employee Misconduct

Employees of the department who, with malicious intent, commit a battery on an inmate supervised by the department, commit a first degree misdemeanor. Employees who, with malicious intent, commit a battery or inflict cruel or inhuman treatment by neglect causing great bodily harm, permanent disability, or permanent disfigurement to an inmate commit a third degree felony.⁶

Correctional Medical Authority

The Correctional Medical Authority (CMA) was created in July 1986, while the state's prison healthcare system was under the jurisdiction of the federal court as a result of litigation that began in 1972. *Costello v. Wainwright* (430 U.S. 57 (1977)) was a class action suit brought by inmates alleging that their constitutional rights had been violated by inadequate medical care, insufficient staffing, overcrowding, and poor sanitation. The CMA was created as part of the settlement of that case and continues to serve as an independent monitoring body providing oversight of the systems in place to provide health care to inmates in the Department of Corrections. In the final order closing the case, Judge Susan Black noted that creation of the CMA made it possible for the Federal Court to relinquish the prison monitoring and oversight function it had performed for the prior twenty years. In light of "Florida's affirmation of its continued commitment to the CMA's independence" and the support from the Defendant and the State of Florida, the court found that the CMA was capable of "performing an oversight and monitoring function over the department in order to assure continued compliance with the orders entered in this case."

In December 2001, the DOC entered into a settlement agreement in a lawsuit (*Osterback v. Crosby*, 16 Fla. Weekly Fed. D 513 (N.D. Fla. 2003)) involving mentally ill inmates housed in close management. The purpose of close management is to confine inmates separate from the general inmate population for reasons of security and for the order and effective management of the prison system. The Osterback agreement included a stipulation that the CMA monitor provisions of the agreement including clinical, administrative, and security components of the program designed to ensure effective treatment of mental illness in the close management population. The CMA completed its special monitoring responsibilities pending the outcome of

⁶ Section 944.35(3)(a), F.S.

the federal court's hearing of the case. The department completed and complied with each component of the close management corrective action plan process. The court entered a final judgment ruling in favor of the department and the case was closed on March 28, 2008. Facilities with close management are now monitored as part of the regular CMA survey process.

The CMA has stated that "Osterback, along with the multitude of lawsuits related to the provision of correctional health care, serve as reminders of the CMA's important role in ensuring proper health and mental health care is provided to incarcerated members of society."⁷

Prior to July 1, 2011, the CMA was housed within the Department of Health (DOH) for administrative purposes. During the 2011 Legislative Session two bills designed to abolish the CMA passed both chambers and were sent to the Governor for approval: Chapter 2011-69, Laws of Florida, (the 2011 General Appropriations Act), which eliminated the funding and positions related to the authority; and HB 5305, which repealed the statutes related to the CMA. The Governor vetoed HB 5305, but not the General Appropriations Act. Therefore, the CMA existed in statute but did not have the funding to operate or perform its duties for the 2011-2012 fiscal year. The CMA was funded again in 2012 and reconstituted as an independent state agency housed within the administrative structure of the Executive Office of the Governor.

The governing board of the authority is composed of nine persons appointed by the Governor subject to confirmation by the Senate. Members of the CMA are not compensated for performance of their duties but they are paid expenses incurred while engaged in the performance of such duties pursuant to s. 112.061, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 216.136, F.S., to require the Criminal Justice Estimating Conference to develop projections of prison admissions and populations for elderly felony offenders.

Section 2 deletes s. 921.0021(7)(c), F.S., removing the prohibition against assessing victim injury points for sexual penetration or sexual contact in calculating the sentencing score for Sexual Misconduct with an Inmate or Supervised Offender (s. 944.35(3)(b)2., F.S.). By definition, the offense cannot be committed without either sexual contact or sexual penetration. Currently, in almost all cases the sentencing range would be limited to a nonprison sanction because no more than 22 sentencing points would be scored. The amendment significantly changes the sentencing range:

- If there was sexual contact, the offender would have a minimum of 44 sentencing points (four points for the base offense plus 40 victim injury points). A total sentencing score of 44 would allow the judge to impose any sentence from a nonprison sanction to the five year maximum prison sentence. If there are additional sentencing points, a prison sentence would be required unless the judge finds statutory grounds for a departure below the minimum permissible sentence.

⁷ The first two paragraphs of this section and the designated quote are from the State of Florida, Correctional Medical Authority 2012-2013 Annual Report and Report on Aging Inmates, http://www.flgov.com/wp-content/uploads/pdfs/correctional_medical_authority_2012-2013_annual_report.pdf

- If there was sexual penetration, the offender would have a minimum of 84 sentencing points (four points for the base offense plus 80 victim injury points). A total sentencing score of 84 would permit the judge to impose any sentence from 42 months in prison to the five year maximum prison sentence.

Section 3 amends s. 944.275, F.S., to allow inmates sentenced for an offense committed on or after October 1, 1995, to be eligible for education attainment gain-time in the amount of 60 days. If this bill becomes law, an inmate may receive a one-time award of 60 days of gain-time for receiving a General Education Development (GED) diploma or for earning a certificate for completion of a vocational program. Under current law, inmates whose offense was committed on or after October 1, 1995, are not eligible for this one-time award.

Section 4 creates a new third degree felony for an employee of the department, private provider, or private correctional facility who knowingly, and with the intent to cause an inmate great bodily harm, permanent disability, or permanent disfigurement, withholds food, water, clothing, shelter, supervision, medicine, or medical services from the inmate and causes an inmate to suffer great bodily harm, permanent disability, or permanent disfigurement by such action.

Section 5 amends s. 945.6031, F.S., to change the CMA's frequency of surveys of the physical and mental health care system at each institution from every three years to every 18 months.

Section 6 conforms a cross reference.

Section 7, 8, 9 reenacts ss. 944.023, 435.04, and 921.022, F.S., for the purpose of incorporating amendments made in the bill.

Section 10 provides an effective date of July 1, 2016.

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:**Correctional Medical Authority**

The increase in the frequency of CMA surveys from every 4 years to every 18 months has an estimated fiscal impact of approximately \$790,000 for additional personnel and expenses.

Education Gain-time

According to the 2015 projections by the department, approximately 650 inmates will immediately receive the one-time 60 day additional gain-time award for past educational attainments. It is estimated that approximately 60 of these inmates will be immediately released due to this award since this group is within 60 days of release. In terms of future impact on prison bed space, the department estimates 24,000 inmate-days will be saved per year as a result of this bill. In other words, the average daily prison population is projected to be reduced by 66 inmates over the course of the year. Reduction of the average daily population by 66 inmates would reduce costs by approximately \$1.2 million each year at the current inmate per diem cost of \$49.49.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Between May and September, 2015, Governor Rick Scott signed three Executive Orders addressing reforms and initiatives for the Department of Corrections. Executive Order No. 15-102 addresses providing a safe and humane environment for offenders and staff and increased security. Executive Order 15-134 calls for an independent audit of the Department's operations by the National Institute of Corrections and the Association of State Correctional Administrators,⁸ and creating a partnership between the Department of Corrections, the Department of Juvenile Justice, and the Department of Children and Families to establish best management practices in order to improve mental health services using facilities in Broward County. Executive Order 15-175 is an addendum to Executive Order 15-134 and adds the Department of Health and the Agency for Health Care Administration to the partnership and expands the pilot mental health programs to Alachua and Pinellas Counties.

The study by the National Institute of Corrections (NIC) was completed pursuant to Executive Order No. 15-134. In the description of the problem the NIC stated it was to provide assistance to DOC by providing an evaluation of staffing adequacy, the application of appropriate relief

⁸ The Order establishes two prototype institutions in Lake and Liberty Counties focused on identifying and measuring enhanced operational methods.

factors consistent with national practices, and a review of the agency's use of special assignment allocations. The study made nine specific findings related to staffing and hiring practices including discontinuing the use of 12-hour shifts with its most "fervent" recommendation that Florida return to its leadership role in prison staffing protocols and performance.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 212.136, 921.0021, 944.275, 944.35, 945.6031, and 951.221.

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.



976882

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Delete line 47
and insert:
populations for elderly felony offenders. The projections shall
also include the ethnicity and health status of those elderly
offenders.



328176

LEGISLATIVE ACTION

Senate

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. .
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. .

House

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

Senate Amendment (with title amendment)

Between lines 85 and 86

insert:

Section 3. Section 943.11, Florida Statutes, is amended to read:

943.11 Criminal Justice Standards and Training Commission; membership; meetings; compensation.—

(1) (a) There is created a Criminal Justice Standards and Training Commission within the Department of Law Enforcement.



328176

11 The commission shall be composed of 21 ~~19~~ members, consisting of
12 the Secretary of Corrections or a designated assistant; the
13 Attorney General or a designee; the Director of the Division of
14 the Florida Highway Patrol; 1 circuit court judge with past
15 criminal jurisdiction designated by the Office of the State
16 Court Administrator; 1 state attorney designated by the Florida
17 Prosecuting Attorneys Association; and 16 members appointed by
18 the Governor, consisting of 3 sheriffs; 3 chiefs of police; 5
19 law enforcement officers who are of the rank of captain ~~sergeant~~
20 or below within the employing agency; 2 correctional officers, 1
21 of whom is an administrator of a state correctional institution
22 and 1 of whom is of the rank of captain ~~sergeant~~ or below within
23 the employing agency; ~~1 training center director;~~ 1 person who
24 is in charge of a county correctional institution; ~~and~~ 2
25 residents ~~1 resident~~ of the state who have never been employed
26 by any of the departments, institutions, or agencies in any
27 ~~falls into none~~ of the foregoing classifications. Prior to the
28 appointment, the sheriff, chief of police, law enforcement
29 officer, and correctional officer members must have had at least
30 4 years' experience as law enforcement officers or correctional
31 officers.

32 (b) The Governor, in making appointments under this
33 section, shall take into consideration representation by
34 geography, population, and other relevant factors in order that
35 the representation on the commission be apportioned to give
36 representation to the state at large rather than to a particular
37 area. Of the appointed members, and except for correctional
38 officers of a state institution, there may be only one
39 appointment from any employing agency.



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40 1. In appointing one circuit judge, the Governor shall
41 choose the appointment from a list of two nominees submitted by
42 the Office of the State Court Administrator. The Office of the
43 State Court Administrator shall submit its list of two nominees
44 at least three months before the expiration of the term of any
45 circuit judge.

46 2. In appointing one state attorney, the Governor shall
47 choose the appointment from a list of two nominees submitted by
48 the Florida Prosecuting Attorneys Association. The Florida
49 Prosecuting Attorneys Association shall submit its list of two
50 nominees at least 3 months before the expiration of the term of
51 any state attorney.

52 3. 1. In appointing the three sheriffs, the Governor shall
53 choose each appointment from a list of six nominees submitted by
54 the Florida Sheriffs Association. The Florida Sheriffs
55 Association shall submit its list of six nominees at least 3
56 months before the expiration of the term of any sheriff member.

57 4. 2. In appointing the three chiefs of police, the
58 Governor shall choose each appointment from a list of six
59 nominees submitted by the Florida Police Chiefs Association. The
60 Florida Police Chiefs Association shall submit its list of six
61 nominees at least 3 months before the expiration of the term of
62 any police chief member.

63 5. 3. In appointing the five law enforcement officers and
64 one correctional officer of the rank of captain ~~sergeant~~ or
65 below, the Governor shall choose each appointment from a list of
66 six nominees submitted by a committee comprised of three members
67 of the collective bargaining agent for the largest number of
68 certified law enforcement bargaining units, two members of the



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69 collective bargaining agent for the second largest number of
70 certified law enforcement bargaining units, and one member of
71 the collective bargaining agent representing the largest number
72 of state law enforcement officers in certified law enforcement
73 bargaining units. At least one of the names submitted for each
74 of the five appointments who are law enforcement officers must
75 be an officer who is not in a collective bargaining unit.

76 (c) Members appointed by the Governor shall be appointed
77 for terms of 4 years, and no member shall serve beyond the time
78 he or she ceases to hold the office or employment by reason of
79 which the member was eligible for appointment to the commission.
80 Any member appointed to fill a vacancy occurring because of
81 death, resignation, or ineligibility for membership shall serve
82 only for the unexpired term of his or her predecessor.

83 (d) Each member appointed by the Governor shall be
84 accountable to the Governor for the proper performance of the
85 duties of his or her office. The Governor may remove from office
86 any such member for malfeasance, misfeasance, neglect of duty,
87 incompetence, or permanent inability to perform official duties
88 or for pleading guilty or nolo contendere to, or being found
89 guilty of, a felony.

90 (e) Membership on the commission shall be construed as an
91 extension of the duties of the office by which the member was
92 appointed to the commission. Membership on the commission does
93 not disqualify a member from holding any other public office or
94 being employed by a public entity, except that no member of the
95 Legislature shall serve on the commission. The Legislature finds
96 that the commission serves a state, county, and municipal
97 purpose and that service on the commission is consistent with a



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98 member's principal service in a public office or employment.

99 (f) Members of the commission shall serve without
100 compensation but shall be entitled to be reimbursed for per diem
101 and travel expenses as provided by s. 112.061.

102 (2) The commission shall annually elect its chair and other
103 officers. The commission shall hold at least four regular
104 meetings each year at the call of the chair or upon the written
105 request of three members of the commission. A majority of the
106 members of the commission constitutes a quorum.

107 (3) The Department of Legal Affairs shall serve as legal
108 counsel to the commission.

109

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

111 And the title is amended as follows:

112 Delete lines 1 - 12

113 and insert:

114 An act relating to criminal justice; amending s.
115 216.136, F.S.; requiring the Criminal Justice
116 Estimating Conference to develop projections of prison
117 admissions and populations for elderly felony
118 offenders; amending s. 921.0021, F.S.; revising the
119 definition of "victim injury" by removing a
120 prohibition on assessing certain victim injury
121 sentence points for sexual misconduct by an employee
122 of the Department of Corrections or a private
123 correctional facility with an inmate or an offender
124 supervised by the department; conforming a provision
125 to changes made by the act; amending s. 943.11, F.S.;
126 modifying the composition of the Criminal Justice



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127 Standards and Training Commission; adding to the
128 commission a circuit court judge, a state attorney and
129 additional resident of the state; specifying that the
130 Governor choose the newly added appointments from
131 lists submitted by the Office of the State Court
132 Administrator and from the Florida Prosecuting
133 Attorneys Association; requiring residents serving on
134 the commission to have never been employed with
135 certain departments, institutions, or agencies;
136 removing the training center director from the
137 commission; requiring that the 5 law enforcement
138 officers and one correctional officer appointed to the
139 commission be of the rank of captain or below;
140 amending s.



723682

LEGISLATIVE ACTION

Senate

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. .
. .

House

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

1 **Senate Substitute for Amendment (328176) (with title**
2 **amendment)**

3
4 Between lines 85 and 86
5 insert:

6 Section 3. Section 943.11, Florida Statutes, is amended to
7 read:

8 943.11 Criminal Justice Standards and Training Commission;
9 membership; meetings; compensation.—

10 (1) (a) There is created a Criminal Justice Standards and



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11 Training Commission within the Department of Law Enforcement.
12 The commission shall be composed of 21 ~~19~~ members, consisting of
13 the Secretary of Corrections or a designated assistant; the
14 Attorney General or a designee; the Director of the Division of
15 the Florida Highway Patrol; 1 circuit court judge with past
16 criminal jurisdiction designated by the Office of the State
17 Court Administrator; 1 state attorney designated by the Florida
18 Prosecuting Attorneys Association; and 16 members appointed by
19 the Governor, consisting of 3 sheriffs; 3 chiefs of police; 6 ~~5~~
20 law enforcement officers or correctional officers who are of the
21 rank of captain ~~sergeant~~ or below within the employing agency; 2
22 correctional officers, 1 of whom is an administrator of a state
23 correctional institution and 1 of whom ~~is of the rank of~~
24 ~~sergeant or below within the employing agency; 1 training center~~
25 ~~director; 1 person who~~ is in charge of a county correctional
26 institution; and 2 residents ~~1 resident~~ of the state who have
27 never been employed by any of the departments, institutions, or
28 agencies in any ~~falls into none~~ of the foregoing
29 classifications. Prior to the appointment, the sheriff, chief of
30 police, law enforcement officer, and correctional officer
31 members must have had at least 4 years' experience as law
32 enforcement officers or correctional officers.

33 (b) The Governor, in making appointments under this
34 section, shall take into consideration representation by
35 geography, population, and other relevant factors in order that
36 the representation on the commission be apportioned to give
37 representation to the state at large rather than to a particular
38 area. Of the appointed members, and except for correctional
39 officers of a state institution, there may be only one



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40 appointment from any employing agency.

41 1. In appointing one circuit judge, the Governor shall
42 choose the appointment from a list of two nominees submitted by
43 the Office of the State Court Administrator. The Office of the
44 State Court Administrator shall submit its list of two nominees
45 at least three months before the expiration of the term of any
46 circuit judge.

47 2. In appointing one state attorney, the Governor shall
48 choose the appointment from a list of two nominees submitted by
49 the Florida Prosecuting Attorneys Association. The Florida
50 Prosecuting Attorneys Association shall submit its list of two
51 nominees at least 3 months before the expiration of the term of
52 any state attorney.

53 3. ~~1.~~ In appointing the three sheriffs, the Governor shall
54 choose each appointment from a list of six nominees submitted by
55 the Florida Sheriffs Association. The Florida Sheriffs
56 Association shall submit its list of six nominees at least 3
57 months before the expiration of the term of any sheriff member.

58 4. ~~2.~~ In appointing the three chiefs of police, the
59 Governor shall choose each appointment from a list of six
60 nominees submitted by the Florida Police Chiefs Association. The
61 Florida Police Chiefs Association shall submit its list of six
62 nominees at least 3 months before the expiration of the term of
63 any police chief member.

64 5. ~~3.~~ For appointments made on or after July 1, 2016, in
65 appointing the ~~five~~ law enforcement officers and ~~one~~
66 correctional officers ~~officer~~ of the rank of captain ~~sergeant~~ or
67 below, the Governor shall choose each appointment from a list of
68 six nominees submitted by a committee comprised of three members



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69 of the collective bargaining agent for the largest number of
70 certified law enforcement or correctional officer bargaining
71 units, two members of the collective bargaining agent for the
72 second largest number of certified law enforcement or
73 correctional officer bargaining units, and one member of the
74 collective bargaining agent representing the largest number of
75 state law enforcement officers or correctional officers in
76 certified law enforcement bargaining units. At least one of the
77 names submitted for each of the six ~~five~~ appointments who are
78 law enforcement officers or correctional officers must be an
79 officer who is not in a collective bargaining unit.

80 (c) Members appointed by the Governor shall be appointed
81 for terms of 4 years, and no member shall serve beyond the time
82 he or she ceases to hold the office or employment by reason of
83 which the member was eligible for appointment to the commission.
84 Any member appointed to fill a vacancy occurring because of
85 death, resignation, or ineligibility for membership shall serve
86 only for the unexpired term of his or her predecessor.

87 (d) Each member appointed by the Governor shall be
88 accountable to the Governor for the proper performance of the
89 duties of his or her office. The Governor may remove from office
90 any such member for malfeasance, misfeasance, neglect of duty,
91 incompetence, or permanent inability to perform official duties
92 or for pleading guilty or nolo contendere to, or being found
93 guilty of, a felony.

94 (e) Membership on the commission shall be construed as an
95 extension of the duties of the office by which the member was
96 appointed to the commission. Membership on the commission does
97 not disqualify a member from holding any other public office or



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98 being employed by a public entity, except that no member of the
99 Legislature shall serve on the commission. The Legislature finds
100 that the commission serves a state, county, and municipal
101 purpose and that service on the commission is consistent with a
102 member's principal service in a public office or employment.

103 (f) Members of the commission shall serve without
104 compensation but shall be entitled to be reimbursed for per diem
105 and travel expenses as provided by s. 112.061.

106 (2) The commission shall annually elect its chair and other
107 officers. The commission shall hold at least four regular
108 meetings each year at the call of the chair or upon the written
109 request of three members of the commission. A majority of the
110 members of the commission constitutes a quorum.

111 (3) The Department of Legal Affairs shall serve as legal
112 counsel to the commission.

113

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

115 And the title is amended as follows:

116 Delete lines 1 - 12

117 and insert:

118 An act relating to criminal justice; amending s.
119 216.136, F.S.; requiring the Criminal Justice
120 Estimating Conference to develop projections of prison
121 admissions and populations for elderly felony
122 offenders; amending s. 921.0021, F.S.; revising the
123 definition of "victim injury" by removing a
124 prohibition on assessing certain victim injury
125 sentence points for sexual misconduct by an employee
126 of the Department of Corrections or a private



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127 correctional facility with an inmate or an offender
128 supervised by the department; conforming a provision
129 to changes made by the act; amending s. 943.11, F.S.;
130 modifying the composition of the Criminal Justice
131 Standards and Training Commission; adding to the
132 commission a circuit court judge, a state attorney and
133 additional resident of the state; specifying that the
134 Governor choose the newly added appointments from
135 lists submitted by the Office of the State Court
136 Administrator and from the Florida Prosecuting
137 Attorneys Association; requiring residents serving on
138 the commission to have never been employed with
139 certain departments, institutions, or agencies;
140 removing the training center director from the
141 commission; requiring that the 6 law enforcement
142 officers and one correctional officer appointed to the
143 commission be of the rank of captain or below;
144 amending s.

FOR CONSIDERATION By the Committee on Criminal Justice

591-00528-16

20167006pb

1 A bill to be entitled
2 An act relating to corrections; amending s. 216.136,
3 F.S.; requiring the Criminal Justice Estimating
4 Conference to develop projections of prison admissions
5 and populations for elderly felony offenders; amending
6 s. 921.0021, F.S.; revising the definition of "victim
7 injury" by removing a prohibition on assessing certain
8 victim injury sentence points for sexual misconduct by
9 an employee of the Department of Corrections or a
10 private correctional facility with an inmate or an
11 offender supervised by the department; conforming a
12 provision to changes made by the act; amending s.
13 944.275, F.S.; prohibiting an inmate from receiving
14 incentive gain-time for completing the requirements
15 for and receiving a high school equivalency diploma or
16 vocational certificate if the inmate is convicted of a
17 specified offense on or after a specified date;
18 amending s. 944.35, F.S.; expanding applicability of a
19 current felony offense to include employees of private
20 providers and private correctional facilities;
21 creating criminal penalties for employees who
22 knowingly and with the intent to cause specified harm
23 withhold food, water, or essential services from an
24 inmate; amending s. 945.6031, F.S.; increasing the
25 frequency of required surveys of health care systems
26 at correctional institutions; amending s. 951.221,
27 F.S.; conforming a cross-reference; reenacting s.
28 944.023(1)(a), F.S., relating to the definition of the
29 term "Criminal Justice Estimating Conference", to

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30 incorporate the amendment made to s. 216.136, F.S., in
31 a reference thereto; reenacting ss. 435.04(2)(uu) and
32 921.0022(3)(f), F.S., relating to level 2 screening
33 standards and level 6 of the offense severity ranking
34 chart, respectively, to incorporate the amendment made
35 to s. 944.35, F.S., in references thereto; providing
36 an effective date.

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

39
40 Section 1. Paragraph (d) is added to subsection (5) of
41 section 216.136, Florida Statutes, to read:

42 216.136 Consensus estimating conferences; duties and
43 principals.—

44 (5) CRIMINAL JUSTICE ESTIMATING CONFERENCE.—The Criminal
45 Justice Estimating Conference shall:

46 (d) Develop projections of prison admissions and
47 populations for elderly felony offenders.

48 Section 2. Subsection (7) of section 921.0021, Florida
49 Statutes, is amended to read:

50 921.0021 Definitions.—As used in this chapter, for any
51 felony offense, except any capital felony, committed on or after
52 October 1, 1998, the term:

53 (7) (a) "Victim injury" means the physical injury or death
54 suffered by a person as a direct result of the primary offense,
55 or any additional offense, for which an offender is convicted
56 and which is pending before the court for sentencing at the time
57 of the primary offense.

58 (b) Except as provided in paragraph (c): ~~or paragraph (d),~~

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59 1. If the conviction is for an offense involving sexual
60 contact that includes sexual penetration, the sexual penetration
61 must be scored in accordance with the sentence points provided
62 under s. 921.0024 for sexual penetration, regardless of whether
63 there is evidence of any physical injury.

64 2. If the conviction is for an offense involving sexual
65 contact that does not include sexual penetration, the sexual
66 contact must be scored in accordance with the sentence points
67 provided under s. 921.0024 for sexual contact, regardless of
68 whether there is evidence of any physical injury.

69
70 If the victim of an offense involving sexual contact suffers any
71 physical injury as a direct result of the primary offense or any
72 additional offense committed by the offender resulting in
73 conviction, such physical injury must be scored separately and
74 in addition to the points scored for the sexual contact or the
75 sexual penetration.

76 ~~(c) The sentence points provided under s. 921.0024 for~~
77 ~~sexual contact or sexual penetration may not be assessed for a~~
78 ~~violation of s. 944.35(3)(b)2.~~

79 (c)~~(d)~~ If the conviction is for the offense described in s.
80 872.06, the sentence points provided under s. 921.0024 for
81 sexual contact or sexual penetration may not be assessed.

82 (d)~~(e)~~ Notwithstanding paragraph (a), if the conviction is
83 for an offense described in s. 316.027 and the court finds that
84 the offender caused victim injury, sentence points for victim
85 injury may be assessed against the offender.

86 Section 3. Paragraphs (d) and (e) of subsection (4) of
87 section 944.275, Florida Statutes, are amended, and paragraph

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88 (b) of that subsection is republished, to read:

89 944.275 Gain-time.—

90 (4)

91 (b) For each month in which an inmate works diligently,
92 participates in training, uses time constructively, or otherwise
93 engages in positive activities, the department may grant
94 incentive gain-time in accordance with this paragraph. The rate
95 of incentive gain-time in effect on the date the inmate
96 committed the offense which resulted in his or her incarceration
97 shall be the inmate's rate of eligibility to earn incentive
98 gain-time throughout the period of incarceration and shall not
99 be altered by a subsequent change in the severity level of the
100 offense for which the inmate was sentenced.

101 1. For sentences imposed for offenses committed prior to
102 January 1, 1994, up to 20 days of incentive gain-time may be
103 granted. If granted, such gain-time shall be credited and
104 applied monthly.

105 2. For sentences imposed for offenses committed on or after
106 January 1, 1994, and before October 1, 1995:

107 a. For offenses ranked in offense severity levels 1 through
108 7, under former s. 921.0012 or former s. 921.0013, up to 25 days
109 of incentive gain-time may be granted. If granted, such gain-
110 time shall be credited and applied monthly.

111 b. For offenses ranked in offense severity levels 8, 9, and
112 10, under former s. 921.0012 or former s. 921.0013, up to 20
113 days of incentive gain-time may be granted. If granted, such
114 gain-time shall be credited and applied monthly.

115 3. For sentences imposed for offenses committed on or after
116 October 1, 1995, the department may grant up to 10 days per

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117 month of incentive gain-time, except that no prisoner is
118 eligible to earn any type of gain-time in an amount that would
119 cause a sentence to expire, end, or terminate, or that would
120 result in a prisoner's release, prior to serving a minimum of 85
121 percent of the sentence imposed. For purposes of this
122 subparagraph, credits awarded by the court for time physically
123 incarcerated shall be credited toward satisfaction of 85 percent
124 of the sentence imposed. Except as provided by this section, a
125 prisoner shall not accumulate further gain-time awards at any
126 point when the tentative release date is the same as that date
127 at which the prisoner will have served 85 percent of the
128 sentence imposed. State prisoners sentenced to life imprisonment
129 shall be incarcerated for the rest of their natural lives,
130 unless granted pardon or clemency.

131 (d) Notwithstanding paragraph (b) ~~subparagraphs (b)1. and~~
132 ~~2.~~, the education program manager shall recommend, and the
133 Department of Corrections may grant, a one-time award of 60
134 additional days of incentive gain-time to an inmate who is
135 otherwise eligible and who successfully completes requirements
136 for and is awarded a high school equivalency diploma or
137 vocational certificate. This incentive gain-time award may be
138 granted to reduce any sentence for an offense committed on or
139 after October 1, 1995. However, this gain-time may not be
140 granted to reduce any sentence for an offense committed on or
141 after October 1, 1995, if the inmate is, or has previously been,
142 convicted of a violation of s. 794.011, s. 794.05, former s.
143 796.03, former s. 796.035, s. 800.04, s. 825.1025, s. 827.03, s.
144 827.071, s. 847.0133, s. 847.0135, s. 847.0137, s. 847.0138, s.
145 847.0145, or s. 985.701(1), or a forcible felony offense that is

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146 specified in s. 776.08, except burglary as specified in s.
147 810.02(4). An inmate subject to the 85 percent minimum service
148 requirement pursuant to subparagraph (b)3. may not accumulate
149 gain-time awards at any point when the tentative release date is
150 the same as the 85 percent minimum service date of the sentence
151 imposed. Under no circumstances may an inmate receive more than
152 60 days for educational attainment pursuant to this section.

153 (e) Notwithstanding subparagraph (b)3. and paragraph (d),
154 for sentences imposed for offenses committed on or after October
155 1, 2014, the department may not grant incentive gain-time if the
156 offense is a violation of s. 782.04(1)(a)2.c.; s. 787.01(3)(a)2.
157 or 3.; s. 787.02(3)(a)2. or 3.; s. 794.011, excluding s.
158 794.011(10); s. 800.04; s. 825.1025; or s. 847.0135(5).

159 Section 4. Subsection (3) of section 944.35, Florida
160 Statutes, is amended to read:

161 944.35 Authorized use of force; malicious battery and
162 sexual misconduct prohibited; reporting required; penalties.—

163 (3)(a)1. Any employee of the department, a private
164 provider, or private correctional facility who, with malicious
165 intent, commits a battery upon an inmate or an offender
166 supervised by the department in the community, commits a
167 misdemeanor of the first degree, punishable as provided in s.
168 775.082 or s. 775.083.

169 2. Any employee of the department, a private provider, or
170 private correctional facility who, with malicious intent,
171 commits a battery or inflicts cruel or inhuman treatment by
172 neglect or otherwise, and in so doing causes great bodily harm,
173 permanent disability, or permanent disfigurement to an inmate or
174 an offender supervised by the department in the community,

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175 commits a felony of the third degree, punishable as provided in
176 s. 775.082, s. 775.083, or s. 775.084.

177 (b) An employee of the department, a private provider, or
178 private correctional facility commits a felony of the third
179 degree, punishable as provided in s. 775.082, s. 775.083, or s.
180 775.084, if the employee:

181 1. Knowingly and with the intent to cause an inmate great
182 bodily harm, permanent disability, or permanent disfigurement,
183 withholds food, water, clothing, shelter, supervision, medicine,
184 or medical services from the inmate; and

185 2. Causes an inmate to suffer great bodily harm, permanent
186 disability, or permanent disfigurement by such action.

187 (c) ~~(b)~~1. As used in this paragraph, the term "sexual
188 misconduct" means the oral, anal, or vaginal penetration by, or
189 union with, the sexual organ of another or the anal or vaginal
190 penetration of another by any other object, but does not include
191 an act done for a bona fide medical purpose or an internal
192 search conducted in the lawful performance of the employee's
193 duty.

194 2. Any employee of the department or a private correctional
195 facility as defined in s. 944.710 who engages in sexual
196 misconduct with an inmate or an offender supervised by the
197 department in the community, without committing the crime of
198 sexual battery, commits a felony of the third degree, punishable
199 as provided in s. 775.082, s. 775.083, or s. 775.084.

200 3. The consent of the inmate or offender supervised by the
201 department in the community to any act of sexual misconduct may
202 not be raised as a defense to a prosecution under this
203 paragraph.

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204 4. This paragraph does not apply to any employee of the
205 department or any employee of a private correctional facility
206 who is legally married to an inmate or an offender supervised by
207 the department in the community, nor does it apply to any
208 employee who has no knowledge, and would have no reason to
209 believe, that the person with whom the employee has engaged in
210 sexual misconduct is an inmate or an offender under community
211 supervision of the department.

212 (d)~~(d)~~ Notwithstanding prosecution, any violation of the
213 provisions of this subsection, as determined by the Public
214 Employees Relations Commission, shall constitute sufficient
215 cause under s. 110.227 for dismissal from employment with the
216 department, and such person shall not again be employed in any
217 capacity in connection with the correctional system.

218 (e)~~(d)~~ Each employee who witnesses, or has reasonable cause
219 to suspect, that an inmate or an offender under the supervision
220 of the department in the community has been unlawfully abused or
221 is the subject of sexual misconduct pursuant to this subsection
222 shall immediately prepare, date, and sign an independent report
223 specifically describing the nature of the force used or the
224 nature of the sexual misconduct, the location and time of the
225 incident, and the persons involved. The report shall be
226 delivered to the inspector general of the department with a copy
227 to be delivered to the warden of the institution or the regional
228 administrator. The inspector general shall immediately conduct
229 an appropriate investigation, and, if probable cause is
230 determined that a violation of this subsection has occurred, the
231 respective state attorney in the circuit in which the incident
232 occurred shall be notified.

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233 Section 5. Subsection (2) of section 945.6031, Florida
234 Statutes, is amended to read:

235 945.6031 Required reports and surveys.—

236 (2) The authority shall conduct surveys of the physical and
237 mental health care system at each correctional institution at
238 least every 18 months ~~triennially~~ and shall report the survey
239 findings for each institution to the Secretary of Corrections.

240 Section 6. Subsection (1) of section 951.221, Florida
241 Statutes, is amended to read:

242 951.221 Sexual misconduct between detention facility
243 employees and inmates; penalties.—

244 (1) Any employee of a county or municipal detention
245 facility or of a private detention facility under contract with
246 a county commission who engages in sexual misconduct, as defined
247 in s. 944.35(3)(c)1. ~~s. 944.35(3)(b)1.~~, with an inmate or an
248 offender supervised by the facility without committing the crime
249 of sexual battery commits a felony of the third degree,
250 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
251 The consent of an inmate to any act of sexual misconduct may not
252 be raised as a defense to prosecution under this section.

253 Section 7. For the purpose of incorporating the amendment
254 made by this act to section 216.136, Florida Statutes, in a
255 reference thereto, paragraph (a) of subsection (1) of section
256 944.023, Florida Statutes, is reenacted to read:

257 944.023 Comprehensive correctional master plan.—

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

259 (a) "Criminal Justice Estimating Conference" means the
260 Criminal Justice Estimating Conference referred to in s.
261 216.136(5).

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262 Section 8. For the purpose of incorporating the amendment
 263 made by this act to section 944.35, Florida Statutes, in a
 264 reference thereto, paragraph (uu) of subsection (2) of section
 265 435.04, Florida Statutes, is reenacted to read:

266 435.04 Level 2 screening standards.—

267 (2) The security background investigations under this
 268 section must ensure that no persons subject to the provisions of
 269 this section have been arrested for and are awaiting final
 270 disposition of, have been found guilty of, regardless of
 271 adjudication, or entered a plea of nolo contendere or guilty to,
 272 or have been adjudicated delinquent and the record has not been
 273 sealed or expunged for, any offense prohibited under any of the
 274 following provisions of state law or similar law of another
 275 jurisdiction:

276 (uu) Section 944.35(3), relating to inflicting cruel or
 277 inhuman treatment on an inmate resulting in great bodily harm.

278 Section 9. For the purpose of incorporating the amendment
 279 made by this act to section 944.35, Florida Statutes, in a
 280 reference thereto, paragraph (f) of subsection (3) of section
 281 921.0022, Florida Statutes, is reenacted to read:

282 921.0022 Criminal Punishment Code; offense severity ranking
 283 chart.—

284 (3) OFFENSE SEVERITY RANKING CHART

285 (f) LEVEL 6

286

Florida	Felony	
Statute	Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a

287

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crash involving serious
bodily injury.

288

316.193 (2) (b)

3rd

Felony DUI, 4th or
subsequent conviction.

289

400.9935 (4) (c)

2nd

Operating a clinic, or
offering services
requiring licensure,
without a license.

290

499.0051 (3)

2nd

Knowing forgery of
pedigree papers.

291

499.0051 (4)

2nd

Knowing purchase or
receipt of prescription
drug from unauthorized
person.

292

499.0051 (5)

2nd

Knowing sale or transfer
of prescription drug to
unauthorized person.

293

775.0875 (1)

3rd

Taking firearm from law
enforcement officer.

294

784.021 (1) (a)

3rd

Aggravated assault;
deadly weapon without
intent to kill.

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

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784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083 (2)	2nd	Aggravated assault on code inspector.
787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
790.164 (1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.

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310	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
311	794.011 (8) (a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
312	794.05 (1)	2nd	Unlawful sexual activity with specified minor.
313	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.
314	800.04 (6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
315	806.031 (2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.

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316	810.02 (3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
317	810.145 (8) (b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
318	812.014 (2) (b) 1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
319	812.014 (6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
320	812.015 (9) (a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
321	812.015 (9) (b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
	812.13 (2) (c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).

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322

817.4821 (5) 2nd Possess cloning paraphernalia with intent to create cloned cellular telephones.

323

825.102 (1) 3rd Abuse of an elderly person or disabled adult.

324

825.102 (3) (c) 3rd Neglect of an elderly person or disabled adult.

325

825.1025 (3) 3rd Lewd or lascivious molestation of an elderly person or disabled adult.

326

825.103 (3) (c) 3rd Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.

327

827.03 (2) (c) 3rd Abuse of a child.

328

827.03 (2) (d) 3rd Neglect of a child.

329

827.071 (2) & (3) 2nd Use or induce a child in

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a sexual performance, or
promote or direct such
performance.

330

836.05

2nd

Threats; extortion.

331

836.10

2nd

Written threats to kill
or do bodily injury.

332

843.12

3rd

Aids or assists person
to escape.

333

847.011

3rd

Distributing, offering
to distribute, or
possessing with intent
to distribute obscene
materials depicting
minors.

334

847.012

3rd

Knowingly using a minor
in the production of
materials harmful to
minors.

335

847.0135(2)

3rd

Facilitates sexual
conduct of or with a
minor or the visual
depiction of such
conduct.

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336

914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
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337

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.
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338

944.40	2nd	Escapes.
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339

944.46	3rd	Harboring, concealing, aiding escaped prisoners.
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340

944.47 (1) (a) 5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
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341

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

342

343

344

Section 10. This act shall take effect July 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

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

11.2.15

Meeting Date

7006

Bill Number (if applicable)

Topic Corrections

723682

Amendment Barcode (if applicable)

Name Ken Ropczynski "Cope-CHEN-ski"

Job Title Lobbyist

Address 300 East Brevard St

Phone 222-3329

Street

Tallah

FL

32301

Email

City

State

Zip

Speaking: For Against Information

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

Representing FLA PBA

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)

Nov. 2, 2015

Meeting Date

7006
Bill Number (if applicable)

723682
Amendment Barcode (if applicable)

Topic Corrections

Name Amy Mercer

Job Title Executive Director

Address 2636 Mitcham Drive

Phone 850-219-3631

Tallahassee FL 32308
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)

2 Nov 15

Meeting Date

SPB7006

Bill Number (if applicable)

Topic Corrections

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 204 S. Monroe, Ste. 201

Phone 850/577-3032

Street

Tall

City

FL

State

32301

Zip

Email barney@smartjustice

allowance.org

Speaking: For Against Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7022

INTRODUCER: For consideration by the Criminal Justice Committee

SUBJECT: OGSR/Agency Photograph, Video, or Audio Recording/Killing of a Person

DATE: October 30, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Dugger	Cannon		Pre-meeting

I. Summary:

SPB 7022 is the result of an Open Government Sunset Review of s. 406.136, F.S., performed by the Criminal Justice Committee. That section makes confidential and exempt photographs and video and audio recordings of the killing of a person when held by an agency. It permits a surviving spouse to view and copy these records. If there is no surviving spouse, then the deceased's surviving parents may view and copy them. If there are no surviving parents, then an adult child of the deceased may view and copy them. The surviving relative who has the authority to view and copy these records is authorized to designate in writing an agent to obtain them. Additionally, federal, state, and local governmental agencies, upon written request, may have access to these records in the performance of their duties and responsibilities. Other than these exceptions, the custodian is prohibited from releasing the records to any other person not authorized under the exemption without a court order.¹ This exemption is subject to review under the Open Government Sunset Review Act.² It will expire on October 2, 2016, unless the Legislature reviews and reenacts it.

The bill reenacts the exemption.

It does not expand the scope of the public records exemption and therefore does not require a two-thirds vote of each house of the Legislature for passage.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.³ This applies to the official business

¹ Section 406.136, F.S.

² Section 119.15, F.S.

³ FLA. CONST., art. I, s. 24(a).

of any public body, officer or employee of the state, including all three branches of state government, local governmental entities and any person acting on behalf of the government.⁴

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.⁵ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁶ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁷

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁸ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁹ A violation of the Public Records Act may result in civil or criminal liability.¹⁰

The Legislature may create an exemption to public records requirements.¹¹ An exemption must pass by a two-thirds vote of the House and the Senate.¹² In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹³ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹⁴

⁴ FLA. CONST., art. I, s. 24(a).

⁵ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁶ Public records laws are found throughout the Florida Statutes.

⁷ Section 119.01(1), F.S.

⁸ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁹ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

¹⁰ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹¹ FLA. CONST., art. I, s. 24(c).

¹² FLA. CONST., art. I, s. 24(c).

¹³ FLA. CONST., art. I, s. 24(c).

¹⁴ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹⁵ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian.¹⁶

Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR).

The OGSR prescribes a legislative review process for newly created or substantially amended public records.¹⁷ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁸ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

Under the OGSR the purpose and necessity of reenacting the exemption are reviewed. The Legislature must consider the following questions during its review of an exemption:¹⁹

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.²⁰ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.²¹

¹⁵ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

¹⁷ Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one legislature cannot bind a future legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(a), F.S.

²⁰ FLA. CONST., art. I, s. 24(c).

²¹ Section 119.15(7), F.S.

Current Exemption Under Review

In 2011, the Legislature created a public record exemption for photographs and video and audio recordings that depict or record the killing of a person when held by an agency.²² These photographs and video and audio recordings are confidential and exempt from public records requirements, except that the exemption permits a surviving spouse to view, listen, and copy these photographs and video and audio recordings.²³ If there is no surviving spouse, then the deceased's surviving parents may view and copy them. If there are no surviving parents, then an adult child of the deceased may view and copy them.²⁴ The surviving relative who has the authority to view and copy these records is authorized to designate in writing an agent to obtain them.²⁵

Additionally, federal, state, and local governmental agencies, upon written request, may have access to these records in the performance of their duties and responsibilities. The identity of the deceased must remain confidential and exempt.²⁶

Persons other than those covered by the exceptions above have access to the photographs and recordings only with a court order upon a showing of good cause and are limited by any restrictions or stipulations that the court deems appropriate. In determining good cause, the court must consider the following:

- Whether such disclosure is necessary for the public evaluation of governmental performance;
- The seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available; and
- The availability of similar information in other public records, regardless of form.²⁷

The specified family members must be given reasonable notice of a petition requesting access to the photographs and recordings, a copy of the petition, and the opportunity to be present and heard at any hearing on the matter.²⁸ Such access, if granted by the court, must be performed under the direct supervision of the custodian of the record or his or her designee.²⁹

It is a third degree felony for any custodian of a photograph, video, or audio recording to willingly and knowingly violate these provisions. The same penalty applies to anyone who willingly and knowingly violates a court order issued under these provisions.³⁰

The exemption does not apply to photographs or video or audio recordings submitted as part of a criminal or administrative proceeding; however, nothing prohibits a court in such proceedings from restricting the disclosure of a killing, crime scene, or similar photograph or video or audio

²² Ch. 2011-115, s. 1, Laws of Fla. (creating s. 406.136, F.S., effective July 1, 2011). "Killing of a person" is defined to mean "all acts or events that cause or otherwise relate to the death of any human being, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death." s. 406.136(1), F.S.

²³ Section 406.136(2), F.S.

²⁴ *Id.*

²⁵ Section 406.136(3), F.S.

²⁶ *Id.*

²⁷ Section 406.136(4), F.S.

²⁸ Section 406.136(5), F.S.

²⁹ Section 406.136(4)(c), F.S.

³⁰ Section 406.136(6), F.S.

recording.³¹ The exemption is retroactive, except that it is not intended to overturn, abrogate, or alter any existing court order in effect on July 1, 2011, that restricts or limits access to any such photograph or recording.³²

The exemption is patterned after the public record exemption created earlier in s. 406.135, F.S., relating to photographs and video and audio recordings of an autopsy held by a medical examiner.³³ The same justification that was used in the public necessity statement for autopsy photographs was also used for the exemption under review:

... photographs or video or audio recordings that depict or record the killing of any person render a visual or aural representation of the deceased in graphic and often disturbing fashion. Such photographs or video or audio recordings provide a view of the deceased in the final moments of life, often bruised, bloodied, broken, with bullet wounds or other wounds, cut open, dismembered, or decapitated. As such, photographs or video or audio recordings that depict or record the killing of any person are highly sensitive representations of the deceased which, if heard, viewed, copied, or publicized, could result in trauma, sorrow, humiliation, or emotional injury to the immediate family of the deceased, as well as injury to the memory of the deceased. The Legislature recognizes that the existence of the World Wide Web and the proliferation of personal computers throughout the world encourages and promotes the wide dissemination of such photographs and video and audio recordings 24 hours a day and that widespread unauthorized dissemination of photographs and video and audio recordings would subject the immediate family of the deceased to continuous injury. The Legislature further recognizes that there continue to be other types of available information, such as crime scene reports, which are less intrusive and injurious to the immediate family members of the deceased and which continue to provide for public oversight.³⁴

The exemption is subject to the Open Government Sunset Review Act and as such, will be repealed on October 2, 2016, unless reviewed and reenacted by the Legislature.³⁵

Based upon the Open Government Sunset Review of the exemption, professional staff of the Senate Criminal Justice Committee recommends that the Legislature retain the public records exemption created in s. 406.136, F.S. This recommendation is made in light of information gathered for the Open Government Sunset Review, indicating that there is a public necessity to continue protecting photographs and video and audio recordings that depict or record the killing of any person when held by an agency because they are highly sensitive and personal representations of the deceased. As such, widespread and continuous display of these

³¹ *Id.* In *State v. Schenecker*, No. 11-CF-001376A (Fla. 13th Cir.Ct. August 3, 2011), *cert. denied sub nom.*, *Media General Operations v. State*, 71 So. 3d 124 (Fla. 2d DCA 2011), the circuit court applied the exemption to crime scene photographs of homicide victims.

³² Section 406.136(7), F.S.

³³ Chapter 2001-1, s. 1, Laws of Fla.

³⁴ Chapter 2011-115, s. 2, Laws of Fla.

³⁵ Section 406.136(9), F.S.

photographs or recordings subjects the surviving family members to unwarranted trauma and emotional distress and harms the memory of the deceased.³⁶

III. Effect of Proposed Changes:

The bill reenacts the public records exemption in s. 406.136, F.S., which provides that photographs and video and audio recordings that depict or record the killing of any person when held by an agency are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, except they are accessible to certain specified family members of the deceased person and public governmental agencies without a court order. The bill also amends s. 406.136, F.S., to remove the sentence that requires its repeal.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

In *Campus Communications, Inc., v. Earnhardt*,³⁷ the Fifth District Court of Appeal upheld the law this exemption is patterned after (which exempts autopsy photographs and video and audio recordings) against an unconstitutional overbreadth challenge brought by a newspaper. The court held that the newspaper had not established good cause to view or copy the photographs and that the exemption applied retroactively.³⁸ The court found that s. 406.135, F.S., met constitutional and statutory requirements that the exemption is no broader than necessary to meet its public purpose, even though not all autopsy recordings are graphic and result in trauma when viewed. The court also found that the Legislature stated with specificity the public necessity justifying the exemption in ch. 2001-1, L.O.F.³⁹ Furthermore, the court found the statute provides for disclosure of written autopsy reports, allows for the publication of exempted records upon good cause if the requisite statutory criterion is met, and is supported by a thoroughly articulated public policy to protect against trauma that is likely to result upon disclosure to the public.⁴⁰

³⁶ According to the majority of survey responses from state agencies, state universities and colleges, municipalities, and local law enforcement agencies that receive or maintain such records, the exemption should be reenacted because it protects information that is personal and highly sensitive, the release of which subjects the surviving family members to further trauma and emotional distress. The responses were as follows: out of 23 state agencies, 10 recommended reenactment (13 were not applicable); out of 20 state university and colleges, 6 recommended reenactment (14 were not applicable); out of 109 municipalities, including 49 police departments, 34 recommended reenactment (31 were from police departments) (77 were not applicable); and out of 32 sheriff's offices, 26 recommended reenactment (6 were not applicable). Several responses had no recommendation regarding repeal or reenactment. One response recommended repealing the exemption. Several responses recommended clarifying the notification provision. Reenactment was generally recommended to continue protecting the surviving family members from emotional distress and trauma and protecting the memory of the deceased.

³⁷ *Campus Communications, Inc.*, 821 So. 2d 388, 403 (Fla. 5th DCA 2002), *review dismissed* 845 So. 2d 894 (Fla. 2003), *review denied*, 848 So. 2d 1153 (Fla. 2003) *certiorari denied* 540 U.S. 1049 (2003).

³⁸ *Id.*

³⁹ *Id.* at 395.

⁴⁰ *Id.* at 394.

The court concluded that it is the prerogative of the Legislature to determine that autopsy photographs are private and need to be protected and that this privacy right prevails over the right to inspect and copy public records. The court also stated that its function is to determine whether the Legislature made this determination in a constitutional manner. Finding that the statute was constitutionally enacted and that it was properly applied to the facts in this case, the Fifth District Court of Appeal affirmed the lower court's finding of constitutionality.⁴¹ The court went on to certify the question of constitutionality to the Florida Supreme Court. On July 1, 2003, the Florida Supreme Court, per curiam, denied review of this case, leaving in place the appellate court's holding.⁴²

This bill reenacts and amends an existing public records exemption specified in s. 406.136, F.S. The bill does not expand the scope of the exemption and therefore does not require a two-thirds vote of each house of the Legislature for passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 406.136 of the Florida Statutes.

⁴¹ *Id.* at 403.

⁴² *Campus Communications, Inc. v. Earnhardt*, 845 So. 2d 894 (Fla. 2003), *review denied*, 848 So. 2d 1153 (Fla. 2003) *certiorari denied* 540 U.S. 1049 (2003).

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.

FOR CONSIDERATION By the Committee on Criminal Justice

591-00875-16

20167022pb

1 A bill to be entitled

2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 406.136, F.S., which
4 provides an exemption from public records requirements
5 for a photograph or video or audio recording held by
6 an agency that depicts or records the killing of a
7 person; removing the scheduled repeal of the
8 exemption; providing an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Section 406.136, Florida Statutes, is amended to
13 read:

14 406.136 A photograph or video or audio recording that
15 depicts or records the killing of a person.—

16 (1) As used in this section, the term "killing of a person"
17 means all acts or events that cause or otherwise relate to the
18 death of any human being, including any related acts or events
19 immediately preceding or subsequent to the acts or events that
20 were the proximate cause of death.

21 (2) A photograph or video or audio recording that depicts
22 or records the killing of a person is confidential and exempt
23 from s. 119.07(1) and s. 24(a), Art. I of the State
24 Constitution, except that a surviving spouse of the decedent may
25 view and copy any such photograph or video recording or listen
26 to or copy any such audio recording. If there is no surviving
27 spouse, then the surviving parents shall have access to such
28 records. If there is no surviving spouse or parent, then an
29 adult child shall have access to such records.

591-00875-16

20167022pb

30 (3) (a) The deceased's surviving relative, with whom
31 authority rests to obtain such records, may designate in writing
32 an agent to obtain such records.

33 (b) A local governmental entity, or a state or federal
34 agency, in furtherance of its official duties, pursuant to a
35 written request, may view or copy a photograph or video
36 recording or may listen to or copy an audio recording of the
37 killing of a person and, unless otherwise required in the
38 performance of their duties, the identity of the deceased shall
39 remain confidential and exempt.

40 (c) The custodian of the record, or his or her designee,
41 may not permit any other person to view or copy such photograph
42 or video recording or listen to or copy such audio recording
43 without a court order.

44 (4) (a) The court, upon a showing of good cause, may issue
45 an order authorizing any person to view or copy a photograph or
46 video recording that depicts or records the killing of a person
47 or to listen to or copy an audio recording that depicts or
48 records the killing of a person and may prescribe any
49 restrictions or stipulations that the court deems appropriate.

50 (b) In determining good cause, the court shall consider:

51 1. Whether such disclosure is necessary for the public
52 evaluation of governmental performance;

53 2. The seriousness of the intrusion into the family's right
54 to privacy and whether such disclosure is the least intrusive
55 means available; and

56 3. The availability of similar information in other public
57 records, regardless of form.

58 (c) In all cases, the viewing, copying, listening to, or

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59 other handling of a photograph or video or audio recording that
60 depicts or records the killing of a person must be under the
61 direct supervision of the custodian of the record or his or her
62 designee.

63 (5) A surviving spouse shall be given reasonable notice of
64 a petition filed with the court to view or copy a photograph or
65 video recording that depicts or records the killing of a person
66 or to listen to or copy any such audio recording, a copy of such
67 petition, and reasonable notice of the opportunity to be present
68 and heard at any hearing on the matter. If there is no surviving
69 spouse, then such notice must be given to the parents of the
70 deceased and, if the deceased has no living parent, then to the
71 adult children of the deceased.

72 (6) (a) Any custodian of a photograph or video or audio
73 recording that depicts or records the killing of a person who
74 willfully and knowingly violates this section commits a felony
75 of the third degree, punishable as provided in s. 775.082, s.
76 775.083, or s. 775.084.

77 (b) Any person who willfully and knowingly violates a court
78 order issued pursuant to this section commits a felony of the
79 third degree, punishable as provided in s. 775.082, s. 775.083,
80 or s. 775.084.

81 (c) A criminal or administrative proceeding is exempt from
82 this section but, unless otherwise exempted, is subject to all
83 other provisions of chapter 119, provided however that this
84 section does not prohibit a court in a criminal or
85 administrative proceeding upon good cause shown from restricting
86 or otherwise controlling the disclosure of a killing, crime
87 scene, or similar photograph or video or audio recordings in the

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88 manner prescribed herein.

89 (7) This exemption shall be given retroactive application
90 and shall apply to all photographs or video or audio recordings
91 that depict or record the killing of a person, regardless of
92 whether the killing of the person occurred before, on, or after
93 July 1, 2011. However, nothing herein is intended to, nor may be
94 construed to, overturn or abrogate or alter any existing orders
95 duly entered into by any court of this state, as of the
96 effective date of this act, which restrict or limit access to
97 any photographs or video or audio recordings that depict or
98 record the killing of a person.

99 (8) This section only applies to such photographs and video
100 and audio recordings held by an agency as defined in s. 119.011.

101 ~~(9) This section is subject to the Open Government Sunset~~
102 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
103 ~~on October 2, 2016, unless reviewed and saved from repeal~~
104 ~~through reenactment by the Legislature.~~

105 Section 2. This act shall take effect October 1, 2016.

CourtSmart Tag Report

Room: LL 37
Caption: Senate Criminal Justice

Case No.:
Judge:

Type:

Started: 11/2/2015 1:07:00 PM

Ends: 11/2/2015 2:59:23 PM

Length: 01:52:24

1:06:59 PM Meeting called to order.
1:07:12 PM Tab 4- SB 386- Senator Detert
1:09:59 PM Thomas Fair- Former President of FI Youth Shine- Speaking in Support of Bill
1:11:03 PM Jorge Chamizo- FL Association of Criminal Defense Lawyers- Waive in Support
1:12:02 PM Samantha Sexton- Junior Leagues of FL- Waive in Support
1:12:36 PM Samantha Sexton- FJJA- Waive in Support
1:12:43 PM Honorable Nancy Daniels- FL Public Defender Assoc, Inc.- Waive in Support
1:13:02 PM Sal Nuzzo- The James Madison Institute- Waive in Support
1:13:11 PM Buddy Jacobs- State Attorneys- Waive in Support
1:13:22 PM Colleen Mackin-The Childrens Campaign- Waive in Support
1:13:44 PM Dawn Steward- Bridges of America- Waive in Support
1:14:02 PM Jennifer C Pritt- FDLE- Waive in Support
1:14:17 PM Angie Gallo-Florida PTA- Waive in Support
1:14:32 PM Barney Bishop- FI Smart Justice Alliance- Waive in Support
1:14:45 PM Christina Spudeas- Florida Childrens First- Waive in Support
1:20:19 PM SB 386 reported Unfavorable
1:21:27 PM Tab 3- SB 314- Senator Diaz de la Portilla
1:36:33 PM Greg Pound- Speaking for Information
1:38:43 PM Brian Pitts- Justice 2 Jesus- Speaking Against the Bill
1:43:56 PM Deborah Brodsky- Project on Accountable Justice- Speaking for Information on Bill
1:45:06 PM Tania Galloni- Southern Poverty Law Center- Speaking for the Bill
1:52:02 PM Sal Nuzzo- James Madison Institute- Speaking for the Bill
1:54:38 PM SB- 314 TP'ed
1:55:39 PM Tab 1-SB 122- Senator Joyner
1:59:31 PM Amendment Barcode 264680
2:00:34 PM Amendment Adopted
2:00:50 PM Brian Pitts- Justice 2 Jesus- Speaking for Information
2:03:06 PM Greg Pound- Speaking for Information
2:06:57 PM Honorable Nancy Daniels- FL Public Defender Assoc Inc- Waive in Support
2:08:27 PM CS/SB 122- Reported Favorably
2:09:11 PM Reconsideration for vote on SB 386 by Senator Clemens
2:11:45 PM SB 386 Reported Favorable
2:12:45 PM SB 314 taken back up
2:13:09 PM Honorable Nancy Daniels- FL Public Defender Assoc Inc- Speaking for the bill
2:21:10 PM Colleen Mackin- Childrens Campaign- Waive in Support
2:22:09 PM Dawn Steward- Bridges of America- Waive in Support
2:22:26 PM Samantha Sexton- FJJA and Pace Center for Girls- Waive in Support
2:22:48 PM Ingrid Delgado- FI Conference of Catholic Bishops- Waive in Support
2:23:06 PM Natalie Kato- Humans Rights Watch- Waive in Support
2:23:16 PM Jorge Chamizo- FL Assoc of Criminal Defense Lawyers- Waive in Support
2:23:26 PM Angie Gallo- FI PTA- Waive in Support
2:23:36 PM Christina Spudeas-FL Children First- Waive in Support
2:23:49 PM Buddy Jacobs- State Attorneys of FL- Speaking Against Bill
2:47:36 PM SB 314- Reported Favorably
2:48:37 PM Chair turned over to Senator Gibson
2:48:50 PM Tab 2- SB 298- Senator Evers
2:49:08 PM Amendment Barcode 925560
2:50:38 PM Amendment Adopted
2:54:14 PM Cynthia Henderson- FALI- Waive in Support
2:55:13 PM Burt Hodge- FL Assoc Liscensed Investigators- Waive in Support
2:55:34 PM Rick Kolodgy- Waive in Support
2:55:44 PM SB 298- Reported Favorably
2:58:17 PM Meeting Adjourned.