

Tab 2	CS/SB 728 by IS, Stargel (CO-INTRODUCERS) Hutson; (Compare to CS/H 00311) Threats					
493844	A	S	RS	CJ, Stargel	Delete L.35 - 105:	02/04 12:30 PM
430974	SA	S	RCS	CJ, Stargel	Delete L.35 - 105:	02/04 12:30 PM
862884	ASA	S	RCS	CJ, Stargel	Delete L.14 - 16:	02/04 12:30 PM
Tab 3	SB 842 by Wright; (Identical to H 00507) Injured Police Canines					
Tab 4	CS/SB 952 by GO, Perry; (Similar to CS/H 00605) Senior Management Service Class					
Tab 5	SB 1018 by Stewart; (Identical to H 00675) Exposure of Sexual Organs					
591108	D	S	RCS	CJ, Stewart	Delete everything after	02/04 12:30 PM
Tab 6	SB 1308 by Brandes (CO-INTRODUCERS) Bracy; (Compare to H 01131) Criminal Justice					
556568	A	S	RCS	CJ, Brandes	Delete L.75 - 138:	02/04 12:30 PM
Tab 7	SB 1396 by Simmons; (Identical to CS/H 01145) Driving Under the Influence					
125024	A	S	RCS	CJ, Simmons	Delete L.37 - 131:	02/04 12:30 PM
Tab 8	SB 1416 by Perry; (Identical to CS/H 00951) Assaults on Specified Persons					
111654	A	S	RCS	CJ, Perry	Delete L.21 - 51:	02/04 12:30 PM
921370	AA	S	RCS	CJ, Perry	Delete L.30 - 48:	02/04 12:30 PM
684444	A	S	WD	CJ, Perry	Delete L.21 - 51:	02/03 07:56 AM
Tab 9	SB 1504 by Brandes (CO-INTRODUCERS) Rouson, Bracy; Sentencing					
625222	A	S	RCS	CJ, Brandes	Delete L.65 - 105:	02/04 12:30 PM
Tab 10	SB 1506 by Brandes (CO-INTRODUCERS) Bracy; Public Records/Expunction of Specified Convictions					
103962	D	S	RCS	CJ, Brandes	Delete everything after	02/04 12:30 PM
Tab 11	SB 1716 by Brandes (CO-INTRODUCERS) Pizzo, Bracy; Sentencing					
952626	A	S	RCS	CJ, Brandes	Delete L.86 - 111:	02/04 12:30 PM
Tab 12	SB 1880 by Perry; (Compare to CS/H 01225) Restitution for Juvenile Offenses					
461968	D	S	FAV	CJ, Perry	Delete everything after	02/04 12:30 PM
156254	A	S	WD	CJ, Perry	Delete L.95 - 122:	02/03 07:55 AM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Perry, Chair
Senator Brandes, Vice Chair

MEETING DATE: Tuesday, February 4, 2020**TIME:** 9:00—11:00 a.m.**PLACE:** Mallory Horne Committee Room, 37 Senate Building**MEMBERS:** Senator Perry, Chair; Senator Brandes, Vice Chair; Senators Bracy, Flores, and Pizzo

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
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Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointment to the office indicated.

Capital Collateral Regional Counsel - Middle Region

1	Pinkard, Eric (Plant City)	09/30/2021	Recommend Confirm Yeas 5 Nays 0
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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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2	CS/SB 728 Infrastructure and Security / Stargel (Compare H 311)	Threats; Prohibiting threats to use, including future threats to use, a firearm or weapon with specified intent; prohibiting a person from threatening the future throwing, projecting, placing, or discharging of any destructive device with specified intent; prohibiting a person from making a false report with specified intent concerning the current or future placing or planting of any bomb, dynamite, other deadly explosive, or weapon of mass destruction or concerning the current or future use of a firearm in a violent manner against a person or persons, etc.	Fav/CS Yeas 5 Nays 0
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IS	01/13/2020 Fav/CS
CJ	01/28/2020 Temporarily Postponed
CJ	02/04/2020 Fav/CS
AP	

3	SB 842 Wright (Identical H 507)	Injured Police Canines; Authorizing life support services to transport injured police canines under certain circumstances; authorizing a paramedic or an emergency medical technician to provide emergency medical care to injured police canines under certain circumstances, etc.	Favorable Yeas 5 Nays 0
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HP	01/21/2020 Favorable
CJ	02/04/2020 Favorable
RC	

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, February 4, 2020, 9:00—11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 952 Governmental Oversight and Accountability / Perry (Similar CS/H 605)	Senior Management Service Class; Providing that participation in the Senior Management Service Class of the Florida Retirement System is compulsory for each appointed criminal conflict and civil regional counsel and specified staff of the regional counsel beginning on a specified date; authorizing members of the class to purchase and upgrade certain retirement credit, etc. GO 01/21/2020 Fav/CS CJ 02/04/2020 Favorable AP	Favorable Yeas 5 Nays 0
5	SB 1018 Stewart (Identical H 675)	Exposure of Sexual Organs; Increasing criminal penalties for exposure of sexual organs under certain circumstances, etc. CJ 01/28/2020 Temporarily Postponed CJ 02/04/2020 Fav/CS JU RC	Fav/CS Yeas 5 Nays 0
6	SB 1308 Brandes (Compare H 1131)	Criminal Justice; Authorizing the resentencing and release of certain persons who are eligible for sentence review under specified provisions; precluding eligibility for a sentence review for young adult offenders who previously committed, or conspired to commit, specified offenses; requiring the Department of Corrections to notify young adult offenders in writing of their eligibility for sentence review within certain timeframes; requiring the department to provide inmates with certain information upon their release, etc. CJ 02/04/2020 Fav/CS ACJ AP	Fav/CS Yeas 5 Nays 0
7	SB 1396 Simmons (Identical H 1145)	Driving Under the Influence; Requiring each judicial circuit to establish a Driving Under the Influence Diversion Pilot Program; requiring the state attorney of each judicial circuit to develop and operate the pilot program; requiring that a person who completes the pilot program be offered a certain plea agreement; authorizing the state attorney to discharge a person who fails to complete the pilot program and pursue prosecution of driving under the influence, etc. CJ 02/04/2020 Fav/CS ACJ AP	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, February 4, 2020, 9:00—11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 1416 Perry (Identical H 951)	Assaults on Specified Persons; Requiring public transit providers to post a specified sign concerning assaulting a transit operator; requiring public transit providers to create and implement a risk reduction program; revising the reclassification of the offense of assault on specified persons, etc. CJ 01/28/2020 Temporarily Postponed CJ 02/04/2020 Fav/CS JU RC	Fav/CS Yeas 5 Nays 0
9	SB 1504 Brandes (Linked S 1506)	Sentencing; Requiring certain persons convicted of driving while license suspended, revoked, canceled, or disqualified committed before a specified date to be sentenced in a specified manner in accordance with the amendments in chapter 2019-167, Laws of Florida; requiring resentencing for persons who committed such violations before a specified date and are serving terms of imprisonment; providing that persons who meet specified criteria are eligible to petition a court to expunge a criminal history record for convictions of driving while license suspended, revoked, canceled, or disqualified, etc. CJ 02/04/2020 Fav/CS ACJ AP	Fav/CS Yeas 5 Nays 0
10	SB 1506 Brandes (Linked S 1504)	Public Records/Expunction of Specified Convictions; Providing a public records exemption to include the expunction of specified convictions of certain persons convicted of driving while license suspended, revoked, canceled, or disqualified; providing for legislative review and repeal of the exemption; providing a statement of public necessity, etc. CJ 02/04/2020 Fav/CS GO AP	Fav/CS Yeas 5 Nays 0
11	SB 1716 Brandes	Sentencing; Revising the required sentencing structure for prison release reoffenders upon proof from a state attorney which establishes that a defendant is a prison release reoffender; applying the revised sentencing structure to certain persons under certain circumstances; providing resentencing requirements; deleting a provision that requires a state attorney to explain a sentencing deviation in writing under certain circumstances, etc. CJ 02/04/2020 Fav/CS ACJ AP	Fav/CS Yeas 4 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, February 4, 2020, 9:00—11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	SB 1880 Perry (Compare CS/H 1225)	Restitution for Juvenile Offenses; Requiring a child's parent or guardian, in addition to the child, to make restitution for damage or loss caused by the child's offense; authorizing the child's parent or guardian to be absolved of liability for restitution in certain circumstances; authorizing the court to order restitution to be paid only by the parents or guardians who have current custody and parental responsibility, etc. CJ 01/28/2020 Temporarily Postponed CJ 02/04/2020 Amendment Adopted - Temporarily Postponed JU AP	Amendment Adopted - Temporarily Postponed

Other Related Meeting Documents



RON DESANTIS
GOVERNOR

RECEIVED
DEPARTMENT OF STATE
2019 NOV 20 AM 9:29
DIVISION OF ELECTIONS
TALLAHASSEE, FL

November 18, 2019

Secretary Laurel M. Lee
Department of State
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Lee:

Please be advised I have made the following appointment under the provisions of Section 27.701, Florida Statutes:

Mr. Eric Pinkard
7621 Southern Brook Bend APT 102
Tampa, FL 33635

as Capital Collateral Regional Counsel for the Middle Region, subject to confirmation by the Senate. This appointment is effective November 18, 2019 for a term ending September 30, 2021.

Sincerely,

A handwritten signature in black ink, appearing to be "R. DeSantis", written over a horizontal line.

Ron DeSantis
Governor

RD/sk

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED
DEPARTMENT OF STATE

2019 DEC -3 PM 2:22

STATE OF FLORIDA

County of Hillsborough

DIVISION OF ELECTIONS
TALLAHASSEE, FL

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

Capital Collateral Regional Council - Middle Region
(Title of Office)

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

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

Eric Pinkard
Signature

Sworn to and subscribed before me this 2 day of December 2019

Carlos Rodriguez III
Signature of Officer Administering Oath or of Notary Public

Carlos Rodriguez III
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced not



ACCEPTANCE

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

Mailing Address: ☒ Home ☐ Office

3409 Swindell Road
Street or Post Office Box

Plant City, FL 33565
City, State, Zip Code

Eric Pinkard
Print Name

E. Pinkard
Signature

147

**STATE OF FLORIDA
DEPARTMENT OF STATE**

Division of Elections

I, Laurel M. Lee, Secretary of State,
do hereby certify that

Eric Pinkard

is duly appointed

Capital Collateral Regional Counsel

for a term beginning on the Eighteenth day of November, A.D.,
2019, until the Thirtieth day of September, A.D., 2021 and is
subject to be confirmed by the Senate during the next regular
session of the Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Third day of December, A.D., 2019.*

Laurel M. Lee

Secretary of State

DSDE 99 (3/03)

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

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

COMMITTEE: Committee on Criminal Justice
MEETING DATE: Tuesday, February 4, 2020
TIME: 9:00—11:00 a.m.
PLACE: Mallory Horne Committee Room, 37 Senate Building

TO: The Honorable Bill Galvano, President

FROM: Committee on Criminal Justice

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

Office: Capital Collateral Regional Counsel - Middle Region

Appointee: Pinkard, Eric

Term: 11/18/2019-9/30/2021

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

THE FLORIDA SENATE

COMMITTEE WITNESS OATH

CHAIR:

Please raise your right hand and be sworn in as a witness.

Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

Eric Pinkard

WITNESS'S NAME: Capital Collateral Regional Counsel -
Middle Region

ANSWER: I do

Pursuant to §90.605(1), *Florida Statutes*: "The witness's answer shall be noted in the record."

COMMITTEE NAME: Senate Criminal Justice Committee

DATE: 2-4-20

THE FLORIDA SENATE
APPEARANCE RECORD

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

02/04/20

Meeting Date

Tab 1

Bill Number (if applicable)

Topic Appointment of Eric Pinkard

Amendment Barcode (if applicable)

Name Eric Pinkard

Job Title Capital Collateral Regional Counsel

Address 3409 Swindell Road

Phone 813-545-4427

Street

Plant City

City

FL

State

33565

Zip

Email Pinkard@ccmr.state.fl.us

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Capital Collateral Regional Counsel

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/CS/SB 728

INTRODUCER: Criminal Justice Committee; Infrastructure and Security Committee; and Senators
Stargel and Hutson

SUBJECT: Threats

DATE: February 5, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	IS	Fav/CS
2.	Cellon	Jones	CJ	Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 728 amends s. 790.162, F.S., to prohibit threatening to use a firearm or weapon at certain locations with intent to do bodily harm to any person or to do damage to any of the designated properties, if the threat is sufficient to cause alarm in a reasonable person. The crime is punishable as a third degree felony. The bill also amends the current degree of the offense of threatening to throw, project, place, or discharge any destructive device with intent to do bodily harm to any person or with intent to do damage to any property of any person from a second degree felony to a third degree felony.

The bill provides that a person is not in violation of the new law prohibiting threatening to use a firearm or weapon at certain locations if he or she uses or threatens to use a firearm or any other weapon in lawful self-defense, lawful defense of others, or lawful defense of property.

The Criminal Punishment Code offense severity ranking chart is amended to include the new crime of threatening to use a firearm or weapon with intent to do bodily harm to any person or to do damage to any property of any person, if the threat is sufficient to cause alarm in a reasonable person as a Level 5 and to incorporate changes made by the bill.

The Criminal Justice Impact Conference considered the previous version of this bill (CS/SB 728) on January 27, 2020, and determined that it would have a positive insignificant prison bed impact (an increase of 10 or fewer prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2020.

II. Present Situation:

Definitions

Chapter 790, F.S., relating to weapons and firearms defines the following terms for purposes of that chapter:

- “Destructive device” means any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled; any device declared a destructive device by the Bureau of Alcohol, Tobacco, and Firearms;¹ any type of weapon which will, is designed to, or may readily be converted to expel a projectile by the action of any explosive and which has a barrel with a bore of one-half inch or more in diameter; and ammunition for such destructive devices, but not including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device.²
- “Firearm” means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun.³
- “Weapon” means any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife.⁴

¹ For the purposes of the National Firearms Act, the term “destructive device” means (1) any explosive, incendiary, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellant charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, or (F) similar device; (2) any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes; and (3) any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subparagraphs (1) and (2) and from which a destructive device may be readily assembled. The term “destructive device” shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 7684(2), 7685, or 7686 of title 10, United States Code; or any other device which the Secretary finds is not likely to be used as a weapon, or is an antique or is a rifle which the owner intends to use solely for sporting purposes. 26 U.S.C. 5845(f).

² Section 790.001(4), F.S. The term under Florida law does not include a device which is not designed, redesigned, used, or intended for use as a weapon; any destructive device, although originally designed as a weapon, which is redesigned so that it may be used solely as a signaling, line-throwing, safety, or similar device; any shotgun other than a short-barreled shotgun; or any nonautomatic rifle (other than a short-barreled rifle) generally recognized or particularly suitable for use for the hunting of big game.

³ Section 790.001(6), F.S. The term does not include an antique firearm unless the antique firearm is used in the commission of a crime.

⁴ Section 790.001(13), F.S.

Threat to Throw, Project, Place, or Discharge Any Destructive Device

Section 790.162, F.S., currently makes it unlawful for any person to threaten to throw, project, place, or discharge any destructive device with intent to do bodily harm to any person or with intent to do damage to any property of any person. A violation is a second degree felony, punishable by an imprisonment term not exceeding 15 years and up to a \$10,000 fine.⁵

The courts have construed s. 790.162, F.S., determining that whether an offender intended to carry out a threat is irrelevant,⁶ and there need not be proof that an actual destructive device existed.⁷

Criminal Punishment Code

The Criminal Punishment Code (Code) is Florida's primary sentencing policy.⁸ Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).⁹ Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses like a Level 7 or 8 drug trafficking offense. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.¹⁰ Absent mitigation,¹¹ the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.

III. Effect of Proposed Changes:

The bill amends s. 790.162, F.S., to expand that section's applicability to include threats involving the use of a firearm or any weapon.

Specifically, the bill makes it a third degree felony¹² for any person to threaten the use of a firearm or any weapon at a child care facility as defined in s. 402.302, F.S., a school as defined

⁵ Sections 775.082, and 775.083, F.S.

⁶ "[T]he threat must convey an intent to do bodily harm or damage to property. Here, appellant's threat obviously conveyed this intent. Therefore, under our construction of the statute, whether appellant intended to follow through with his threat was irrelevant." *Reid v. State*, 405 So.2d 500, 501 (Fla. 2d DCA 1981).

⁷ "[T]he State need not prove the existence of an actual destructive device. It is sufficient that the State prove that the defendant threatened to throw, place, or discharge a destructive device with the stated intent to do bodily harm to any person or with the stated intent to do damage to any property of any person, regardless of whether the defendant had the actual ability to carry out that threat." *Valdes v. State*, 443 So.2d 221, 222 (Fla. 1st DCA 1983).

⁸ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

⁹ Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

¹⁰ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

¹¹ The court may "mitigate" or "depart downward" from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

¹² A third degree felony is punishable by up to 5 years' imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

in s. 790.115(2)(a), F.S., a religious institution as defined in s. 496.404(23), F.S., a theme park complex as defined in s. 817.361(1)(c), F.S., or any building owned by a federal, state, county, municipality, or other local government or political subdivision, with intent to do bodily harm to any person or with intent to do damage to any of the designated properties, if the threat is sufficient to cause alarm in a reasonable person.

The bill provides that a person does not violate the prohibition against threatening to use a firearm or any weapon if the person uses or threatens to use a firearm or any other weapon in lawful self-defense, lawful defense of others, or lawful defense of property.

The bill also changes the felony degree of the offense of threatening to throw, project, place, or discharge any destructive device with intent to do bodily harm to any person or with intent to do damage to any property of any person from a second degree felony to a third degree felony.

The bill amends s. 921.0222, F.S., the offense severity ranking chart of the Criminal Punishment Code to revise the degree of crime for the violation of s. 790.162(1), F.S., as amended, from a second to a third degree felony. This is the crime of threatening to throw, project, place, or discharge any destructive device with intent to do bodily harm to any person or with intent to do damage to any property of any person.

The bill also adds the crime of threat involving a firearm or weapon as a Level 5 to the Criminal Punishment Code offense severity ranking chart.

The bill takes effect October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference which provides the final, official estimate of the prison bed impact, if any, considered the previous version of this bill (CS/SB 728) on January 27, 2020, and determined that it would have a positive insignificant prison bed impact (an increase of 10 or fewer prison beds).

In its analysis of the bill, the Public Defender Association, Inc. indicates that the bill would have an indeterminate effect on public defender caseloads. The Association also notes that it is difficult to project how many cases would be filed under the new felony created in s. 790.162, F.S.¹³

VI. Technical Deficiencies:

None.

VII. Related Issues:**Threats**

The First Amendment to the U.S. Constitution does not protect “true threats” as free speech and states are not restricted from banning such threats.¹⁴ The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats “protect[s] individuals from the fear of violence” and “from the disruption that fear engenders,” in addition to protecting people “from the possibility that the threatened violence will occur.”¹⁵

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 790.162, and 921.0022.

¹³ Florida Public Defender Association, Inc., Fiscal Analysis of SB 728 (on file with the Senate Criminal Justice Committee).

¹⁴ *Virginia v. Black*, 538 U.S. 343, 344 (2003) quoting *Watts v. United States*, 394 U.S. 705, 708 (1969).

¹⁵ *Id.*; see also *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 388 (1992).

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Criminal Justice on February 4, 2020:**

The committee substitute:

- Renumbers and reorganizes subsections in s. 790.162, F.S.
- Deletes the reference to the *future* throwing, projecting, placing, or discharging of any destructive device in s. 790.162, F.S.
- Deletes provisions related to the *future* threat to use a firearm or any weapon in s. 790.162, F.S.
- Changes the felony degree of the crime of threatening to throw, project, place, or discharge any destructive device with intent to do bodily harm to any person or with intent to do damage to any property of any person to a third degree felony from a second degree felony and makes the corresponding changes in the Criminal Punishment Code offense severity ranking chart.
- Limits the application of s. 790.162(2), F.S., to the following locations:
 - A child care facility as defined in s. 402.302, F.S.;
 - A school as defined in s. 790.115(2)(a), F.S.;
 - A religious institution as defined in s. 496.404(23), F.S.;
 - A theme park complex as defined in s. 817.361(1)(c), F.S.; or
 - Any building owned by a federal, state, county, municipality, or other local government or political subdivision.
- Deletes sections 2 and 3 from the CS, which removes the provisions related to *current or future false reports* regarding the placing or planting of any bomb, dynamite, other deadly explosive, or weapon of mass destruction (s. 790.163, F.S.) and the use of firearms in a violent manner against a person (s. 790.164, F.S.).

CS by Infrastructure and Security on January 13, 2020:

The committee substitute:

- Includes as a violation of law a threat of *future* use of a firearm or any weapon if the threat is sufficient to cause alarm in a reasonable person;
- Includes the *future* throwing, projecting, placing, or discharging of any destructive device in the existing prohibition against such threats;
- Provides a person is not in violation if he or she threatens to use a firearm or any other weapon in lawful self-defense, or in lawful defense of others or of property; and
- Revises existing prohibitions against making a false report, with intent to deceive, mislead, or misinform any person, to apply to those reports concerning the *current or future* placing or planting of any bomb, dynamite, other deadly explosive, or weapon of mass destruction, or concerning the *current or future* use of firearms in a violent manner against a person.

B. Amendments:

None.

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



493844

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/04/2020	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 35 - 105
and insert:

(1) It is unlawful for any person to threaten to throw, project, place, or discharge any destructive device with intent to do bodily harm to any person or with intent to do damage to any property of any person. ~~and any person convicted thereof~~ A person who violates this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083,



493844

or s. 775.084.

(2) It is unlawful for any person to threaten the use of a firearm or any weapon with intent to do bodily harm to any person or with intent to do damage to any property of any person, if the threat is sufficient to cause alarm in a reasonable person. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person does not violate subsection (2) if he or she uses or threatens to use a firearm or any other weapon in lawful self-defense, lawful defense of others, or lawful defense of property.

Section 2. Paragraph (e) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(2) (a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4) (a)	2nd	Aggravated fleeing or eluding.



493844

33	316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
34	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
35	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
	379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.



493844

36

379.367(4) 3rd Willful molestation of a
commercial harvester's spiny
lobster trap, line, or buoy.

37

379.407(5)(b)3. 3rd Possession of 100 or more
undersized spiny lobsters.

38

381.0041(11)(b) 3rd Donate blood, plasma, or organs
knowing HIV positive.

39

440.10(1)(g) 2nd Failure to obtain workers'
compensation coverage.

40

440.105(5) 2nd Unlawful solicitation for the
purpose of making workers'
compensation claims.

41

440.381(2) 3rd Submission of false,
misleading, or incomplete
information with the purpose of
avoiding or reducing workers'
compensation premiums.

42

624.401(4)(b)2. 2nd Transacting insurance without a
certificate or authority;
premium collected \$20,000 or
more but less than \$100,000.

43



493844

626.902(1)(c) 2nd Representing an unauthorized
 insurer; repeat offender.

790.01(2) 3rd Carrying a concealed firearm.

790.162(1) 2nd Threat to throw or discharge
 destructive device.

790.162(2) 3rd Threat involving firearm or
 weapon.

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

And the title is amended as follows:

Delete lines 3 - 24

and insert:

prohibiting threats to use a firearm or weapon with
specified intent; providing applicability; providing
criminal penalties; amending s.



430974

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2020	.	
	.	
	.	
	.	

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

Senate Substitute for Amendment (493844) (with title amendment)

Delete lines 35 - 105
and insert:

(1) It is unlawful for any person to threaten to throw, project, place, or discharge any destructive device with intent to do bodily harm to any person or with intent to do damage to any property of any person.~~, and any person convicted thereof~~ A person who violates this subsection commits a felony of the



430974

third ~~second~~ degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) It is unlawful for any person to threaten the use of a firearm or any weapon with intent to do bodily harm to any person or with intent to do damage to any property of any person, if the threat is sufficient to cause alarm in a reasonable person. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person does not violate subsection (2) if he or she uses or threatens to use a firearm or any other weapon in lawful self-defense, lawful defense of others, or lawful defense of property.

Section 2. Paragraph (e) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(2) (a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4) (a)	2nd	Aggravated fleeing or eluding.



430974

33

316.80(2) 2nd Unlawful conveyance of fuel;
obtaining fuel fraudulently.

34

322.34(6) 3rd Careless operation of motor
vehicle with suspended license,
resulting in death or serious
bodily injury.

35

327.30(5) 3rd Vessel accidents involving
personal injury; leaving scene.

36

379.365(2)(c)1. 3rd Violation of rules relating to:
willful molestation of stone
crab traps, lines, or buoys;
illegal bartering, trading, or
sale, conspiring or aiding in
such barter, trade, or sale, or
supplying, agreeing to supply,
aiding in supplying, or giving
away stone crab trap tags or
certificates; making, altering,
forging, counterfeiting, or
reproducing stone crab trap
tags; possession of forged,
counterfeit, or imitation stone
crab trap tags; and engaging in
the commercial harvest of stone
crabs while license is



430974

suspended or revoked.

379.367(4) 3rd Willful molestation of a
commercial harvester's spiny
lobster trap, line, or buoy.

379.407(5) (b) 3. 3rd Possession of 100 or more
undersized spiny lobsters.

381.0041(11) (b) 3rd Donate blood, plasma, or organs
knowing HIV positive.

440.10(1) (g) 2nd Failure to obtain workers'
compensation coverage.

440.105(5) 2nd Unlawful solicitation for the
purpose of making workers'
compensation claims.

440.381(2) 3rd Submission of false,
misleading, or incomplete
information with the purpose of
avoiding or reducing workers'
compensation premiums.

624.401(4) (b) 2. 2nd Transacting insurance without a
certificate or authority;
premium collected \$20,000 or
more but less than \$100,000.



430974

626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
---------------	-----	--

790.01 (2)	3rd	Carrying a concealed firearm.
------------	-----	-------------------------------

790.162 (1) 3rd~~2nd~~ Threat to throw or discharge
destructive device.

<u>790.162(2)</u>	<u>3rd</u>	<u>Threat involving firearm or</u> <u>weapon.</u>
-------------------	------------	--

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

And the title is amended as follows:

Delete lines 3 - 25

and insert:

decreasing the criminal penalty for threatening to throw, project, place, or discharge any destructive device with intent to do bodily harm to any person or with intent to do damage to any property of any person; prohibiting threats to use a firearm or weapon with specified intent; providing applicability; providing criminal penalties; amending s. 921.0022, F.S.; conforming provisions to changes made



862884

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2020	.	
	.	
	.	
	.	

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

Senate Amendment to Substitute Amendment (430974)

Delete lines 14 - 16
and insert:
firearm or any weapon at a child care facility as defined in s.
402.302, a school as defined in s. 790.115(2) (a), a religious
institution as defined in s. 496.404(23), a theme park complex
as defined in s. 817.361(1) (c), or any building owned by a
federal, state, county, municipality, or other local government
or political subdivision, with intent to do bodily harm to any



862884

11 person or with intent to do damage to any of the listed
12 properties, if the threat is sufficient to cause alarm in a

By the Committee on Infrastructure and Security; and Senator Stargel

596-02228-20

2020728c1

A bill to be entitled

An act relating to threats; amending s. 790.162, F.S.; prohibiting threats to use, including future threats to use, a firearm or weapon with specified intent; prohibiting a person from threatening the future throwing, projecting, placing, or discharging of any destructive device with specified intent; providing applicability; providing criminal penalties; amending s. 790.163, F.S.; prohibiting a person from making a false report with specified intent concerning the current or future placing or planting of any bomb, dynamite, other deadly explosive, or weapon of mass destruction or concerning the current or future use of a firearm in a violent manner against a person or persons; providing criminal penalties; amending s. 790.164, F.S.; prohibiting a person from making a false report with specified intent concerning the current or future placing or planting of any bomb, dynamite, other deadly explosive, or weapon of mass destruction concerning any act of arson or other violence to property owned by the state or a political subdivision, or concerning the current or future use of firearms in a violent manner against a person or persons; providing criminal penalties; amending s. 921.0022, F.S.; conforming a provision to changes made by the act; providing an effective date.

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

Page 1 of 12

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

596-02228-20

2020728c1

Section 1. Section 790.162, Florida Statutes, is amended to read:

790.162 Threats involving a firearm, weapon, or Threat to throw, project, place, or discharge any destructive device, felony, penalty.-

(1) It is unlawful for any person to threaten:

(a) The use of a firearm or any weapon, including the future use of a firearm or any weapon if the threat is sufficient to cause alarm in a reasonable person; or

(b) To threaten to throw, project, place, or discharge any destructive device, including the future throwing, projecting, placing, or discharging of any destructive device,

with intent to do bodily harm to any person or with intent to do damage to any property of any person.

(2) A person does not violate subsection (1) if he or she uses or threatens to use a firearm or any other weapon in lawful self-defense, lawful defense of others, or lawful defense of property.

(3) A, and any person who violates subsection (1) convicted thereof commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Subsection (1) of section 790.163, Florida Statutes, is amended to read:

790.163 False report concerning planting a bomb, an explosive, or a weapon of mass destruction, or concerning the use of firearms in a violent manner; penalty.-

(1) It is unlawful for any person to make a false report, with intent to deceive, mislead, or otherwise misinform any

Page 2 of 12

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2020728c1

person, concerning the current or future placing or planting of any bomb, dynamite, other deadly explosive, or weapon of mass destruction as defined in s. 790.166, or concerning the current or future use of firearms in a violent manner against a person or persons. A person who violates this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 3. Subsection (1) of section 790.164, Florida Statutes, is amended to read:

790.164 False reports concerning planting a bomb, explosive, or weapon of mass destruction in, or committing arson against, state-owned property, or concerning the use of firearms in a violent manner; penalty; reward.—

(1) It is unlawful for any person to make a false report, with intent to deceive, mislead, or otherwise misinform any person, concerning the current or future placing or planting of any bomb, dynamite, other deadly explosive, or weapon of mass destruction as defined in s. 790.166, concerning any act of arson or other violence to property owned by the state or any political subdivision, or concerning the current or future use of firearms in a violent manner against a person or persons. A person who violates this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 4. Paragraph (e) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

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2020728c1

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or

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supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.

379.367(4)

3rd

Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.

379.407(5)(b)3.

3rd

Possession of 100 or more undersized spiny lobsters.

381.0041(11)(b)

3rd

Donate blood, plasma, or organs knowing HIV positive.

440.10(1)(g)

2nd

Failure to obtain workers' compensation coverage.

440.105(5)

2nd

Unlawful solicitation for the purpose of making workers' compensation claims.

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440.381(2)

3rd

Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.

624.401(4)(b)2.

2nd

Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.

626.902(1)(c)

2nd

Representing an unauthorized insurer; repeat offender.

790.01(2)

3rd

Carrying a concealed firearm.

790.162

2nd

Threat involving firearm, weapon, or to throw or discharge destructive device.

790.163(1)

2nd

False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.

790.221(1)

2nd

Possession of short-barreled shotgun or machine gun.

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	596-02228-20		2020728c1
	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
109			
	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
110			
	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
111			
	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
112			
	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
113			
	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
114			
	812.015 (8)(a) & (c)-(e)	3rd	Retail theft; property stolen is valued at \$750 or more and one or more specified acts.
115			
	812.019(1)	2nd	Stolen property; dealing in or

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

	596-02228-20		2020728c1
			trafficking in.
116			
	812.131(2)(b)	3rd	Robbery by sudden snatching.
117			
	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
118			
	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
119			
	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
120			
	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
121			
	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more

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596-02228-20

2020728c1

persons.

122

817.611(2)(a)

2nd

Traffic in or possess 5 to 14
counterfeit credit cards or
related documents.

123

817.625(2)(b)

2nd

Second or subsequent fraudulent
use of scanning device,
skimming device, or reencoder.

124

825.1025(4)

3rd

Lewd or lascivious exhibition
in the presence of an elderly
person or disabled adult.

125

827.071(4)

2nd

Possess with intent to promote
any photographic material,
motion picture, etc., which
includes sexual conduct by a
child.

126

827.071(5)

3rd

Possess, control, or
intentionally view any
photographic material, motion
picture, etc., which includes
sexual conduct by a child.

127

828.12(2)

3rd

Tortures any animal with intent
to inflict intense pain,
serious physical injury, or

Page 9 of 12

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

596-02228-20

2020728c1

death.

128

839.13(2)(b)

2nd

Falsifying records of an
individual in the care and
custody of a state agency
involving great bodily harm or
death.

129

843.01

3rd

Resist officer with violence to
person; resist arrest with
violence.

130

847.0135(5)(b)

2nd

Lewd or lascivious exhibition
using computer; offender 18
years or older.

131

847.0137
(2) & (3)

3rd

Transmission of pornography by
electronic device or equipment.

132

847.0138
(2) & (3)

3rd

Transmission of material
harmful to minors to a minor by
electronic device or equipment.

133

874.05(1)(b)

2nd

Encouraging or recruiting
another to join a criminal
gang; second or subsequent
offense.

134

874.05(2)(a)

2nd

Encouraging or recruiting

Page 10 of 12

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

596-02228-20

2020728c1

person under 13 years of age to
join a criminal gang.

893.13(1)(a)1. 2nd Sell, manufacture, or deliver
cocaine (or other s.
893.03(1)(a), (1)(b), (1)(d),
(2)(a), (2)(b), or (2)(c)5.
drugs).

893.13(1)(c)2. 2nd Sell, manufacture, or deliver
cannabis (or other s.
893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3., (2)(c)6.,
(2)(c)7., (2)(c)8., (2)(c)9.,
(2)(c)10., (3), or (4) drugs)
within 1,000 feet of a child
care facility, school, or
state, county, or municipal
park or publicly owned
recreational facility or
community center.

893.13(1)(d)1. 1st Sell, manufacture, or deliver
cocaine (or other s.
893.03(1)(a), (1)(b), (1)(d),
(2)(a), (2)(b), or (2)(c)5.
drugs) within 1,000 feet of
university.

596-02228-20

2020728c1

893.13(1)(e)2. 2nd Sell, manufacture, or deliver
cannabis or other drug
prohibited under s.
893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3., (2)(c)6.,
(2)(c)7., (2)(c)8., (2)(c)9.,
(2)(c)10., (3), or (4) within
1,000 feet of property used for
religious services or a
specified business site.

893.13(1)(f)1. 1st Sell, manufacture, or deliver
cocaine (or other s.
893.03(1)(a), (1)(b), (1)(d),
or (2)(a), (2)(b), or (2)(c)5.
drugs) within 1,000 feet of
public housing facility.

893.13(4)(b) 2nd Use or hire of minor; deliver
to minor other controlled
substance.

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

Section 5. This act shall take effect October 1, 2020.



Florida Public Defender Association, Inc.

Fiscal Analysis of SB 728

PUBLIC DEFENDERS

*Bruce Miller
First Circuit*

*Andrew Thomas
Second Circuit*

*Blair Payne
Third Circuit*

*Charles Cofer
Fourth Circuit*

*Mike Graves
Fifth Circuit*

*Bob H. Dillinger
Sixth Circuit*

*James S. Purdy
Seventh Circuit*

*Stacy A. Scott
Eighth Circuit
Secretary*

*Rex Dimmig
Tenth Circuit
President-Elect*

*Carlos J. Martinez
Eleventh Circuit*

*Larry L. Eger
Twelfth Circuit*

*Julianne M. Holt
Thirteenth Circuit*

*Mark Sims
Fourteenth Circuit*

*Carey Haughwout
Fifteenth Circuit
President*

*Robert Lockwood
Sixteenth Circuit
Treasurer*

*Howard Finkelstein
Seventeenth Circuit*

*Blaise Trettis
Eighteenth Circuit*

*Diamond R. Litty
Nineteenth Circuit*

*Kathleen A. Smith
Twentieth Circuit*

EXECUTIVE DIRECTOR
Kristina Wiggins, MPA

GENERAL COUNSEL
Robert Trammell

LEGISLATIVE CONSULTANT
Nancy Daniels

Bill Analysis- This bill adds language to section 790.162 to make it a second-degree felony to threaten the use of a firearm or any weapon with intent to harm a person or property. It is already a second-degree felony to threaten to throw, place, project or discharge any destructive device with intent to harm a person or property.

Public Defenders have concerns about bills that make threatening speech into a crime that could send a person to prison for up to 15 years. Youthful offenders particularly are prone to make ill-considered threatening statements without the ability or true criminal intent to carry them out.

Fiscal Analysis- The bill would have an indeterminate effect on public defender caseloads. It is difficult to project how many cases would be filed under the new language in this bill that are not already charged under existing statutes.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/4/20

Meeting Date

728

Bill Number (if applicable)

862884

Amendment Barcode (if applicable)

Topic Threats

Name Carlos Martinez

Job Title Public Defender, 11th Judicial Circuit

Address 1320 Nw 14th St

Street

Miami

City

FL

State

33125

Zip

Phone 305-545-1900

Email cmartinez@pdmiami.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

02/04/2020

Meeting Date

SB 728

Bill Number (if applicable)

Topic Threats

Amendment Barcode (if applicable)

Name Gary W. Hester

Job Title Government Affairs

Address P.O. Box 14038

Phone 863-287-8438

Street

Tallahassee

FL

32317

Email garywhester@gmail.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

02-04-20

Meeting Date

SB 728

Bill Number (if applicable)

Topic THREATS

Amendment Barcode (if applicable)

Name MATT BUTLER

Job Title CAPTAIN

Address 2500 W. COLONIAL DR,
Street
ORLANDO FL 32804
City State Zip

Phone 321-229-9064

Email MAT.BUTLER@API.NET

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ORANGE COUNTY SHERIFF'S OFFICE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/4/20

Meeting Date

CS/5B 728

Bill Number (if applicable)

Topic

Threats

Amendment Barcode (if applicable)

Name

Phil Archer - ~~18th Cir.~~

Job Title

State Attorney - 18th Cir

Address

Fran Tamirson Way

Phone

(321) 637-5575

Street

Viera

City

Fl.

State

32940

Zip

Email

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

Fla Prosecuting Attorneys Assoc.

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-4-20

Meeting Date

728

Bill Number (if applicable)

Topic Threats

Amendment Barcode (if applicable)

Name MaH Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive
Street

Phone 850 877 2165

Tallahassee FL 32308
City State Zip

Email mdunagan@flsheriffs.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Sheriffs Association

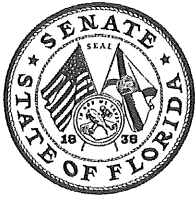
Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on
Education, *Chair*
Appropriations
Education
Ethics and Elections
Finance and Tax
Judiciary
Rules

JOINT COMMITTEE:
Joint Select Committee on Collective Bargaining

SENATOR KELLI STARGEL
22nd District

January 17, 2020

The Honorable Keith Perry
Senate Committee on Criminal Justice, Chair
316 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Perry:

I respectfully request that SB 728, related to *Threats*, be placed on Criminal Justice meeting agenda at your earliest convenience.

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

Sincerely,

A handwritten signature in black ink that reads "Kelli Stargel". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

Kelli Stargel
State Senator, District 22

Cc: Lauren Jones/Staff Director
Sue Arnold/AA

REPLY TO:

- ☐ 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803 (863) 668-3028
- ☐ 408 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 842

INTRODUCER: Senator Wright

SUBJECT: Injured Police Canines

DATE: February 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	Favorable
2.	Wagoner	Jones	CJ	Favorable
3.			RC	

I. Summary:

SB 842 authorizes an emergency service transport vehicle permit holder to transport a police canine injured in the line of duty to a veterinary clinic, hospital emergency department, or similar facility if no person requires medical attention or transport when the canine needs it. The bill authorizes emergency medical technicians (EMTs) and paramedics to provide emergency medical care to an injured police canine at the scene of an emergency or while the canine is being transported.

The bill provides civil and criminal immunity for EMTs and paramedics providing emergency care to an injured police canine and exempts them from the application of the veterinary practice act for providing medical care to a police canine injured in the line of duty.

The bill may have a fiscal impact. See Section V. Fiscal Impact Statement.

The bill has an effective date of July 1, 2020.

II. Present Situation:

Police Canines

Section 843.19, F.S., defines the term “police canine” for law enforcement purposes as any canine that is owned, or the service of which is employed, by a law enforcement agency or a correctional agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders.

Police dogs are frequently used in conjunction with high-intensity, criminal situations and are often deployed by their handlers to chase after fleeing felons. As a result, the dogs can be caught

in the line of fire while on the job. In September 2018, 3-year-old Fang, a member of Jacksonville Sheriff's Office canine unit, was shot and killed by a teenager who was fleeing a scene after carjacking two women at a gas station minutes earlier.¹ Similarly, in December 2018, 3-year-old Cigo with the Palm Beach County Sheriff's Office was shot and killed by an attempted murder suspect outside of a shopping mall.² In Florida, there have been 49 police canines killed in the line of duty.³ In 2019, the Legislature, recognizing the ongoing danger to and violence against police canines, increased the penalty for causing harm to or using a deadly weapon against a police canine from a third degree felony to a second degree felony.^{4,5}

Special K-9 Units

Specially-trained dogs are used by various agencies and departments throughout the state in their K-9 units. These departments employ dogs to assist with tracking and apprehending offenders, narcotics and bomb detection,⁶ and building and article searches.⁷ Additionally, some fire departments use dogs as part of arson detection programs.⁸ Various non-profit organizations also use dogs for the purpose of search and rescue, such as the Community Emergency Response Team, which provides support to the federal Emergency Management Agency.⁹

Veterinary Medical Care and Treatment for Canines

The practice of veterinary medicine is licensed and regulated by the Department of Business and Professional Regulation (DBPR), Board of Veterinary Medicine.¹⁰ A veterinarian is a licensed health care practitioner who engages in the practice of veterinary medicine which the Legislature has determined can be potentially dangerous to the public health and safety if conducted by incompetent and unlicensed practitioners.¹¹ The practice of veterinary medicine includes:

- The diagnosis of medical conditions of animals;
- Prescribing, dispensing, or administering drugs, medicine, appliances, and applications for animals;
- The treatment of animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease;

¹ Tarik Mino and Colette DuChanois, *Audio, video evidence released in case of teen held in K-9's death*, NEWS4JAX (Nov. 12, 2018), <https://www.news4jax.com/news/2018/11/13/audio-video-evidence-released-in-case-of-teen-held-in-k-9s-death/>.

² Mark Osborne and Jason M. Volack, *Suspect kills police dog in shootout outside mall on Christmas Eve, police say*, ABC NEWS (Dec. 25, 2018), <https://abcnews.go.com/US/suspect-kills-police-dog-shootout-mall-christmas-eve/story?id=60007552>.

³ Officer Down Memorial Page, *Florida Line of Duty Deaths*, available at <https://www.odmp.org/search/browse/florida> (last visited Jan. 30, 2020).

⁴ Ch. 2019-9, Laws of Fla. (2019).

⁵ A third degree felony is punishable by a state prison term not exceeding 5 years, a fine not exceeding \$5,000, or both. Sections 775.082 and 775.082, F.S.

⁶ City of Orlando, *K-9 Unit*, available at <http://www.cityoforlando.net/police/k-9-unit/> (last visited Jan. 30, 2020).

⁷ St. Petersburg Police Department, *K-9 Unit*, available at <http://police.stpete.org/usb/k-9.html> (last visited Jan. 30, 2020).

⁸ City of Orlando, *Accelerant Detection Canines*, available at <http://www.cityoforlando.net/fire/accelerant-detection-canines/> (last visited Jan. 30, 2020).

⁹ Boondocks K9 SAR-CERT Unit, *Community Emergency Response Team (CERT)*, available at <https://www.boondocksk9.org/> (last visited Jan. 30, 2020).

¹⁰ Chapter 474, F.S.; and *see* s. 20.165, F.S.

¹¹ Sections 474.201 and 202(11), F.S.

- Performing any manual procedure for the diagnosis of or treatment for pregnancy or fertility or infertility of animals;
- The determination of the health, fitness, or soundness of an animal; and
- The practice of the following on animals:
 - Surgery;
 - Acupuncture;
 - Obstetrics;
 - Dentistry;
 - Physical therapy;
 - Radiology;
 - Theriogenology; and
 - Any other veterinary medicine specialty.¹²

Section 474.202, F.S., defines an animal as a wild or domestic, dead or alive, bird, amphibian, fish, reptile, or mammal, other than a human being. A dog, or canine, is a mammal.¹³ It is the responsibility of every veterinarian licensed and practicing in Florida to provide, either personally or through another licensed veterinarian, 24-hour emergency services for all animals under his or her continuing care.¹⁴

When the DBPR has probable cause to believe that a person is practicing, or attempting to practice, veterinary medicine without a license, or aiding and abetting a person to practice veterinary medicine without a license, the DBPR may issue to the offender a notice to cease and desist. If the person fails to comply with the notice, the DBPR may file a proceeding seeking an injunction or a writ of mandamus. Additionally, the DBPR may impose an administrative penalty not to exceed \$5,000 per incident or may issue a citation.¹⁵

Emergency Medical Services, Paramedics, and Emergency Medical Technicians

Emergency Medical Transport Services

Prehospital life support transport services fall into two general categories – basic life support services (BLS) and advanced life support services (ALS).

BLS services include the assessment or treatment by a person qualified under part III of ch. 401, F.S., through the use of techniques described in the EMT-Basic National Standard Curriculum or the National Emergency Medical Services (EMS) Education Standards of the U.S. Department of Transportation.¹⁶ The term includes the administration of oxygen and other techniques that have

¹² Sections 474.202(9) and (13), F.S.

¹³ Merriam-Webster On-line Dictionary, Dog or Canine is a highly variable domestic mammal (*Canis familiaris*) closely related to the gray wolf, available at <https://www.merriam-webster.com/dictionary/dog> (last visited Jan. 30, 2020).

¹⁴ Fla. Admin. Code R. 61G18-19.001 (2019).

¹⁵ Section 455.228, F.S.

¹⁶ United States Department of Transportation, National Highway Traffic Safety Administration, *National Emergency Medical Services Education Standards*, available at <https://www.ems.gov/pdf/National-EMS-Education-Standards-FINAL-Jan-2009.pdf> (last visited Jan. 30, 2020).

been approved and are performed under specific conditions.¹⁷ BLS services are usually performed by EMTs.¹⁸

ALS services include patient assessment or treatment including the implementation of advanced medical skills such as endotracheal intubation, the administration of drugs or intravenous fluids, telemetry, cardiac monitoring, cardiac defibrillation, and other techniques described in the EMT-Paramedic National Standard Curriculum or the National EMS Education Standards.¹⁹ ALS services can be performed on site and are usually provided by physicians or paramedics.²⁰

To obtain a transport vehicle permit to provide BLS or ALS services, an applicant must provide to the Department of Health the following:

- An application and required fees; and
- Documentation that the vehicle qualifies as follows:
 - Is furnished with essential medical supplies and equipment which is in good working order;
 - Meets appropriate standards for design and construction;
 - Is equipped with an appropriate communication system;
 - Meets appropriate safety standards;
 - Meets sanitation and maintenance standards;
 - Is insured for a minimum of \$100,000/\$300,000 against injuries to or the death of any person arising out of an accident; and
 - Has been awarded a Certificate of Public Convenience and Necessity (COPCN).²¹

The following adult and pediatric medical equipment and supplies are required for BLS service vehicles:

- Bandaging, dressing, and taping supplies;
- Bandage shears;
- Patient restraints;
- Blood pressure cuffs;
- Stethoscopes;
- Blankets;
- Sheets;
- Pillows;
- Patient rain cover;
- Long and short spine boards;
- Cervical, spine and extremity immobilization devices and traction splints;
- Portable oxygen tanks, masks, and nasal cannula;
- Hand-operated bag-valve mask resuscitators;
- Portable suction;

¹⁷ Sections 401.23(7) and (8), F.S.

¹⁸ Ryyanen, et. al, *Is advanced life support better than basic life support in prehospital care? A systematic review*, Scand J Trauma Resusc. Emerg. Med. 2010; 18: 62, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3001418/> (last visited Jan. 30, 2020).

¹⁹ Sections 401.23(1) and (2), F.S.

²⁰ Ryyanen, et. al, *supra* note 18.

²¹ Section 401.26(2), F.S., and Fla. Admin. Code R. 64J-1.002 and 64J-1.003 (2019).

- Sterile obstetrical kit;
- Burn sheets;
- Flashlight;
- Occlusive dressings;
- Gloves, face masks;
- Nasopharyngeal airways;
- Biohazardous waste bags; and
- Bulb syringe.²²

The following additional adult and pediatric medical equipment and medications are required for ALS service vehicles:

- Medications:
 - Atropine;
 - Dextrose;
 - Epinephrine;
 - Ventricular dysrhythmic;
 - Benzodiazepine sedative/anticonvulsant;
 - Naloxone (Narcan);
 - Nitroglycerin; and
 - Beta adrenergic inhalant with nebulizer apparatus.
- I.V. Solutions, including Lactated Ringers or Normal Saline with stopcocks, pressure infuser, drip sets, tubing and cannula.
- Equipment:
 - Laryngoscope handle, blades and batteries;
 - I.V. arm boards or splints;
 - Disposable endotracheal tubes and stylets;
 - Magill forceps;
 - Device for intra-tracheal meconium suctioning;
 - Tourniquets;
 - Needles and syringes;
 - Portable monitor with defibrillator, pacing capabilities, ECG printout, and electrodes; and
 - Glucometer.²³

Emergency Medical Technicians

The primary focus of an EMT is to provide basic emergency medical care and transportation for critical and emergent patients who access the emergency medical system. This individual possesses the basic knowledge and skills necessary to provide patient care and transportation. An EMT functions as part of a comprehensive EMS response, under medical oversight. An EMT performs interventions with the basic equipment typically found on an ambulance. An EMT is a link from the scene to the emergency health care system.²⁴

²² Fla. Admin Code R. 64J-1.002(4) (2019).

²³ Fla. Admin Code R. 64J-1.003(7) (2019).

²⁴ See note 16.

Paramedics

A paramedic is an allied health professional whose primary focus is to provide advanced emergency medical care for critical and emergent patients who access the emergency medical system. This individual possesses the complex knowledge and skills necessary to provide patient care and transportation. Paramedics function as part of a comprehensive EMS response, under medical oversight. Paramedics perform interventions with the basic and advanced equipment typically found on an ALS service vehicle. A paramedic is a link from the scene into the health care system.²⁵

III. Effect of Proposed Changes:

The bill creates s. 401.254, F.S., to authorize an emergency service transport vehicle permit holder to transport a police canine injured in the line of duty to a veterinary clinic, hospital emergency department, or similar facility if no person requires medical attention or transport when the canine needs it.

The bill defines the term “police canine” as any canine that is owned, or the service of which is employed, by a state or local law enforcement agency, a correctional agency, a fire department, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of criminal activity, flammable materials, or missing persons; enforcement of laws; investigation of fires; or apprehension of offenders.

The bill authorizes EMTs and paramedics to provide emergency medical care to the injured police canine at the scene of the emergency or while being transported. The bill provides civil and criminal immunity for EMTs and paramedics who act in good faith to provide emergency care to the injured police canine and exempts them from the application of the veterinary practice act for providing medical care to a police canine injured in the line of duty.

The bill has an effective date of July 1, 2020.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁵ *Id.*

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Should a police canine be transported to an emergency medical center for treatment of injuries suffered in the line of duty by an emergency service transport vehicle, the cost of such services would need to be covered. The bill does not specify who would pay the cost of such services.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not provide any emergency treatment protocols for EMTs and paramedics to follow for the emergency care and treatment of police canines injured in the line of duty, nor does the bill require the collaborative development of treatment protocols for injured police canines between the boards of medicine and osteopathic medicine and the board of veterinary medicine. The emergency medical care and treatment of human beings and canines is very different, as is the training of veterinarians when compared to that of EMTs and paramedics. Further, if an injured police canine is transported to a hospital emergency department or similar facility, those treatment providers may not have veterinary training nor be willing to treat animals. The bill does not provide immunity from liability for those treatment providers.

VIII. Statutes Affected:

This bill substantially amends section 474.203 of the Florida Statutes.

This bill creates section 401.254 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.

By Senator Wright

14-00561-20

2020842__

A bill to be entitled

An act relating to injured police canines; creating s. 401.254, F.S.; defining the term "police canine"; authorizing life support services to transport injured police canines under certain circumstances; authorizing a paramedic or an emergency medical technician to provide emergency medical care to injured police canines under certain circumstances; providing immunities; amending s. 474.203, F.S.; providing applicability; providing an effective date.

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

Section 1. Section 401.254, Florida Statutes, is created to read:

401.254 Treatment of injured police canines.—

(1) As used in this section, the term "police canine" means any canine that is owned, or the service of which is employed, by a state or local law enforcement agency, a correctional agency, a fire department, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of criminal activity, flammable materials, or missing persons; enforcement of laws; investigation of fires; or apprehension of offenders.

(2) A licensee with a valid permit for its transport vehicle may transport a police canine injured in the line of duty to a veterinary clinic, hospital emergency department, or similar facility if there is no individual requiring medical attention or transport at that time.

Page 1 of 2

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

14-00561-20

2020842__

(3) Notwithstanding s. 474.213, a paramedic or an emergency medical technician may provide emergency medical care to a police canine injured in the line of duty while at the scene of the emergency or while the police canine is being transported to a veterinary clinic, hospital emergency department, or similar facility. A paramedic or an emergency medical technician who acts in good faith to provide emergency medical care to an injured police canine is immune from criminal or civil liability.

Section 2. Subsection (9) is added to section 474.203, Florida Statutes, to read:

474.203 Exemptions.—This chapter does not apply to:

(9) A paramedic or an emergency medical technician providing emergency medical care to a police canine injured in the line of duty as authorized under s. 401.254.

For the purposes of chapters 465 and 893, persons exempt pursuant to subsection (1), subsection (2), or subsection (4) are deemed to be duly licensed practitioners authorized by the laws of this state to prescribe drugs or medicinal supplies.

Section 3. This act shall take effect July 1, 2020.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Feb 4, 2020

Meeting Date

842

Bill Number (if applicable)

Topic Injured Police Canines

Amendment Barcode (if applicable)

Name Gary Bradford

Job Title Lobbyist

Address 300 East Brevard Street

Phone 222-3329

Street

Talla

FL

32301

Email gbradford1958@yahoo.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PBA Inc

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

2/4/20

Meeting Date

842

Bill Number (if applicable)

Topic Injured Canines

Amendment Barcode (if applicable)

Name Kate MacFall

Job Title State director

Address _____
Street

Phone 810 508-1001

City

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Humane Society of the United States

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/4/20

Meeting Date

SB842

Bill Number (if applicable)

Topic Injured Police Canines

Amendment Barcode (if applicable)

Name JENNIFER HOBGOOD

Job Title SENIOR DIRECTOR OF LEGISLATION

Address P O BOX 5741

Phone 850 445 5245

TALLAHASSEE FL 32314

City

State

Zip

Email jen.hobgood@aspca.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ASPCA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs and Space, *Chair*
Children, Families, and Elder Affairs
Commerce and Tourism
Environment and Natural Resources

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR TOM A. WRIGHT

14th District

January 23, 2019

The Honorable Keith Perry
316, Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 842 – Injured Police Canines

Dear Chair Perry:

Senate Bill 842, relating to Injured Police Canines has been referred to the Committee on Criminal Justice. I am requesting your consideration on placing SB 842 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Tom A. Wright".

Tom A. Wright, District 14

cc: Lauren Jones, Staff Director of the Committee on Criminal Justice
Sue Arnold, Administrative Assistant of the Committee on Criminal Justice

REPLY TO:

- ☐ 4606 Clyde Morris Blvd., Suite 2-J, Port Orange, Florida 32129 (386) 304-7630
- ☐ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 952

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Perry

SUBJECT: Senior Management Service Class

DATE: February 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	Fav/CS
2.	Cellon	Jones	CJ	Favorable
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 952 makes certain managerial employees of the criminal conflict and civil regional counsel offices members of the Senior Management Service Class (SMSC) (rather than the Regular Class) of the Florida Retirement System (FRS). For each employee participating in the pension plan of the FRS, this shift means the employee earns 2.0 percent service credit for each year of service rather than 1.6 percent service credit. For an employee participating in the investment plan of the FRS, the employee will receive contributions into the investment account equal to 7.67 percent of salary rather than 6.3 percent of salary.

Any employee shifted from the Regular Class to the SMSC is permitted to upgrade retirement credit for service in the same position. The upgraded service credit may not be purchased by the member's employer.

The bill increases the personnel costs incurred by the five offices of the criminal conflict and civil regional counsel by roughly \$300,000 annually for the positions enumerated in the bill for membership in the SMSC.

The bill takes effect July 1, 2020.

II. Present Situation:

Criminal Conflict and Civil Regional Counsel

In 2007, the Legislature created s. 27.511, F.S., to establish five offices of criminal conflict and civil regional counsel. When an Office of the Public Defender determines it has a conflict in representing an indigent defendant, the office of criminal conflict and civil regional counsel will be appointed to represent the defendant. The office of criminal conflict and civil regional counsel has primary responsibility for representing persons entitled to court-appointed counsel under the Federal or State Constitution or as authorized by law in civil proceedings, such as proceedings to terminate parental rights.¹

The table below shows the number of full-time equivalent positions and the amount of salary rate authorized for each of the five regional offices.

Regional Office	FTE Positions	Salary Rate
First	122.00	6,822,226
Second	107.00	6,310,604
Third	66.75	4,314,054
Fourth	114.00	6,257,822
Fifth	92.00	4,621,667
Total	501.75	28,326,373

The Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.² The FRS is a contributory system, with active members contributing three percent of their salaries.³

The membership of the FRS is divided into five membership classes:

- The Regular Class⁴ consists of 554,631 active members and 7,629 in renewed membership;
- The Special Risk Class⁵ includes 74,274 active members and 1,112 in renewed membership;

¹ Section 27.511(5) and (6), F.S.

² Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2019, at p. 35. Available online at: https://www.rol.frs.state.fl.us/forms/2018-19_CAFR.pdf (last visited January 30, 2020).

³ Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011. Members in the Deferred Retirement Option Program do not contribute to the system.

⁴ The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

⁵ The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.

- The Special Risk Administrative Support Class⁶ has 100 active members and 1 in renewed membership;
- The Elected Officers' Class⁷ has 2,088 active members and 112 in renewed membership; and
- The Senior Management Service Class⁸ has 7,767 active members and 214 in renewed membership.⁹

Members of the FRS have two primary plan options available for participation:

- The defined benefit plan, also known as the Pension Plan; and
- The defined contribution plan, also known as the Investment Plan.

Pension Plan

The pension plan is administered by the secretary of the Department of Management Services through the Division of Retirement.¹⁰ Investment management is handled by the State Board of Administration.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.¹¹ For members initially enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.¹² Benefits payable under the pension plan are calculated based on the member's years of creditable service multiplied by the service accrual rate multiplied by the member's average final compensation.¹³ For most current members of the pension plan (including members in the Regular Class and the Senior Management Service Class), normal retirement (when first eligible for unreduced benefits) occurs at the earliest attainment of 30 years of service or age 62.¹⁴ Members initially enrolled in the pension plan on or after July 1, 2011, have longer service requirements. For members initially enrolled after that date, a member in the Regular Class or the Senior Management Service Class (SMSC) must complete 33 years of service or attain age 65.¹⁵

The Regular Class and the SMSC share the same normal retirement dates, average final compensation calculation, and disability/survivor benefits. However, the Regular Class service credit provides a 1.6 percent accrual value for each year of creditable service while the SMSC earns a 2.0 percent accrual value each year.

⁶ The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.

⁷ The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

⁸ The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

⁹ All figures are from Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2019, at p. 161.

¹⁰ Section 121.025, F.S.

¹¹ Section 121.021(45)(a), F.S.

¹² Section 121.021(45)(b), F.S.

¹³ Section 121.091, F.S.

¹⁴ Section 121.021(29)(a)1., F.S.

¹⁵ Sections 121.021(29)(a)2. and (b)2., F.S.

Section 121.055(1)(j), F.S., authorizes a member of the SMSC to upgrade service credit in the same position from Regular Class accrual value to the SMSC accrual value. Generally, the service credit may be purchased by the employer on behalf of the member.

Investment Plan

In 2000, the Public Employee Optional Retirement Program (investment plan) was created as a defined contribution plan offered to eligible employees as an alternative to the FRS Pension Plan. The State Board of Administration (SBA) is primarily responsible for administering the investment plan.¹⁶ The Board of Trustees of the SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.¹⁷

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and earnings. Benefits are provided through employee-directed investments offered by approved investment providers.

A member vests immediately in all employee contributions paid to the investment plan.¹⁸ With respect to the employer contributions, a member vests after completing one work year of employment with an FRS employer.¹⁹ Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.²⁰ The investment plan also provides disability coverage for both in-line-of-duty and regular disability retirement benefits.²¹ An FRS member who qualifies for disability while enrolled in the investment plan may apply for benefits as if the employee were a member of the pension plan. If approved for retirement disability benefits, the member is transferred to the pension plan.²²

¹⁶ Section 121.4501(8), F.S.

¹⁷ FLA CONST. art. IV, s. 4.

¹⁸ Section 121.4501(6)(a), F.S.

¹⁹ If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, then any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. Section 121.4501(6)(b)-(d), F.S.

²⁰ Section 121.591, F.S.

²¹ See s. 121.4501(16), F.S.

²² Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate an in-line-of-duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for special risk class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If the disability occurs other than in the line of duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date. Section 121.091(4)(f), F.S.

The table below shows the allocation of contributions made into the FRS for members of the investment plan participating in the Regular Class and SMSC. The contributions are based on a percentage of the member's gross compensation for the month.

Allocation of Contributions	Regular Class	Senior Management Service Class
Investment Account	6.30%	7.67%
Disability	0.25%	0.26%
In line of duty death	0.05%	0.05%
Administrative Assessments	0.06%	0.06%
Total	6.66%	8.04%

III. Effect of Proposed Changes:

Section 1 amends s. 121.053, F.S., to make certain employees of the criminal conflict and civil regional counsel offices members of the SMSC (rather than the Regular Class) of the FRS. For each employee participating in the pension plan of the FRS, this shift means the employee earns 2.0 percent service credit for each year of service rather than 1.6 percent service credit. For an employee participating in the investment plan of the FRS, the employee will receive contributions into the investment account equal to 7.67 percent of salary rather than 6.3 percent of salary.

Any employee shifted from the Regular Class to the SMSC is permitted to upgrade retirement credit for service in the same position, but no further back than October 1, 2007, when the criminal conflict and civil regional counsel was created. The upgraded service credit may not be purchased by the member's employer.

Section 2 provides that the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The additional employer contributions for the enumerated positions to be paid annually beginning in the 2020-2021 fiscal year are estimated to be roughly \$300,000. These funds will be deposited into the Florida Retirement System Trust Fund to be used to pay benefits upon each member's retirement.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 121.055 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 Governmental Oversight and Accountability on January 21, 2020:

The CS eliminates new provisions that allowed up to five percent of other criminal conflict regional counsel personnel to be designated as SMSC for retirement purposes.

B. Amendments:

None.

By the Committee on Governmental Oversight and Accountability;
and Senator Perry

585-02435-20

2020952c1

1 A bill to be entitled
2 An act relating to the Senior Management Service
3 Class; amending s. 121.055, F.S.; providing that
4 participation in the Senior Management Service Class
5 of the Florida Retirement System is compulsory for
6 each appointed criminal conflict and civil regional
7 counsel and specified staff of the regional counsel
8 beginning on a specified date; authorizing members of
9 the class to purchase and upgrade certain retirement
10 credit; providing an effective date.

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

13
14 Section 1. Paragraph (m) is added to subsection (1) of
15 section 121.055, Florida Statutes, to read:

16 121.055 Senior Management Service Class.—There is hereby
17 established a separate class of membership within the Florida
18 Retirement System to be known as the "Senior Management Service
19 Class," which shall become effective February 1, 1987.

20 (1)

21 (m)1. Effective July 1, 2020, participation in the Senior
22 Management Service Class is compulsory for each appointed
23 criminal conflict and civil regional counsel and each district's
24 assistant regional counsel chiefs, administrative directors, and
25 chief investigators.

26 2. A Senior Management Service Class member under this
27 paragraph may purchase additional retirement credit in the class
28 for creditable service within the purview of the Senior
29 Management Service Class retroactive to October 1, 2007, and may

Page 1 of 2

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

585-02435-20

2020952c1

30 upgrade retirement credit for such service in accordance with
31 paragraph (j). However, this service credit may not be purchased
32 by the employer on behalf of the member.

33 Section 2. This act shall take effect July 1, 2020.

Page 2 of 2

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

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 1018

INTRODUCER: Criminal Justice Committee and Senator Stewart

SUBJECT: Exposure of Sexual Organs

DATE: February 5, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stokes	Jones	CJ	Fav/CS
2. _____	_____	JU	_____
3. _____	_____	RC	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1018 amends s. 800.03, F.S., increasing the penalty from a first degree misdemeanor to a third degree felony for a second or subsequent offense of exposing or exhibiting one's s sexual organs in a vulgar or indecent manner while in public or private view.

Additionally, this bill provides that exposing of sexual organs by a mother breastfeeding her baby, a person who is merely naked at a place provided or set apart for that purpose, including but not limited to a clothing-optional beach, or an inmate in a state correctional institution or local detention facility, is not a violation of s. 800.03, F.S.

This bill amends s. 901.15, F.S., adding the crime of exposure of sexual organs to the list of misdemeanor offenses for which an officer may conduct a warrantless arrest.

Section 901.15, F.S., provides the circumstances when a law enforcement officer may conduct a warrantless arrest.

The Criminal Justice Impact Conference estimates this bill will have a "positive indeterminate" prison bed impact (unquantifiable increase in prison bed impact). See Section V. Fiscal Impact Statement.

This bill is effective October 1, 2020.

II. Present Situation:

Exposure of sexual organs

Section 800.03, F.S., provides that it is unlawful for a person to expose or exhibit his or her sexual organs in a vulgar or indecent manner while in public or private view, or to be naked except in any place provided or set apart for that purpose. A mother who is breastfeeding does not violate this section. A violation of this section is a misdemeanor of the first degree.¹

Courts have consistently held that being naked alone is not sufficient to violate s. 800.03, F.S. To trigger a violation, there must also be a “lascivious” exhibition of the sexual organs.² The terms “lascivious,” “lewd” and “indecent” have been interpreted by the Florida Supreme Court to be synonymous and mean wicked, lustful, unchaste, licentious, or sensual design by the perpetrator.³ Because nudity alone is not a violation of s. 800.03, F.S., some counties have enacted county ordinances which specifically address public nudity.⁴ Similarly, the Department of Environmental Protection has enacted a rule that specifically prohibits nudity in parks.⁵ These local ordinances or rules further restrict nudity in their respective jurisdictions.

Courts have also made a distinction between conduct that occurs in public and conduct that occurs in a private place. If the exposure occurs in a private place, evidence must be provided that someone was offended by the conduct.⁶

Similar conduct, when done in the presence of a person younger than 16, is currently a felony. Section 800.04(7), F.S., provides that a person who intentionally masturbates, intentionally exposes his or her genitals in a lewd or lascivious manner, or intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, and the victim is younger than 16 years old, commits:

- A second degree felony,⁷ if the person is 18 years of age or older.
- A third degree felony,⁸ if the person is younger than 18 years of age.

¹ A first degree misdemeanor is punishable by up to a year in county jail and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

² See *Hoffman v. Carson*, 250 So. 2d 891 (Fla. 1971); *Goodmakers v. State*, 450 So. 2d 888 (Fla. 2d DCA, 1984); *Duvallon v. State*, 404 So. 2d 196 (Fla. 1st DCA, 1981).

³ *Boles v. State*, 27 So. 2d 293, 294 (Fla. 1946); *Goodmakers v. State*, 450 So. 2d 888 (Fla. 2d DCA 1984).

⁴ Brevard County, Florida, Municipal Code art. II., s. 74-30.

⁵ Rule 62D-2.014(7)(a), F.A.C., states that in every area of a park including bathing areas no individual shall expose the human, male or female genitals, pubic area, the entire buttocks or female breast below the top of the nipple, with less than fully opaque covering.

⁶ *State v. Kees*, 919 So. 2d 504, 506-07 (Fla. 5th DCA 2005).

⁷ A second degree felony is punishable by up to 15 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

⁸ A third degree felony is punishable by up to five years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

Arrest without an Arrest Warrant

Section 901.15, F.S., provides the circumstances in which a law enforcement officer may conduct a warrantless arrest. Generally, a law enforcement officer may arrest a person without an arrest warrant when:

- The person has committed a felony or misdemeanor or violated a local ordinance in the officer's presence, however the arrest for a misdemeanor or local ordinance must be made immediately or in fresh pursuit;
- A felony has been committed and the officer reasonably believes the person committed it;
- The officer reasonably believes that a felony has been or is being committed and that the person has committed or is committing it; and
- A warrant for the arrest has been issued and is held by another officer for execution.⁹

However, there are many exceptions to these general rules. A law enforcement officer may make an arrest, where there is probable cause¹⁰ to believe that a person has committed one of the following offenses:

- Violations of injunctions for protection against domestic violence, dating violence, sexual violence, repeat violence, exploitation of a vulnerable adult or a foreign protection order;¹¹
- Acts of domestic violence or dating violence;¹²
- Child abuse or luring or enticing a child for unlawful purposes;¹³
- Battery;¹⁴
- Criminal mischief or graffiti-related offenses;¹⁵
- Violation of a safety zone, security zone, regulated navigation area, or naval vessel protection zone;¹⁶
- Racing violation as described in s. 316.191(2), F.S.;¹⁷
- An act that violates a condition of pretrial release when the original arrest was for an act of domestic violence or dating violence;¹⁸
- Trespass in a posted secure area of an airport;¹⁹
- Assault upon a law enforcement officer, a firefighter, an emergency medical care provider, public transit employees or agents, or other officers specified in s. 784.07, F.S., who is engaged in the lawful performance of his or her duties;²⁰

⁹ Section 901.15(1), (2), (3), and (4), F.S. Also, a law enforcement officer who witnesses a violation of ch. 316, F.S. (State Uniform Traffic Control), may relay that information to another officer who can then make the arrest when reasonable and proper identification of the vehicle and the violation has been communicated to the arresting officer. Section 901.15(5), F.S.

¹⁰ Probable cause to arrest is not to be equated with the standards of conclusiveness and probability required upon which a conviction must be based. *State v. Outten*, 206 So. 2d 392 (Fla.1968); Arrests are made upon probable cause or a reasonable ground for belief, not proof beyond a reasonable doubt. *Hall v. State*, 219 So. 2d 757 (Fla. 3d DCA 1969).

¹¹ Section 901.15(6), F.S.

¹² Section 901.15(7), F.S.

¹³ Section 901.15(8), F.S.

¹⁴ Section 901.15(9), F.S.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Section 901.15(13), F.S.

¹⁹ Section 901.15(14), F.S.

²⁰ Section 901.15(15), F.S.

- Assault or battery upon an employee of a receiving facility as defined in s. 394.455(39), F.S., who is engaged in the lawful performance of his or her duties;²¹ and
- A criminal act of cyberharassment as described in s. 784.049, F.S.²²

III. Effect of Proposed Changes:

This bill amends s. 800.03, F.S., increasing the penalty from a first degree misdemeanor to a third degree felony for a second or subsequent offense of exposing or exhibiting one's sexual organs in a vulgar or indecent manner while in public or private view.

This bill removes the language, "or to be naked in public except in any place provided or set apart for that purpose." The removal of this language is consistent with the Florida Supreme Court's interpretation of the statute that mere nudity is not a violation of s. 800.03, F.S.²³

Additionally, this bill provides that exposing of sexual organs by a mother breastfeeding her baby, a person who is merely naked at a place provided or set apart for that purpose, including but not limited to a clothing-optional beach, or an inmate in a state correctional institution or local detention facility, is not a violation of s. 800.03, F.S.

This bill amends s. 901.15, F.S., adding the crime of exposure of sexual organs to the list of misdemeanor offenses for which an officer may conduct a warrantless arrest.

This bill is effective October 1, 2020

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

²¹ *Id.*

²² Section 901.15(16), F.S.

²³ *Hoffman v. Carson*, 250 So. 2d 891 (Fla. 1971).

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates this bill will have a “positive indeterminate” prison bed impact (unquantifiable increase in prison bed impact).²⁴

The CJIC provides the following information relevant to its estimate:²⁵

Per [Florida Department of Law Enforcement], in FY 18-19, 720 people were arrested under s. 800.03, F.S., with 283 guilty/convicted and 76 having adjudication withheld. It is not known how many of these people were exhibiting sexual organs in a vulgar or indecent manner, nor is it known how many were naked in public.

In FY 17-18, the incarceration rate for a Level 1, 3rd degree felony was 8.7%.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 800.03 and 901.15.

²⁴ CJIC SB 1018-Exposure of Sexual Organs (Identical HB 675), January 27, 2020, on file with the Senate Committee on Criminal Justice.

²⁵ *Id.*

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

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

CS by Criminal Justice on February 4, 2020:

The committee substitute:

- Makes a second or subsequent violation of s. 800.03, F.S., a third degree felony.
- This bill removes the language, “or to be naked in public except in any place provided or set apart for that purpose.” The removal of this language is consistent with the Florida Supreme Court’s interpretation of the statute that mere nudity is not a violation of s. 800.03, F.S.²⁶
- Provides that exposing of sexual organs by a mother breastfeeding her baby, a person who is merely naked at a place provided or set apart for that purpose, including but not limited to a clothing-optional beach, or an inmate in a state correctional institution or local detention facility, is not a violation of s. 800.03, F.S.
- Amends s. 901.15, F.S., to add the crime of exposure of sexual organs, contrary to s. 800.03, F.S., the list of misdemeanor offenses for which an officer may conduct a warrantless arrest.

B. Amendments:

None.

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

²⁶ *Hoffman v. Carson*, 250 So. 2d 891 (Fla. 1971).



591108

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 800.03, Florida Statutes, is amended to
read:

800.03 Exposure of sexual organs.—

(1) It is unlawful to expose or exhibit one's sexual organs
in public or on the private premises of another, or so near
thereto as to be seen from such private premises, in a vulgar or



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indecent manner, ~~or to be naked in public except in any place provided or set apart for that purpose.~~

(2) (a) Except as provided in paragraph (b), a violation of this section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A second or subsequent violation of this section is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) The exposure of sexual organs by any of the following does not violate subsection (1):

(a) A mother's breastfeeding of her baby;

(b) An individual who is merely naked at any place provided or set apart for that purpose, including, but not limited to, a clothing-optional beach; or

(c) An inmate incarcerated at a state correctional institution or local detention facility ~~does not under any circumstance violate this section.~~

Section 2. Subsection (9) of section 901.15, Florida Statutes, is amended to read

901.15 When arrest by officer without warrant is lawful.—A law enforcement officer may arrest a person without a warrant when:

(9) There is probable cause to believe that the person has committed:

(a) Any battery upon another person, as defined in s. 784.03.

(b) An act of criminal mischief or a graffiti-related offense as described in s. 806.13.

(c) A violation of a safety zone, security zone, regulated



591108

navigation area, or naval vessel protection zone as described in
s. 327.461.

(d) A racing violation as described in s. 316.191(2).

(e) An exposure of sexual organs in violation of s. 800.03.

Section 3. This act shall take effect October 1, 2020.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to exposure of sexual organs; amending
s. 800.03; increasing criminal penalties for exposure
of sexual organs for a second or subsequent offense;
providing exceptions; amending s. 901.15, F.S.;
authorizing warrantless arrests when a law enforcement
officer has probable cause to believe that a person
has violated s. 800.03, F.S.; providing an effective
date.

By Senator Stewart

13-00929-20

20201018__

A bill to be entitled

An act relating to exposure of sexual organs; amending
s. 800.03, F.S.; increasing criminal penalties for
exposure of sexual organs under certain circumstances;
providing an effective date.

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

Section 1. Section 800.03, Florida Statutes, is amended to
read:

800.03 Exposure of sexual organs.—

(1) It is unlawful to expose or exhibit one's sexual organs
in public or on the private premises of another, or so near
thereto as to be seen from such private premises, in a vulgar or
indecent manner, ~~or to be naked in public except in any place
provided or set apart for that purpose.~~ Violation of this
~~subsection~~ ~~section~~ is a felony misdemeanor of the third ~~first~~
degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or
s. 775.084.

(2) It is unlawful to be naked in public except in any
place provided or set apart for that purpose. Violation of this
subsection is a misdemeanor of the first degree, punishable as
provided in s. 775.082 or s. 775.083.

(3) A mother's breastfeeding of her baby does not under any
circumstance violate this section.

Section 2. This act shall take effect October 1, 2020.

SB 1018 – Exposure of Sexual Organs (Identical HB 675)

This bill amends s. 800.03, F.S., adding an unranked, **3rd degree felony (Level 1 by default)** for a person “to expose or exhibit one's sexual organs in public or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner.” To be naked in public except in any place provided or set apart for that purpose remains a 1st degree misdemeanor.

Per FDLE, in FY 18-19, 720 people were arrested under s. 800.03, F.S., with 283 guilty/convicted and 76 having adjudication withheld. It is not known how many of these people were exhibiting sexual organs in a vulgar or indecent manner, nor is it known how many were naked in public.

In FY 17-18, the incarceration rate for a Level 1, 3rd degree felony was 8.7%.

CONFERENCE ADOPTED ESTIMATE: Positive Indeterminate

Requested by: House

THE FLORIDA SENATE
APPEARANCE RECORD

2/4/20

Meeting Date

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

1018

Bill Number (if applicable)

591108

Amendment Barcode (if applicable)

Topic Public Nudity

Name Carlos Martinez

Job Title Public Defender, 11th Judicial Circuit

Address 1320 Nw 14th St

Street

Miami

City

FL

State

33125

Zip

Phone 305-545-1900

Email cmartinez@pdmiami.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/4/20

Meeting Date

1018

Bill Number (if applicable)

Topic EXPOSURE 800.03

Amendment Barcode (if applicable)

Name Ramon MARY

Job Title _____

Address PO BOX 10245
Street

Phone 222 1568

TALL HILL FL 32302
City State Zip

Email RMA@RAMONMARY.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing AANR-FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

This form is part of the public record for this meeting

CS-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)

02-04-20
Meeting Date

SB 1018
Bill Number (if applicable)

Topic EXPOSURE SEXUAL ORGANS

Amendment Barcode (if applicable)

Name MATT BUTLER

Job Title CAPTAIN

Address 2500 W. COLONIAL DR.
Street

Phone 321-224-9864

ORLANDO FL 32804
City State Zip

Email MATT.BUTLER@ORCL.MA

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ORANGE COUNTY SHERIFF'S OFFICE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/4/20

Meeting Date

SB1018

Bill Number (if applicable)

Topic Exposure of Sex Organs

Amendment Barcode (if applicable)

Name Phil Archer

Job Title State Attorney - 18th Cir

Address Frank Samson Way

Phone (321) 637-5875

Street

Viera

City

FL

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fla Prosecuting Attorneys Assoc. (FPAA)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

This form is part of the public record for this meeting

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Keith Perry, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: December 13, 2019

I respectfully request that **Senate Bill #: 1018** relating to Exposure of Sexual Organs be placed on the:

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

A handwritten signature in cursive script that reads "Linda Stewart".

Senator Linda Stewart
Florida Senate, District 13

c.c. Lauren Jones, Staff Director
Sue Arnold, Senior Administrative Assistant

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 1308

INTRODUCER: Criminal Justice Committee and Senators Brandes and Bracy

SUBJECT: Criminal Justice

DATE: February 5, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1308 makes a number of changes to the criminal justice system, including:

- Modifying the list of enumerated offenses that exclude juvenile offenders convicted of capital murder from a sentence review hearing in accordance with s. 921.1402, F.S., enacted subsequent to the *Graham v. Florida* and *Miller v. Alabama* cases, to only murder.
- Retroactively applying the above modification to limit the prior offenses that serve as a bar for certain juvenile offenders to have a sentence review hearing to only murder.
- Providing that juvenile offenders who are no longer barred from a sentence review hearing due to the change to the list of enumerated prior offenses and who have served 25 years of the imprisonment imposed on the effective date of the bill must have a sentence review hearing conducted immediately.
- Providing all other juvenile offenders who are no longer barred from a sentence review hearing due to the change to the list of enumerated prior offenses must be given a sentence review hearing when 25 years of the imprisonment imposed have been served.
- Establishing a sentence review process similar to that created for juvenile offenders pursuant to s. 921.1402, F.S., for “young adult offenders.”
- Defining the term “young adult offender.”
- Allowing certain young adult offenders to request a sentence review hearing with the original sentencing court if specified conditions are met, specifically:
 - A young adult offender convicted of a life felony offense, or an offense reclassified as such, who was sentenced to 20 years imprisonment may request a sentence review after 20 years; and

- A young adult offender convicted of a first degree felony offense, or an offense reclassified as such, who was sentenced to 15 years imprisonment may request a sentence review after 15 years.
- Providing an exception to the requirement for prison releasee reoffenders to serve specified amounts of the term of imprisonment and allowing such prison releasee reoffenders that also qualify as juvenile offenders and young adult offenders to have sentence review hearings conducted by the court and be resentenced and released from imprisonment if deemed appropriate.
- Requiring the DOC and county detention facilities to provide documentation to inmates upon release specifying the total length of the term of imprisonment at the time of release.
- Allowing time spent incarcerated in a county detention facility or state correctional facility to apply towards satisfaction of residing for a specified amount of time in Florida for designation as a resident for tuition purposes.
- Requiring the time spent incarcerated in a county detention facility or state correctional facility to be credited toward the residency requirement, with any combination of documented time living in Florida before and after incarceration.
- Requiring the Office of Program Policy and Governmental Accountability (OPPAGA) to conduct a study to evaluate the various opportunities available to persons returning to the community from imprisonment.
- Providing the study's scope and requiring the OPPAGA to submit a report to the Governor, the President of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives by November 1, 2020.

To the extent that the bill increases the number of certain offenders being released from prison as a result of the sentence review hearings, the bill may result in a negative indeterminate prison bed impact and a positive indeterminate impact to the supervision population managed by the DOC. Additionally, the bill may result in an increased workload to the courts, the DOC, and county jail facilities. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2020.

II. Present Situation:

Criminal Punishment Code

The Criminal Punishment Code (Code) is Florida's primary sentencing policy.¹ Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).² Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses like a Level 7 or 8 drug trafficking offense. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points,

¹ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

² Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.³ Absent mitigation,⁴ the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.

Except as otherwise provided by law, the statutory maximum sentence for an offense committed, which is classified as a:

- Capital felony is:
 - Death, if the proceeding held according to the procedure set forth in s. 921.141, F.S., results in a determination that it is appropriate for the person to be punished by death; or
 - Life imprisonment without the possibility of parole.
- Life felony is a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.
- First-degree felony is:
 - 30 years; or
 - Imprisonment for a term of years not exceeding life imprisonment when specifically provided by statute.
- Second-degree felony is 15 years.
- Third degree felony is 5 years.⁵

Juvenile Offenders Convicted of Offenses Punishable by Life Without Parole

In recent years, the U.S. Supreme Court issued several decisions addressing the application of the Eighth Amendment's prohibition against cruel and unusual punishment as it relates to the punishment of juvenile offenders.⁶ The first of these was *Roper v. Simmons*,⁷ in which the Court held that juvenile offenders cannot be subject to the death penalty for any offense. More recently, the Court expanded juvenile sentencing doctrine in *Graham v. Florida*⁸ and *Miller v. Alabama*.⁹

Graham v. Florida

In *Graham*, the U.S. Supreme Court held that a juvenile offender may not be sentenced to life in prison without the possibility of parole for a non-homicide offense. More specifically, the Court found that if a non-homicide juvenile offender is sentenced to life in prison, the state must

³ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

⁴ The court may “mitigate” or “depart downward” from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

⁵ See s. 775.082, F.S.

⁶ The term “juvenile offender” refers to an offender who was less than 18 years of age at the time the offense was committed for which he or she was sentenced. Most crimes committed by juveniles are dealt with through delinquency proceedings as set forth in ch. 985, F.S. However, the law provides a mechanism for juveniles to be tried and handled as adults. A juvenile who commits a crime while 13 years old or younger may only be tried as an adult if a grand jury indictment is returned. A juvenile who is older than 13 years may be tried as an adult for certain felony offenses if a grand jury indictment is returned, if juvenile court jurisdiction is waived and the case is transferred for prosecution as an adult pursuant to s. 985.556, F.S., or if the state attorney direct files an information in adult court pursuant to s. 985.557, F.S. Regardless of age, s. 985.58, F.S., requires a grand jury indictment to try a juvenile as an adult for an offense that is punishable by death or life imprisonment.

⁷ 125 S.Ct. 1183 (2005).

⁸ 130 S.Ct. 2011 (2010).

⁹ 132 S.Ct. 2455 (2012).

“provide him or her with some realistic opportunity to obtain release before the end of that term.”¹⁰ Because Florida abolished parole¹¹ and the possibility of executive clemency was deemed to be remote,¹² the Court held that a juvenile offender in Florida could not be given a life sentence for a non-homicide offense without a meaningful opportunity to obtain release.¹³

Graham applies retroactively to previously sentenced offenders because it established a fundamental constitutional right.¹⁴ Therefore, a juvenile offender who is serving a life sentence for a non-homicide offense that was committed after parole eligibility was eliminated is entitled to be resentenced to a term less than life.

The U.S. Supreme Court did not give any guidance as to the maximum permissible sentence for a non-homicide juvenile offender other than to exclude the possibility of life without parole. This led to different results among the District Courts in reviewing sentences for a lengthy term of years. Prior to the 2014 Legislative Session, there were conflicts in the case law regarding whether a term of years could be deemed to equate to a life without parole sentence. The Florida First District Court of Appeal held that a lengthy term of years is a *de facto* life sentence if it exceeds the juvenile offender’s life expectancy.¹⁵ On the other hand, the Florida Fourth and Fifth District Courts of Appeal strictly construed *Graham* to apply only to life sentences and not to affect sentences for a lengthy term of years.¹⁶

On March 19, 2015, the Florida Supreme Court issued opinions on two cases that had been certified for it to resolve, *Gridine v. State*, 89 So. 3d 909 (Fla. 1st DCA 2011) and *Henry v. State*, 82 So. 3d 1084 (Fla. 5th DCA 2012). The Court held that a sentence proscribing a lengthy term of years imprisonment, such as a 70-year sentence as was pronounced in *Gridine* or the 90-year sentence pronounced in *Henry* that does not provide a meaningful opportunity for release is a *de facto* life sentence that violates the Eighth Amendment to the U.S. Constitution and the holding in *Graham*.¹⁷

Miller v. Alabama

In *Miller*, the U.S. Supreme Court held that juvenile offenders who commit homicide may not be sentenced to life in prison without the possibility of parole as the result of a mandatory sentencing scheme. The Court did not find that the Eighth Amendment prohibits sentencing a juvenile murderer to life without parole, but rather that individualized factors related to the offender’s age must be considered before a life without parole sentence may be imposed. The

¹⁰ *Graham* at 82.

¹¹ Parole was abolished in 1983 for all non-capital felonies committed on or after October 1, 1983, and was completely abolished in 1995 for any offense committed on or after October 1, 1995.

¹² *Graham* at 70.

¹³ *Graham* at 75.

¹⁴ See, e.g., *St. Val v. State*, 107 So. 3d 553 (Fla. 4th DCA 2013); *Manuel v. State*, 48 So.3d 94 (Fla. 2d DCA 2010).

¹⁵ *Adams v. State*, 2012 WL 3193932 (Fla. 1st DCA 2012). The First District Court of Appeal has struck down sentences of 60 years (*Adams*) and 80 years (*Floyd v. State*, 87 So.3d 45 (Fla. 1st DCA 2012)), while approving sentences of 50 years (*Thomas v. State*, 78 So.3d 644 (Fla. 1st DCA 2011)) and 70 years (*Gridine v. State*, 89 So. 3d 909 (Fla. 1st DCA 2011)).

¹⁶ See *Guzman v. State*, 110 So.3d 480 (Fla. 4th DCA 2013); *Henry v. State*, 82 So.3d 1084 (Fla. 5th DCA 2012). It also appears that the Second District Court of Appeal may agree with this line of reasoning: see *Young v. State*, 110 So.3d 931 (Fla. 2d DCA 2013).

¹⁷ *Gridine v. State*, 175 So.3d 672 (Fla. 2015) and *Henry v. State*, 175 So.3d 675 (Fla. 2015).

Court also indicated that it expects few juvenile offenders will be found to merit life without parole sentences.

The majority opinion in *Miller* noted mandatory life-without-parole sentences “preclude a sentencer from taking account of an offender’s age and the wealth of characteristics and circumstances attendant to it.”¹⁸ Although the Court did not require consideration of specific factors, it highlighted the following concerns:

Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys....[A]nd finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.¹⁹

CS/HB 7035 (2014)

In response to the above-mentioned cases, the 2014 Legislature passed and the Governor signed into law CS/HB 7035 (2014), codified in ch. 2014-220, L.O.F., ensuring Florida had a constitutional sentencing scheme for juvenile offenders who are convicted of offenses punishable by a sentence of life without parole.

CS/HB 7035 (2014) amended s. 775.082, F.S., *requiring* a court to sentence a juvenile offender who is convicted of a homicide offense²⁰ that is a capital felony or an offense that was reclassified as a capital felony (capital felony homicide) and where the person actually killed, intended to kill, or attempted to kill the victim to:

- Life imprisonment, if, after conducting a sentencing hearing in accordance with the newly created s. 921.1401, F.S., the court concluded that life imprisonment is an appropriate sentence; or
- A term of imprisonment of not less than 40 years, if the judge concluded at the sentencing hearing that life imprisonment is not an appropriate sentence.²¹

¹⁸ *Miller* at 2467.

¹⁹ *Miller* at 2468.

²⁰ Section 782.04, F.S., establishes homicide offenses.

²¹ Section 775.082(1)(b)1., F.S.

The court *may* sentence a juvenile offender to life imprisonment or a term of years equal to life imprisonment, if, after conducting a sentencing hearing in accordance with s. 921.1401, F.S., the court finds such sentence appropriate and the juvenile offender is convicted of a:

- Life or first degree felony homicide where the person actually killed, intended to kill, or attempted to kill the victim;²²
- Capital, life, or first degree felony homicide offense where the person did not actually kill, intend to kill, or attempt to kill the victim;²³ or
- Nonhomicide offense.²⁴

Section 775.082(1)(b)1., F.S., requires the court to impose a minimum sentence (40 years) only in instances where the court determines that life imprisonment is not appropriate for a juvenile offender convicted of a capital felony homicide where the person actually killed, intended to kill, or attempted to kill the victim.²⁵

Section 775.082(1) and (3), F.S., also provides that all juvenile offenders are entitled to have their sentence reviewed by the court of original jurisdiction after specified periods of imprisonment. However, a juvenile offender convicted of a capital felony homicide, where the person actually killed, intended to kill, or attempted to kill the victim, is not entitled to review if he or she has previously been convicted of a list of enumerated offenses, or conspiracy to commit one of the enumerated offenses, if the offense for which the person was previously convicted was part of a separate criminal transaction or episode than that which resulted in the sentence for the capital felony homicide.²⁶

Sentencing Proceedings for Juvenile Offenders Sentenced to Life Imprisonment

CS/HB 7035 (2014) created s. 921.1401, F.S., which authorized the court to conduct a separate sentencing hearing to determine whether life imprisonment or a term of years equal to life imprisonment is an appropriate sentence for a juvenile offender convicted of one of the above-described homicide or nonhomicide offenses that was committed on or after July 1, 2014.²⁷ When determining whether such sentence is appropriate, the court is required to consider factors relevant to the offense and to the juvenile offender's youth and attendant circumstances, including, but not limited to the:

- Nature and circumstances of offense committed by the juvenile offender;
- Effect of crime on the victim's family and on the community;
- Juvenile offender's age, maturity, intellectual capacity, and mental and emotional health at time of offense;
- Juvenile offender's background, including his or her family, home, and community environment;
- Effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the juvenile offender's participation in the offense;
- Extent of the juvenile offender's participation in the offense;

²² Section 775.082(3)(a)5. and (b), F.S.

²³ Section 775.082(1)(b)2., F.S.

²⁴ Section 775.082(3)(c), F.S.

²⁵ Section 775.082(1)(b)1., F.S.

²⁶ See s. 775.082(1) and (3), F.S., providing that reviews of sentences will be conducted in accordance with s. 921.1402, F.S.

²⁷ Section 921.1401(1), F.S.

- Effect, if any, of familial pressure or peer pressure on the juvenile offender's actions;
- Nature and extent of the juvenile offender's prior criminal history;
- Effect, if any, of characteristics attributable to the juvenile offender's youth on the juvenile offender's judgment; and
- Possibility of rehabilitating the juvenile offender.²⁸

This sentencing hearing is mandatory when sentencing any juvenile offender for a capital felony homicide offense where the offender actually killed, intended to kill, or attempted to kill the victim. The hearing is not required in any of the other above-described offenses, but must be conducted before the court can impose a sentence of life imprisonment or a term of years equal to life imprisonment.

Sentence Review Proceedings

CS/HB 7035 (2014) also created s. 921.1402, F.S., which entitles certain juvenile offenders to a review of his or her sentence by the court of original jurisdiction after specified periods of time. The sentence review hearing is to determine whether the juvenile offender has been rehabilitated and is deemed fit to re-enter society.

Section 921.1402(1), F.S., defines "juvenile offender" to mean a person sentenced to imprisonment in the custody of the DOC for an offense committed on or after July 1, 2014, and committed *before* he or she was 18 years of age.

A juvenile offender convicted of a capital felony homicide offense where the person actually killed, intended to kill, or attempted to kill the victim is entitled to a sentence review hearing after 25 years.²⁹ However, a juvenile offender is not entitled to review if he or she has previously been convicted of one of the following offenses, or conspiracy to commit one of the following offenses, if the offense for which the person was previously convicted was part of a separate criminal transaction or episode than that which resulted in the sentence for which he or she was sentenced to life:

- Murder;
- Manslaughter;
- Sexual battery;
- Armed burglary;
- Armed robbery;
- Armed carjacking;
- Home-invasion robbery;
- Human trafficking for commercial sexual activity with a child under 18 years of age;
- False imprisonment under s. 787.02(3)(a), F.S.; or
- Kidnapping.³⁰

A juvenile offender convicted of a life felony or first degree felony homicide offense where the person actually killed, intended to kill, or attempted to kill the victim, is entitled to a sentence

²⁸ Section 921.1401(2), F.S.

²⁹ Section 775.082(1)(b)1., F.S.

³⁰ Section 921.1402(2)(a), F.S.

review hearing after 25 years, if he or she is sentenced to a term of imprisonment for more than 25 years.³¹

A juvenile offender convicted of a capital felony, life felony, or first degree felony homicide offense where the person did not actually kill, intend to kill, or attempt to kill the victim is entitled to have the court review the sentence after 15 years, if he or she is sentenced to a term of imprisonment of more than 15 years.³²

A juvenile offender convicted of a nonhomicide offense is entitled to have the court review the sentence after 20 years if the juvenile is sentenced to a term of imprisonment of more than 20 years. The juvenile offender is eligible for one subsequent review hearing 10 years after the initial review hearing.³³

The juvenile offender must submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. The DOC must notify a juvenile offender of his or her eligibility to request a sentencing review hearing 18 months before the juvenile offender becomes entitled to such review. Additionally, an eligible juvenile offender is entitled to be represented by counsel at the sentence review hearing, including a court appointed public defender, if the juvenile offender cannot afford an attorney.³⁴

Section 921.1402(6), F.S., requires the original sentencing court to consider any factor it deems appropriate during the sentence review hearing, including all of the following:

- Whether the offender demonstrates maturity and rehabilitation;
- Whether the offender remains at the same level of risk to society as he or she did at the time of the initial sentencing;
- The opinion of the victim or the victim's next of kin;³⁵
- Whether the offender was a relatively minor participant in the criminal offense or acted under extreme duress or the domination of another person;
- Whether the offender has shown sincere and sustained remorse for the criminal offense;
- Whether the offender's age, maturity, and psychological development at the time of the offense affected his or her behavior;
- Whether the offender has successfully obtained a general educational development certificate or completed another educational, technical, work, vocational, or self-rehabilitation program, if such a program is available;
- Whether the offender was a victim of sexual, physical, or emotional abuse before he or she committed the offense; and

³¹ Section 921.1402(2)(b), F.S.

³² Section 921.1402(2)(c), F.S.

³³ Section 921.1402(2)(d), F.S.

³⁴ Section 921.1402(3)-(5), F.S.

³⁵ Section 921.1402(6)(c), F.S., further states that the absence of the victim or the victim's next of kin from the resentencing hearing may not be a factor in the court's determination. The victim or victim's next of kin is authorized to appear in person, in writing, or by electronic means. Additionally, if the victim or the victim's next of kin chooses not to participate in the hearing, the court may consider previous statements made by the victim or the victim's next of kin during the trial, initial sentencing phase, or subsequent sentence review hearings.

- The results of any mental health assessment, risk assessment, or evaluation of the offender as to rehabilitation.³⁶

If a court, after conducting a sentence review hearing, finds that the juvenile offender has been rehabilitated and is reasonably fit to reenter society, the court must modify the offender's sentence and impose a term of probation of at least five years. If the court determines that the juvenile offender has not demonstrated rehabilitation or is not fit to reenter society, the court must issue an order in writing stating the reasons why the sentence is not being modified.³⁷

These sentencing provisions are limited to the juvenile offenders that fall under the strict findings in *Graham* and *Miller*.³⁸ Thus, the sentence review hearings do not currently apply to persons who were convicted and sentenced to very similar offenses and who are close in age to the juvenile offenders who have received sentence review hearings because of *Graham* and *Miller*.

Case Law Subsequent to CS/HB 7035 (2014)

Valid Sentence Options for *Miller* Offenders

Subsequent to the U.S. Supreme Court's holdings in *Roper* and *Miller*, the options for permissible sentences under Florida law for juveniles who were convicted of such capital and life offenses punishable by life imprisonment without the possibility of parole became unclear. The Florida Fifth District Court of Appeal in *Horsley v. State*,³⁹ held that the principal of statutory revival should be applied mandating that the last constitutional sentence, life with the possibility of parole after 25 years, should be imposed for convictions of such juveniles. However, in 2015, the Florida Supreme Court heard and overturned this decision in *Horsley*,⁴⁰ holding that the proper remedy for such juveniles convicted of offenses classified as capital offenses is to apply the sentencing provisions enacted by CS/HB 7035 (2014), which codified the above-mentioned ss. 775.082, 921.1401, and 921.1402, F.S., rather than utilize statutory revival principles and impose a sentence of life with the possibility of parole after 25 years.⁴¹

Retroactive Application of *Miller*

Another outstanding question at the time CS/HB 7035 (2014) was implemented was whether *Miller* applied retroactively in the same manner that *Graham* did. Other state and federal courts had issued differing opinions as to whether *Miller* applies retroactively. The question has turned on whether *Miller* is considered to be a procedural change in the law that does not apply retroactively to sentences that were final before the opinion was issued or an opinion of fundamental significance, similar to *Graham*.

The Florida Supreme Court decided this issue in *Falcon v. State*.⁴² The Court held that *Miller* applied retroactively because the ruling is a development of fundamental significance. The Court

³⁶ Section 921.1402(6), F.S.

³⁷ Section 921.1402(7), F.S.

³⁸ See *Graham v. Florida*, 130 S.Ct. 2011 (2010) and *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

³⁹ 121 So.3d 1130 (Fla. 5th DCA 2013).

⁴⁰ 160 So.3d 393 (Fla. 2015).

⁴¹ Life with the possibility of parole after 25 years is the penalty for capital murder under the 1993 version of s. 775.082(1), F.S., the most recent capital murder penalty statute that is constitutional under *Miller* when applied to a juvenile offender.

⁴² 162 So.3d 954 (Fla. 2015).

held that given that *Miller* invalidated the only statutory means for imposing a sentence of life without the possibility of parole on juveniles convicted of a capital felony it dramatically impacted the ability of Florida to impose a nondiscretionary sentence of life without parole on a juvenile convicted of a capital felony. Therefore, *Falcon* ensured that juvenile offenders whose convictions and sentences were final prior to the *Miller* decision could seek collateral relief based on it.⁴³

Impact of Parole or Conditional Release Options for Juvenile Offenders

The U.S. Supreme Court further distinguished the *Graham* and *Miller* progeny of cases with *Virginia v. LeBlanc*, which denied habeas corpus relief for the juvenile offender holding that release programs for prisoners that consider factors in a similar manner as parole, such as Virginia's geriatric release program, did not violate *Graham* or *Miller* because it provides a juvenile offender a meaningful opportunity for release. In *LeBlanc*, the Court reasoned that Virginia's geriatric release program considered individualized factors of the offender, such as the individual's rehabilitation and maturity, history and conduct before and during incarceration, his or her inter-personal relationships with staff and inmates, and development and growth in attitude toward himself, herself, and others.⁴⁴

The Florida Supreme Court has held that the *Graham* and *Miller* rules do not apply to juvenile offenders sentenced to life or lengthy terms of years equal to life, but who are eligible for parole.⁴⁵

Collateral Consequences of Felony Convictions

A collateral consequence is any adverse legal effect of a conviction that is not a part of a sentence.⁴⁶ If the consequence does not affect the range of punishment, it is said to be collateral to the plea.⁴⁷ Such consequences are legal and regulatory restrictions that limit or prohibit people convicted of crimes from accessing employment, business and occupational licensing, housing, voting, education, and other rights, benefits, and opportunities.⁴⁸ Some examples of collateral consequences that occur upon any felony conviction in Florida include the loss of the right to vote,⁴⁹ hold public office,⁵⁰ serve on a jury,⁵¹ obtain certain professional licenses,⁵² and owning or possessing a firearm.⁵³ There are additional collateral consequences that can occur as a result

⁴³ *Falcon v. State*, 162 So.3d 954, 961 (Fla. 2015).

⁴⁴ *Virginia v. LeBlanc*, 137 S.Ct. 1726 (2017).

⁴⁵ See *Franklin v. State*, 258 So.3d 1329 (Fla. 2018); *Carter v. State*, 283 So.3d 409 (Fla. 3d DCA 2019); *Brown v. State*, 283 So.3d 424 (Fla. 3d 2019).

⁴⁶ The Miami-Dade Florida Public Defender's Office, *What You Don't Know Can Hurt You: The Collateral Consequences of a Conviction in Florida*, Updated April 2019, p. 7, available at <http://www.pdmiami.com/ConsequencesManual.pdf> (last visited January 29, 2020).

⁴⁷ See *Bolware v. State*, 995 So.2d 268 (Fla. 2008).

⁴⁸ U.S. Commission on Civil Rights, *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities*, Executive Summary, June 2019, p. 1, available at <https://www.usccr.gov/pubs/2019/06-13-Collateral-Consequences.pdf> (last visited January 29, 2020).

⁴⁹ Art. VI, s. 4, FLA. CONST.; s. 97.041, F.S.

⁵⁰ *Id.*

⁵¹ Section 40.013(1), F.S.

⁵² For example, see chs. 455, 489, and 626, F.S.

⁵³ Section 790.23, F.S.

of a felony conviction of specified offenses, such as the loss of driving privileges related to drug and theft offenses.⁵⁴ Conviction of a crime may also result in disqualification to hold a government job and other limits on employment opportunities or even loss of employment.⁵⁵

Requirement to Provide Certain Information to Persons Upon Release From Imprisonment

Entities that imprison persons convicted of offenses in violation of Florida law are required in certain circumstances to provide specified information to such persons upon release. For example, s. 944.705(6), F.S., requires the DOC to notify every inmate upon release, in no less than 18-point type in the inmate's release documents, that the inmate may be sentenced pursuant to s. 775.082(9), F.S., as a prison releasee reoffender as discussed below if the inmate commits any enumerated felony offense within 3 years after the inmate's release. Additionally, the notice must be prefaced by the word "WARNING" in boldfaced type.⁵⁶

Further, specified entities are required to provide inmates with certain information related to all outstanding terms of sentence in accordance with CS/SB 7066 (2019), related to voting rights restoration.⁵⁷ For example, ss. 944.705, and 948.041, F.S., require the DOC to notify an inmate or offender in writing of all outstanding terms of sentence at the time of release or termination of probation or community control.

Such entities are not currently required to provide inmates being released from their facilities information related to dates of his or her admission to and release from the custody of the facility, including the total length of the term of imprisonment from which he or she is being released.

Prison Releasee Reoffender

A prison releasee reoffender is a person who is being sentenced for committing or attempting to commit a qualifying offense, such as murder, manslaughter, sexual battery, or robbery,⁵⁸ within three years of being released from a:

- State correctional facility operated by the DOC or a private vendor;
- Correctional institution of another jurisdiction following incarceration for which the sentence is punishable by more than one year in Florida; or
- County detention facility following incarceration for an offense for which the sentence pronounced was a prison sentence,⁵⁹ if the person is otherwise eligible.⁶⁰

⁵⁴ See ss. 322.055 and 812.0155, F.S.

⁵⁵ 16 Fla. Prac., Sentencing, s. 6:120 (2019-2020 ed.).

⁵⁶ Section 944.705(6), F.S., further provides that evidence that the DOC failed to provide this notice to an inmate will not prohibit a person from being sentenced pursuant to s. 775.082(9), F.S. The state is not be required to demonstrate that a person received any notice from the DOC in order for the court to impose a sentence pursuant to s. 775.082(9), F.S.

⁵⁷ See ch. 2019-162, L.O.F.

⁵⁸ See s. 775.082(9)(a)3., F.S., for a complete list of qualifying offenses.

⁵⁹ In December of 2018, the Florida Supreme Court held that a defendant released from a county jail after having been committed to the legal custody of the DOC was not a prison releasee reoffender within the current meaning of that term as provided in s. 775.082, F.S. CS/HB 7125 (2019), codified in ch. 2019-167, L.O.F., amended s. 775.082(9), F.S., to include language to cure this issue. See *State v. Lewars*, 259 So.3d 793 (Fla. 2018).

⁶⁰ Section 775.082(9)(a)1., F.S.

A prison releasee reoffender also includes a person who commits or attempts to commit a qualifying offense while serving a prison sentence or while on escape status from a state correctional facility operated by the DOC or a private vendor or from a correctional institution of another jurisdiction.⁶¹

A person who qualifies as a prison releasee reoffender is subject to a mandatory minimum sentence. Specifically, a court must sentence a prison releasee reoffender to:

- A 5-year mandatory minimum for a third degree felony;
- A 15-year mandatory minimum for a second degree felony;
- A 30-year mandatory minimum term for a first degree felony; and
- Life imprisonment for a first degree felony punishable by life or a life felony.⁶²

Probation Supervision through the Department of Corrections

At sentencing, a judge may place an offender on probation or community control in lieu of or in addition to incarceration.⁶³ The DOC supervises more than 164,000 offenders on active community supervision. This includes offenders released from prison on parole, conditional release, or conditional medical release and offenders placed on court ordered supervision including probation, drug offender probation, sex offender probation, and community control.⁶⁴

Probation

Probation is a form of community supervision requiring specified contacts with probation officers and other conditions a court may impose to ensure the offender's compliance with the terms of the sentence and the safety to the community.⁶⁵ Section 948.03, F.S., provides that a court must determine the terms and conditions of probation. Standard conditions of probation that are enumerated in s. 948.03, F.S., are not required to be announced on the record, but the court must orally pronounce, as well as provide in writing, any special conditions of probation imposed.

Violations of Probation or Community Control

If an offender violates the terms of his or her probation or community control, the supervision can be revoked in accordance with s. 948.06, F.S.⁶⁶ A violation of probation (VOP) can be the result of a new violation of law or a technical violation of the conditions imposed. If reasonable grounds exist to believe that an offender has violated his or her terms of supervision in a material respect, an offender may be arrested without a warrant by a:

- Law enforcement officer who is aware of the inmate's supervised community release status;
- Probation officer; or
- County or municipal law enforcement officer upon request by a probation officer.⁶⁷

⁶¹ Section 775.082(9)(a)2., F.S.

⁶² Section 775.082(9)(a)3., F.S.

⁶³ Section 948.01, F.S.

⁶⁴ The DOC, *Probation Services*, available at <http://www.dc.state.fl.us/cc/index.html> (last visited January 29, 2020).

⁶⁵ Section 948.001(8), F.S. Terms and conditions of probation are provided in s. 948.03, F.S.

⁶⁶ Section 948.10(3), F.S.

⁶⁷ Section 948.06(1)(a), F.S.

The offender must be returned to the court granting such probation.⁶⁸ Additionally, the committing court judge may issue a warrant, upon the facts being made known to him or her by affidavit of one having knowledge of such facts, for the arrest of the offender.⁶⁹

Upon a finding through a VOP hearing, a court may revoke, modify, or continue the supervision. If the court chooses to revoke the supervision, it may impose any sentence originally permissible before placing the offender on supervision.⁷⁰ In addition, if an offender qualifies as a violent felony offender of special concern (VFOSC), the court must revoke supervision, unless it makes written findings that the VFOSC does not pose a danger to the community.⁷¹ The VFOSC status also accrues sentence points under the Code, which affects the scoring of the lowest permissible sentence.⁷²

Constitutional and Statutory Savings Clauses

Until recently, Article X, Section 9 of the State Constitution (Florida's constitutional savings clause) expressly prohibited any repeal or amendment of a criminal statute that affected prosecution or punishment for any crime previously committed, and therefore, the Florida Legislature was "powerless to lessen penalties for past transgressions; to do so would require constitutional revision."⁷³

In 2018, Florida voters adopted the following amendment to Article X, Section 9 of the State Constitution:

~~Repeal or amendment~~ of a criminal statute shall not affect prosecution or ~~punishment~~ for any crime ~~previously~~ committed before such repeal.

Revised Article X, Section 9 of the State Constitution only prohibits applying the repeal of a criminal statute to any crime committed before such repeal if this retroactive application "affects prosecution." The revised constitutional savings clause does not expressly prohibit retroactive application of a repeal that does not affect prosecution, a repeal that affects punishment, or an amendment of a criminal statute that affects prosecution or punishment.

The elimination of the expressed prohibition on certain retroactive applications is not a directive to the Legislature to retroactively apply what was formerly prohibited. As the Florida Supreme Court recently stated: "... [T]here will no longer be any provision in the Florida Constitution that would prohibit the Legislature from applying an amended criminal statute retroactively to

⁶⁸ *Id.*

⁶⁹ Section 948.06(1)(b), F.S. The committing trial court judge may also issue a notice to appear if the probationer or controllee has never been convicted of committing, and is not currently alleged to have committed, a qualifying offense as enumerated in s. 948.06(8)(c), F.S.

⁷⁰ Section 948.06(2)(b), F.S.

⁷¹ See s. 948.06(8)(a), F.S., for all VFOSC qualifications and enumerated list of felonies that are considered qualifying offenses. See also ch. 2007-2, L.O.F.

⁷² Section 921.0024, F.S.

⁷³ Comment, *Today's Law and Yesterday's Crime: Retroactive Application of Ameliorative Criminal Legislation*, 121 U. Pa. L. Rev. 120, 129 (1972).

pending prosecutions or sentences. However, nothing in our constitution does or will require the Legislature to do so, and the repeal of the prohibition will not require that they do so.”⁷⁴

In 2019, the Legislature created s. 775.022, F.S., a general savings statute for criminal statutes. The statute defines a “criminal statute” as a statute, whether substantive or procedural, dealing in any way with a crime or its punishment, defining a crime or a defense to a crime, or providing for the punishment of a crime.⁷⁵

The statute specifies legislative intent to preclude:

- Application of the common law doctrine of abatement to a reenactment or an amendment of a criminal statute; and
- Construction of a reenactment or amendment as a repeal or an implied repeal⁷⁶ of a criminal statute for purposes of Article X, Section 9 of the State Constitution (Florida’s constitutional savings clause).⁷⁷

The statute also states that, except as expressly provided in an act of the Legislature or as provided in two specified exceptions, the reenactment or amendment of a criminal statute operates prospectively and does not affect or abate any of the following:

- The prior operation of the statute or a prosecution or enforcement under the criminal statute;
- A violation of the criminal statute based on any act or omission occurring before the effective date of the act; and
- A prior penalty, prior forfeiture, or prior punishment incurred or imposed under the statute.⁷⁸

The first exception is a retroactive amelioration exception that provides that if a penalty, forfeiture, or punishment for a violation of a criminal statute is reduced by a reenactment or an amendment of a criminal statute, the penalty, forfeiture, or punishment, if not already imposed, must be imposed according to the statute as amended.⁷⁹ This means the penalty, forfeiture, or punishment reduction must be imposed retroactively *if the sentence has not been imposed*, including the situation in which the sentence is imposed after the effective date of the amendment. However, nothing in the general savings statute precludes the Legislature from providing for a more extensive retroactive application either to legislation in the future or legislation that was enacted prior to the effective date of the general savings statute. This is because the general savings statute specifically provides for a legislative exception to the default position of prospectivity. The Legislature only has to “expressly provide” for this retroactive application.⁸⁰

⁷⁴ *Jimenez v. Jones*, 261 So.3d 502, 504 (Fla. 2018).

⁷⁵ Section 775.022(2), F.S.

⁷⁶ The Florida Supreme Court previously indicated that the “standard [is] that implied repeals are disfavored and should only be found in cases where there is a ‘positive repugnancy’ between the two statutes or ‘clear legislative intent’ indicating that the Legislature intended the repeal[.]” *Flo-Sun, Inc. v. Kirk*, 783 So.2d 1029, 1036 (Fla. 2001).

⁷⁷ Section 775.022(1), F.S.

⁷⁸ Section 775.022(3), F.S.

⁷⁹ Section 775.022(4), F.S.

⁸⁰ Section 775.022(3), F.S.

The second exception relates to defenses and provides that the general savings statute does not limit the retroactive effect of any defense to a criminal statute enacted or amended by the Legislature to any criminal case that has not yet reached final judgment.⁸¹

Victim Input

In 2018, the Florida voters approved Amendment 6 on the ballot, which provided certain rights to victims in the Florida Constitution. In part, Article I, s. 16 of the Florida Constitution, provides that a victim must have the following rights upon request:

- Reasonable, accurate, and timely notice of, and to be present at, all public proceedings involving the criminal conduct, including, but not limited to, trial, plea, sentencing, or adjudication, even if the victim will be a witness at the proceeding, notwithstanding any rule to the contrary.
- To be heard in any public proceeding involving pretrial or other release from any form of legal constraint, plea, sentencing, adjudication, or parole, and any proceeding during which a right of the victim is implicated.
- To be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the convicted offender, any scheduled release date of the offender, and the release of or the escape of the offender from custody.
- To be informed of all postconviction processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender.⁸²

Residency Status for Tuition Purposes

Florida law defines “tuition” to mean the basic fee charged to a student for instruction provided by a public postsecondary educational institution in the state.⁸³ Residency designations are used for assessing tuition in postsecondary educational programs offered by charter technical career centers or career centers operated by school districts, in Florida College System institutions, and in state universities.⁸⁴ Students who are not classified as “residents for tuition purposes”⁸⁵ are required to pay the full cost of instruction at a public postsecondary institution. A person is able to meet the definition of a “legal resident” if the person has maintained his or her residence in Florida for the preceding year, has purchased a home which is occupied by him or her as his or her residence, or has established a domicile in this state.⁸⁶

Specifically, to qualify as a resident for tuition purposes:

- A person or, if that person is a dependent child, his or her parent or parents must have established legal residence in Florida and must have maintained legal residence for at least 12 consecutive months immediately prior to his or her initial enrollment in an institution of higher education.

⁸¹ Section 775.022(5), F.S.

⁸² Art. 1, s. 16(b)(6)a., b., f., and g., FLA. CONST.

⁸³ Section 1009.01(1), F.S.

⁸⁴ Section 1009.21, F.S.

⁸⁵ Section 1009.21(1)(g), F.S.

⁸⁶ Section 1009.21(1)(d), F.S.

- Every applicant for admission to an institution of higher education is required to make a statement as to his or her length of residence and establish that his or her presence or, if the applicant is a dependent child, the presence of his or her parent or parents in Florida currently is, and during the requisite 12-month qualifying period was, for the purpose of maintaining a bona fide domicile.⁸⁷

A person must show certain proof that he or she should be classified as a resident for tuition purposes and may not receive the in-state tuition rate until clear and convincing evidence related to legal residence and its duration has been provided. Each institution of higher education must make a residency determination that is documented by the submission of written or electronic verification that includes two or more specified documents that:

- Must include at least one of the following:
 - A Florida voter's registration card.
 - A Florida driver license.
 - A State of Florida identification card.
 - A Florida vehicle registration.
 - Proof of a permanent home in Florida which is occupied as a primary residence by the individual or by the individual's parent if the individual is a dependent child.
 - Proof of a homestead exemption in Florida.
 - Transcripts from a Florida high school for multiple years if the Florida high school diploma or high school equivalency diploma was earned within the last 12 months.
 - Proof of permanent full-time employment in Florida for at least 30 hours per week for a 12-month period.
- May include one or more of the following:
 - A declaration of domicile in Florida.
 - A Florida professional or occupational license.
 - Florida incorporation.
 - A document evidencing family ties in Florida.
 - Proof of membership in a Florida-based charitable or professional organization.
 - Any other documentation that supports the student's request for resident status, including, but not limited to, utility bills and proof of 12 consecutive months of payments; a lease agreement and proof of 12 consecutive months of payments; or an official state, federal, or court document evidencing legal ties to Florida.⁸⁸

Florida law is silent as to whether time incarcerated in a Florida prison or county detention facility may count toward the 12-month legal residency requirements.

The DOC reports that it and Florida Gateway College partnered to offer the Second Chance Pell Program at Columbia Correctional Institution Annex, which is a pilot program operating under the Second Chance Pell Experimental Sites Initiative through the U.S. Department of Education and the Department of Justice. The program at Columbia Correctional Institution Annex commenced on January 24, 2017, and has recently been renewed for another three-years. The DOC reports that this pilot program allows eligible inmates to access Pell Grant funds for post-secondary education. Such funds accessed through the grant must be used to cover the costs of

⁸⁷ Section 1009.21(2)(a), F.S.

⁸⁸ Section 1009.21(3), F.S.

tuition, fees, books, and supplies. The DOC is currently attempting to expand post-secondary opportunities for inmates in collaboration with several Florida colleges and universities.⁸⁹

III. Effect of Proposed Changes:

The bill provides that the act may be cited as “The Second Look Act.”

Sentence Review Hearings for Specified Offenders

Juvenile Offenders

As discussed above, a juvenile offender sentenced to a sentence of life without parole for a capital felony⁹⁰ where a finding was made that he or she actually killed, intended to kill, or attempted to kill the victim is entitled to a review of his or her sentence after 25 years if he or she has never previously been convicted of a specified enumerated felony.⁹¹ The bill amends the list of enumerated offenses that bar such juvenile offenders from having a sentence review hearing to only include murder. Therefore, the bill provides such a juvenile offender is only prohibited from having a sentence review hearing if he or she has previously been convicted of committing or conspiracy to commit murder, if the murder for which the person was previously convicted was part of a separate criminal transaction or episode than that which resulted in the sentence.

The bill also creates s. 921.14021, F.S., providing for the retroactive application of the above mentioned amendment to remove certain prior convictions as a bar for a juvenile offender to have a sentence review hearing in accordance with s. 921.1402(2)(a), F.S. The bill requires that a juvenile offender is entitled to a review of his or her sentence after 25 years or, if 25 years on the term of imprisonment has already been served by July 1, 2020, the sentence review hearing must be conducted immediately. The bill provides legislative findings related to the retroactive application of such provisions.

Because the bill expressly provides for retroactive application of the changes the bill makes, the bill has provided a legislative exception to the default position of prospectively.

Young Adult Offenders

The bill creates s. 921.1403, F.S., expanding the sentence review hearing process created by CS/HB 7035 (2014) for juveniles in response to the *Graham* and *Miller* cases to persons convicted of similar offenses, but who were not entitled to a sentence review hearing.

The bill defines the term “young adult offender” to mean a person who committed an offense before he or she reached 25 years of age and for which he or she is sentenced to a term of years in the custody of the DOC, regardless of the date of sentencing. The bill also provides that the provisions allowing sentence review hearings of young adult offenders applies retroactively.

⁸⁹ The DOC, Agency Analysis for SB 1308, February 3, 2020, p. 4 (on file with the Senate Criminal Justice Committee) (hereinafter cited as “The DOC SB 1308 Analysis”).

⁹⁰ In violation of s. 782.04, F.S.

⁹¹ See ss. 775.082(1)(b)1. and 921.1402, F.S.

The sentence review procedures and hearing process are substantively identical to those in place for juvenile offenders in accordance with s. 921.1402, F.S., and discussed above. However, the eligibility criteria for a young adult offender to have a sentence review hearing is different.

Eligibility

The bill prohibits a young adult offender convicted of a violation of s. 782.04, F.S., related to homicide, which is punishable by death from being eligible for a sentence review hearing. The bill only permits young adult offenders convicted of offenses that are life or first degree felony offenses to be eligible for a sentence review hearing in accordance with s. 921.1403, F.S.

The bill excludes a young adult offender convicted and sentenced for certain life felony or first degree felony⁹² offenses from a sentence review if he or she has previously been convicted of committing, or of conspiring to commit murder, if such prior offense was part of a separate criminal transaction or episode than the offense that resulted in the sentence.

The bill provides that a young adult offender who is convicted of an offense that is a:

- Life felony, or that was reclassified as a life felony, and who is sentenced to a term of more than 20 years⁹³ is entitled to a review of his or her sentence after 20 years.⁹⁴
- Felony of the first degree or that was reclassified as a felony of the first degree and who is sentenced to a term of more than 15 years⁹⁵ is entitled to a review of his or her sentence after 15 years.

Procedures for Initiating the Sentence Review Hearing Process

Similar to the process developed in s. 921.1402(3), F.S., applicable to a juvenile offender, the bill provides that the DOC must notify a young adult offender in writing of his or her eligibility to request a sentence review hearing:

- 18 months before the young adult offender is entitled to a sentence review hearing if such offender is not eligible when the bill becomes effective; or
- Immediately if the offender is eligible as of July 1, 2020.

A young adult offender seeking a sentence review must submit an application to the original sentencing court requesting that the court hold a sentence review hearing. The bill provides that such court retains jurisdiction for the duration of the sentence for this purpose. The bill also provides that a young adult offender who is eligible for a sentence review hearing may be represented by an attorney, who must be appointed by the court if the young adult offender cannot afford an attorney.

⁹² See s. 775.082(3)(a)1., 2., 3., 4., or 6., or (b)1., F.S., which are the citations included in the bill. Each of these citations includes different sentence terms based upon the degree of offense or the date of commission of the offense.

⁹³ Pursuant to s. 775.082(3)(a)1., 2., 3., 4., or 6., F.S.

⁹⁴ The bill provides that this does not apply to a person who is eligible for sentencing under s. 775.082(3)(a)5., F.S., which only applies to an offender who committed the offense before attaining the age of 18 years.

⁹⁵ Pursuant to s. 775.082(3)(b)1., F.S.

Sentence Review Hearing

The bill requires the court to hold a sentence review hearing to determine whether to modify the young adult offender's sentence upon receiving an application for such hearing. The court is required to consider any factor it deems appropriate to determine the appropriateness of modifying the young adult offender's sentence, including, but not limited to, any of the following:

- Whether the young adult offender demonstrates maturity and rehabilitation.
- Whether the young adult offender remains at the same level of risk to society as he or she did at the time of the initial sentencing.
- The opinion of the victim or the victim's next of kin.⁹⁶
- Whether the young adult offender was a relatively minor participant in the criminal offense or whether he or she acted under extreme duress or under the domination of another person.
- Whether the young adult offender has shown sincere and sustained remorse for the criminal offense.
- Whether the young adult offender's age, maturity, or psychological development at the time of the offense affected his or her behavior.
- Whether the young adult offender has successfully obtained a high school equivalency diploma or completed another educational, technical, work, vocational, or self-rehabilitation program, if such a program is available.
- Whether the young adult offender was a victim of sexual, physical, or emotional abuse before he or she committed the offense.
- The results of any mental health assessment, risk assessment, or evaluation of the young adult offender as to rehabilitation.

These enumerated factors mirror the criteria used for the sentence review hearings conducted for juvenile offenders in accordance with s. 921.1402(6), F.S.

Terms of Release for Young Adult Offenders Resentenced Pursuant to s. 921.1403, F.S.

The terms that a young adult offender must comply with if he or she is resentenced under the bill are similar to those that a juvenile offender must comply with if resentenced in accordance with s. 921.1402, F.S.

Upon conducting the sentence review hearing, the court may modify the young adult offender's sentence if the court makes a determination that the young adult offender is rehabilitated and is reasonably believed to be fit to reenter society. The court must modify the sentence to a term of probation for at least:

- Five years, if the young adult offender was originally sentenced for a life felony, or an offense reclassified as a life felony; or
- Three years, if the young adult offender was originally sentenced for a first degree felony, or an offense reclassified as a first degree felony.

⁹⁶ The bill states that the absence of the victim or the victim's next of kin from the hearing may not be a factor in the determination of the court. The court must allow the victim or victim's next of kin to be heard in person, in writing, or by electronic means. Finally, if the victim or the victim's next of kin chooses not to participate in the hearing, the court may consider previous statements made by the victim or the victim's next of kin during the trial, initial sentencing phase, or previous sentencing review hearings.

However, the bill prohibits the court from resentencing a young adult offender if the court determines that he or she has not demonstrated rehabilitation or is not fit to reenter society and requires the court to issue a written order stating the reasons why the sentence is not being modified.

Subsequent Reviews

The bill allows a young adult offender to have one subsequent sentence review hearing after five years if he or she is not resentenced at the initial sentence review hearing. The bill requires the young adult offender seeking a subsequent sentence review hearing to submit a new application to the original sentencing court to request a subsequent sentence review hearing.

Prison Releasee Reoffenders

As stated above, a person sentenced as a prison releasee reoffender:

- Must serve 100 percent of the court-imposed sentence;
- May only be released when his or her sentence expires; and
- Is not eligible for parole, control release, or any form of early release.

The bill amends s. 775.082(9)(b), F.S., providing an exception to this requirement that allows an inmate who meets the above definitions of a juvenile offender or young adult offender eligible for a sentence review hearing under s. 921.1402, F.S., or s. 921.1403, F.S., to be resentenced and released from imprisonment if a court deems the resentencing appropriate in accordance with the review requirements as discussed above.

Incarceration Counting Toward Tuition Residency Requirements

The bill amends s. 1009.21(2), F.S., authorizing time spent incarcerated in a county detention facility or state correctional facility to apply towards the requirement to reside in Florida through an authorized manner for 12 consecutive months immediately before enrollment for the designation as a resident for tuition purposes. The bill also amends s. 1009.21(3), F.S., requiring time spent incarcerated in a county detention facility⁹⁷ or state correctional facility⁹⁸ to be credited toward the residency requirement, with any combination of documented time living in Florida before and after incarceration.

Further, the bill amends s. 944.705, F.S., and creates s. 951.30, F.S., requiring the DOC and administrators of county detention facilities, respectively, to provide documentation to inmates upon release specifying the dates of the inmate's admission to and release from the custody of the facility. This notification must include the total length of the term of imprisonment from which he or she is being released.

⁹⁷ Section 951.23(1)(a), F.S., defines "county detention facility" to mean a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either felony or misdemeanor.

⁹⁸ Section 944.02(8), F.S., defines "state correctional institution" to mean any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the DOC.

This documentation will assist inmates with providing the proper evidence to satisfy residency requirements for tuition purposes pursuant to s. 1009.21(3), F.S.

Office of Program Policy and Governmental Accountability (OPPAGA) Study on Collateral Consequences

The bill requires the OPPAGA to conduct a study to evaluate the various opportunities available to persons returning to the community from imprisonment. The bill provides that the study's scope must include, but need not be limited to:

- Any barriers to such opportunities;
- The collateral consequences that are present, if applicable, for persons who are released from incarceration into the community; and
- Methods for reducing the collateral consequences identified.

The bill requires the OPPAGA to submit a report to the Governor, the President of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives by November 1, 2020 on its findings.

The bill is effective July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Sentence Review Hearings

The Criminal Justice Impact Conference has not heard the bill at this time, but the Office of Economic and Demographic Research (EDR) prepared a preliminary estimate for the bill stating that the bill will have a negative significant prison bed impact (i.e. decrease of more than 25 beds).⁹⁹

Further, the bill modifies the ability of certain juvenile offenders from being eligible for a sentence review hearing in addition to creating a new sentence review hearing process for young adult offenders sentenced for committing specified offenses before attaining the age of 25 years. To the extent that the bill results in juvenile or young adult offenders being released from prison earlier than otherwise may occur as a result of such sentence review hearings, the bill may result in a negative indeterminate prison bed impact (i.e. an unquantifiable decrease in prison beds).

The DOC reports that there are 37 inmates eligible for review based on the changes made to s. 921.1402, F.S., and the retroactive application of such changes. Additionally, the DOC states that there are 5,312 potentially eligible young adult offenders that will require eligibility notification under the newly-created s. 921.1403, F.S. As stated above, to the extent that the bill results in juvenile or young adult offenders being released from prison earlier than otherwise may occur as a result of such sentence review hearings, the DOC provides that the bill may result in a negative indeterminate prison bed impact (i.e. an unquantifiable decrease in prison beds) and an indeterminate positive impact on the supervision population managed by the DOC.¹⁰⁰

Additionally, the bill may have an impact on the court system to the extent that resentencing hearings for such offenders affected by the bill will require more time and resources. However, any fiscal impact cannot be accurately determined due to the unavailability of data needed to establish the increase in judicial and court staff workload.

Juvenile and Young Adult Offenders Sentenced as Prison Releasee Reoffenders

The DOC provides that there are approximately 110 inmates that may be eligible for a sentence review hearing under the changes made to s. 775.082(9), F.S. To the extent that the bill results in juvenile or young adult offenders being released from prison earlier than otherwise may occur as a result of such sentence review hearings, the DOC provides that this provision of the bill may result in a negative indeterminate prison bed impact (i.e. an

⁹⁹ The EDR, Preliminary Estimate on SB 1308 – Criminal Justice, p. 2 (on file with the Senate Criminal Justice Committee).

¹⁰⁰ The DOC SB 1308 Analysis, p. 5, 6, and 8.

unquantifiable decrease in prison beds) and an indeterminate positive impact on the supervision population managed by the DOC.¹⁰¹

Notification of Certain Release Information

The bill requires the DOC and county detention facilities to provide inmates certain information related to the length of incarceration. The DOC states that inmates in its custody often have multiple sentences with various admission dates, release dates, and terms imposed. Further, each sentence length is calculated individually based on a number of factors and therefore an inmate may have multiple endpoints of their various sentences. The DOC provides that this provision of the bill will require significant programming changes, but such necessary changes are not specified by the DOC.¹⁰²

Residency for Tuition Purposes

The bill allows time incarcerated in a Florida facility to count towards the 12-month residency requirement for tuition purposes and requires the DOC and county detention facilities to provide certain information to inmates upon release from such facilities. To the extent that the requirement to provide such notification increases the workload of the DOC and county detention facilities, the bill may result in an indeterminate fiscal impact on such entities.

Additionally, to the extent that the bill results in additional persons enrolling in postsecondary education in Florida that would otherwise have been unable to do so, there could be a positive fiscal impact to such postsecondary entities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 775.082, 921.1402, 944.705, 951.30, and 1009.21.

This bill creates the following sections of the Florida Statutes: 921.14021 and 921.1403.

¹⁰¹ The DOC SB 1308 Analysis, p. 5.

¹⁰² The DOC SB 1308 Analysis, p. 6.

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 February 4, 2020:

The committee substitute:

- Fixes incorrect citations in the provision that allowed juvenile offenders and young adult offenders sentenced with the PRR enhancement to be released if the court deems appropriate;
- Adds legislative findings language to the section created to retroactively apply the changes made to the juvenile offenders who are eligible for a sentence review;
- Corrects language in the provision limiting review of certain juvenile offenders related to the two criminal episodes to ensure the correct application of limiting such reviews; and
- Ensures the provisions that limit certain offenders from having a review are the same between the juvenile offender and young adult offender statutes.

- B. **Amendments:**

None.



556568

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2020	.	
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The Committee on Criminal Justice (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 75 - 138
and insert:
review of his or her sentence under s. 921.1402 or s. 921.1403,
respectively, may be resentenced and released from imprisonment
if a court deems the resentencing appropriate in accordance with
the review requirements under such sections.

Section 3. Paragraph (a) of subsection (2) of section
921.1402, Florida Statutes, is amended, and subsection (4) of



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that section is reenacted, to read:

921.1402 Review of sentences for persons convicted of specified offenses committed while under the age of 18 years.—

(2)(a) A juvenile offender sentenced under s. 775.082(1)(b)1. is entitled to a review of his or her sentence after 25 years. However, a juvenile offender is not entitled to review if he or she has previously been convicted of committing ~~one of the following offenses~~, or of conspiracy to commit ~~one of the following offenses~~, murder if the murder offense for which the person was previously convicted was part of a separate criminal transaction or episode than the murder ~~that~~ which resulted in the sentence under s. 775.082(1)(b)1.÷

~~1. Murder;~~

~~2. Manslaughter;~~

~~3. Sexual battery;~~

~~4. Armed burglary;~~

~~5. Armed robbery;~~

~~6. Armed carjacking;~~

~~7. Home invasion robbery;~~

~~8. Human trafficking for commercial sexual activity with a child under 18 years of age;~~

~~9. False imprisonment under s. 787.02(3)(a); or~~

~~10. Kidnapping.~~

(4) A juvenile offender seeking sentence review pursuant to subsection (2) must submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. The juvenile offender must submit a new application to the court of original jurisdiction to request subsequent sentence review hearings pursuant to paragraph (2)(d). The



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sentencing court shall retain original jurisdiction for the duration of the sentence for this purpose.

Section 4. Section 921.14021, Florida Statutes, is created to read:

921.14021 Retroactive application relating to s. 921.1402; legislative intent; review of sentence.—

(1) It is the intent of the Legislature to retroactively apply the amendments made to s. 921.1402 which are effective on July 1, 2020, only as provided in this section, to juvenile offenders convicted of a capital offense and sentenced under s. 775.082(1)(b)1. who have been ineligible for sentence review hearings because of a previous conviction of an offense enumerated in s. 921.1402(2)(a) thereby providing such juvenile offenders with an opportunity for consideration by a court and an opportunity for release if deemed appropriate under law.

(2) A juvenile offender, as defined in s. 921.1402, who was convicted for a capital offense and sentenced under s. 775.082(1)(b)1., and who was ineligible for a sentence review hearing pursuant to s. 921.1402(2)(a)2.-10. as it existed before July 1, 2020, is entitled to a review of his or her sentence after 25 years or, if on July 1, 2020, 25 years have already passed since the sentencing, immediately.

Section 5. Section 921.1403, Florida Statutes, is created to read:

921.1403 Review of sentences for persons convicted of specified offenses committed while under 25 years of age.—

(1) As used in this section, the term "young adult offender" means a person who committed an offense before he or she reached 25 years of age and for which he or she is sentenced



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to a term of years in the custody of the Department of
Corrections, regardless of the date of sentencing.

(2) A young adult offender is not entitled to a sentence
review under this section if he or she has previously been
convicted of committing, or of conspiring to commit, murder if
the murder offense for which the person was previously convicted
was part of a separate criminal transaction or episode than that
which resulted in the sentence under s. 775.082(3)(a)1., 2., 3.,
4., or 6., or (b)1.

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

And the title is amended as follows:

Delete lines 10 - 17

and insert:

921.14021, F.S.; providing legislative intent;
providing for retroactive application of a specified
provision relating to review of sentence for juvenile
offenders convicted of murder; providing for immediate
review of certain sentences; creating s. 921.1403,
F.S.; defining the term "young adult offender";
precluding eligibility for a sentence review for young
adult offenders who previously committed, or conspired
to commit, murder

By Senator Brandes

24-00771D-20

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1 A bill to be entitled
 2 An act relating to criminal justice; providing a short
 3 title; amending s. 775.082, F.S.; authorizing the
 4 resentencing and release of certain persons who are
 5 eligible for sentence review under specified
 6 provisions; reenacting and amending s. 921.1402, F.S.;
 7 revising the circumstances under which a juvenile
 8 offender is not entitled to a review of his or her
 9 sentence after a specified timeframe; creating s.
 10 921.14021, F.S.; providing for retroactive application
 11 of a specified provision relating to review of
 12 sentence for juvenile offenders convicted of murder;
 13 providing for immediate review of certain sentences;
 14 creating s. 921.1403, F.S.; defining the term "young
 15 adult offender"; precluding eligibility for a sentence
 16 review for young adult offenders who previously
 17 committed, or conspired to commit, specified offenses;
 18 providing timeframes within which young adult
 19 offenders who commit specified crimes are entitled to
 20 a review of their sentences; providing applicability;
 21 requiring the Department of Corrections to notify
 22 young adult offenders in writing of their eligibility
 23 for sentence review within certain timeframes;
 24 requiring a young adult offender seeking a sentence
 25 review or a subsequent sentence review to submit an
 26 application to the original sentencing court and
 27 request a hearing; providing for legal representation
 28 of eligible young adult offenders; providing for one
 29 subsequent review hearing for the young adult offender

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

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30 after a certain timeframe if he or she is not
 31 resentenced at the initial sentence review hearing;
 32 requiring the original sentencing court to hold a
 33 sentence review hearing upon receiving an application
 34 from an eligible young adult offender; requiring the
 35 court to consider certain factors in determining
 36 whether to modify the young adult offender's sentence;
 37 authorizing a court to modify the sentence of certain
 38 young adult offenders if the court makes certain
 39 determinations; requiring the court to issue a written
 40 order stating certain information in specified
 41 circumstances; providing for retroactive application;
 42 amending s. 944.705, F.S.; requiring the department to
 43 provide inmates with certain information upon their
 44 release; creating s. 951.30, F.S.; requiring that
 45 administrators of county detention facilities provide
 46 inmates with certain information upon their release;
 47 amending s. 1009.21, F.S.; providing that a specified
 48 period of time spent in a county detention facility or
 49 state correctional facility counts toward the 12-month
 50 residency requirement for tuition purposes; requiring
 51 the Office of Program Policy and Governmental
 52 Accountability (OPPAGA) to conduct a study to evaluate
 53 the various opportunities available to persons
 54 returning to the community from imprisonment;
 55 providing study requirements; requiring OPPAGA to
 56 submit a report to the Governor and the Legislature by
 57 a specified date; providing an effective date.
 58

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

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

Section 1. This act may be cited as "The Second Look Act."

Section 2. Paragraph (b) of subsection (9) of section 775.082, Florida Statutes, is amended to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(9)

(b) 1. Except as provided in subparagraph 2., a person sentenced under paragraph (a) shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release. Any person sentenced under paragraph (a) must serve 100 percent of the court-imposed sentence.

2. A juvenile or young adult offender who is eligible for review of his or her sentence under s. 921.1401 or s. 921.1402 may be resentenced and released from imprisonment if a court deems the resentencing appropriate in accordance with the review requirements under such sections.

Section 3. Paragraph (a) of subsection (2) of section 921.1402, Florida Statutes, is amended, and subsection (4) of that section is reenacted, to read:

921.1402 Review of sentences for persons convicted of specified offenses committed while under the age of 18 years.—

(2) (a) A juvenile offender sentenced under s. 775.082(1)(b)1. is entitled to a review of his or her sentence after 25 years. However, a juvenile offender is not entitled to review if he or she has previously been convicted of committing

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~~one of the following offenses~~, or of conspiracy to commit ~~one of the following offenses~~, murder and if the murder offense for which the person was previously convicted was part of a separate criminal transaction or episode ~~than that which~~ resulted in the sentence under s. 775.082(1)(b)1.†

~~1. Murder;~~

~~2. Manslaughter;~~

~~3. Sexual battery;~~

~~4. Armed burglary;~~

~~5. Armed robbery;~~

~~6. Armed carjacking;~~

~~7. Home invasion robbery;~~

~~8. Human trafficking for commercial sexual activity with a child under 18 years of age;~~

~~9. False imprisonment under s. 787.02(3)(a); or~~

~~10. Kidnapping.~~

(4) A juvenile offender seeking sentence review pursuant to subsection (2) must submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. The juvenile offender must submit a new application to the court of original jurisdiction to request subsequent sentence review hearings pursuant to paragraph (2)(d). The sentencing court shall retain original jurisdiction for the duration of the sentence for this purpose.

Section 4. Section 921.14021, Florida Statutes, is created to read:

921.14021 Retroactive application relating to s. 921.1402; review of sentence.—A juvenile offender, as defined in s. 921.1402, who was convicted and sentenced under s.

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117 921.1402(2)(a), excluding s. 921.1402(2)(a)1., as it existed on
 118 or before June 30, 2020, is entitled to a review of his or her
 119 sentence after 25 years or, if on July 1, 2020, 25 years have
 120 already passed since the sentencing, immediately.

121 Section 5. Section 921.1403, Florida Statutes, is created
 122 to read:

123 921.1403 Review of sentences for persons convicted of
 124 specified offenses committed while under 25 years of age.—

125 (1) As used in this section, the term "young adult
 126 offender" means a person who committed an offense before he or
 127 she reached 25 years of age and for which he or she is sentenced
 128 to a term of years in the custody of the Department of
 129 Corrections, regardless of the date of sentencing.

130 (2) A young adult offender is not entitled to a sentence
 131 review under this section if he or she has previously been
 132 convicted of committing, or of conspiring to commit, any of the
 133 following offenses and if the offense was part of a separate
 134 criminal transaction or episode that resulted in the sentence
 135 under s. 775.082(3)(a)1., 2., 3., 4., or 6., or (b)1.:

136 (a) Section 782.04(1)(a)1.;

137 (b) Section 782.04(1)(a)3.; or

138 (c) Section 782.04(2).

139 (3)(a)1. A young adult offender who is convicted of an
 140 offense that is a life felony, that is punishable by a term of
 141 years not exceeding life imprisonment, or that was reclassified
 142 as a life felony, which was committed after the person attained
 143 18 years of age and who is sentenced to a term of more than 20
 144 years under s. 775.082(3)(a)1., 2., 3., 4., or 6., is entitled
 145 to a review of his or her sentence after 20 years.

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146 2. This paragraph does not apply to a person who is
 147 eligible for sentencing under s. 775.082(3)(a)5.

148 (b) A young adult offender who is convicted of an offense
 149 that is a felony of the first degree or that was reclassified as
 150 a felony of the first degree and who is sentenced to a term of
 151 more than 15 years under s. 775.082(3)(b)1. is entitled to a
 152 review of his or her sentence after 15 years.

153 (4) The Department of Corrections must notify a young adult
 154 offender in writing of his or her eligibility to request a
 155 sentence review hearing 18 months before the young adult
 156 offender is entitled to a sentence review hearing or notify him
 157 or her immediately in writing if the offender is eligible as of
 158 July 1, 2020.

159 (5) A young adult offender seeking a sentence review under
 160 this section must submit an application to the original
 161 sentencing court requesting that the court hold a sentence
 162 review hearing. The young adult offender seeking a subsequent
 163 sentence review hearing must submit a new application to the
 164 original sentencing court to request a subsequent sentence
 165 review hearing pursuant to subsection (7). The original
 166 sentencing court retains jurisdiction for the duration of the
 167 sentence for this purpose.

168 (6) A young adult offender who is eligible for a sentence
 169 review hearing under this section is entitled to be represented
 170 by an attorney, and the court must appoint a public defender to
 171 represent the young adult offender if he or she cannot afford an
 172 attorney.

173 (7)(a) If the young adult offender seeking sentence review
 174 under paragraph (3)(a) is not resentenced at the initial

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175 sentence review hearing, he or she is eligible for one
 176 subsequent review hearing 5 years after the initial review
 177 hearing.

178 (b) If the young adult offender seeking sentence review
 179 under paragraph (3)(b) is not resentenced at the initial
 180 sentence review hearing, he or she is eligible for one
 181 subsequent review hearing 5 years after the initial review
 182 hearing.

183 (8) Upon receiving an application from an eligible young
 184 adult offender, the original sentencing court must hold a
 185 sentence review hearing to determine whether to modify the young
 186 adult offender's sentence. When determining if it is appropriate
 187 to modify the young adult offender's sentence, the court must
 188 consider any factor it deems appropriate, including, but not
 189 limited to, any of the following:

190 (a) Whether the young adult offender demonstrates maturity
 191 and rehabilitation.

192 (b) Whether the young adult offender remains at the same
 193 level of risk to society as he or she did at the time of the
 194 initial sentencing.

195 (c) The opinion of the victim or the victim's next of kin.
 196 The absence of the victim or the victim's next of kin from the
 197 sentence review hearing may not be a factor in the determination
 198 of the court under this section. The court must allow the victim
 199 or victim's next of kin to be heard in person, in writing, or by
 200 electronic means. If the victim or the victim's next of kin
 201 chooses not to participate in the hearing, the court may
 202 consider previous statements made by the victim or the victim's
 203 next of kin during the trial, initial sentencing phase, or

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204 previous sentencing review hearings.

205 (d) Whether the young adult offender was a relatively minor
 206 participant in the criminal offense or whether he or she acted
 207 under extreme duress or under the domination of another person.

208 (e) Whether the young adult offender has shown sincere and
 209 sustained remorse for the criminal offense.

210 (f) Whether the young adult offender's age, maturity, or
 211 psychological development at the time of the offense affected
 212 his or her behavior.

213 (g) Whether the young adult offender has successfully
 214 obtained a high school equivalency diploma or completed another
 215 educational, technical, work, vocational, or self-rehabilitation
 216 program, if such a program is available.

217 (h) Whether the young adult offender was a victim of
 218 sexual, physical, or emotional abuse before he or she committed
 219 the offense.

220 (i) The results of any mental health assessment, risk
 221 assessment, or evaluation of the young adult offender as to
 222 rehabilitation.

223 (9) (a) If the court determines at a sentence review hearing
 224 that the young adult offender who is seeking sentence review
 225 under paragraph (3)(a) has been rehabilitated and is reasonably
 226 believed to be fit to reenter society, the court may modify the
 227 sentence and impose a term of probation of at least 5 years.

228 (b) If the court determines at a sentence review hearing
 229 that the young adult offender who is seeking sentence review
 230 under paragraph (3)(b) has been rehabilitated and is reasonably
 231 believed to be fit to reenter society, the court may modify the
 232 sentence and impose a term of probation of at least 3 years.

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(c) If the court determines that the young adult offender seeking sentence review under paragraph (3)(a) or (3)(b) has not demonstrated rehabilitation or is not fit to reenter society, the court must issue a written order stating the reasons why the sentence is not being modified.

(10) This section applies retroactively to a young adult offender eligible under this section.

Section 6. Paragraph (a) of subsection (7) of section 944.705, Florida Statutes, is amended to read:

944.705 Release orientation program.—

(7)(a) The department shall notify every inmate in the inmate's release documents:

1. Of all outstanding terms of the inmate's sentence at the time of release to assist the inmate in determining his or her status with regard to the completion of all terms of sentence, as that term is defined in s. 98.0751. This subparagraph does not apply to inmates who are being released from the custody of the department to any type of supervision monitored by the department;

2. Of the dates of admission to and release from the custody of the department, including the total length of the term of imprisonment for which he or she is being released; and

~~3.2.~~ In not less than 18-point type, that the inmate may be sentenced pursuant to s. 775.082(9) if the inmate commits any felony offense described in s. 775.082(9) within 3 years after the inmate's release. This notice must be prefaced by the word "WARNING" in boldfaced type.

Section 7. Section 951.30, Florida Statutes, is created to read:

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951.30 Release documents requirements.—The administrator of a county detention facility must provide to each inmate upon release from the custody of the facility the dates of his or her admission to and release from the custody of the facility, including the total length of the term of imprisonment from which he or she is being released.

Section 8. Paragraph (a) of subsection (2) and paragraphs (b) and (c) of subsection (3) of section 1009.21, Florida Statutes, are amended to read:

1009.21 Determination of resident status for tuition purposes.—Students shall be classified as residents or nonresidents for the purpose of assessing tuition in postsecondary educational programs offered by charter technical career centers or career centers operated by school districts, in Florida College System institutions, and in state universities.

(2)(a) To qualify as a resident for tuition purposes:

1. A person or, if that person is a dependent child, his or her parent or parents must have established legal residence in this state and must have maintained legal residence in this state for at least 12 consecutive months immediately before ~~prior to~~ his or her initial enrollment in an institution of higher education. The 12 consecutive months immediately before enrollment may include time spent incarcerated in a county detention facility or state correctional facility.

2. Every applicant for admission to an institution of higher education shall be required to make a statement as to his or her length of residence in the state and, further, shall establish that his or her presence or, if the applicant is a

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dependent child, the presence of his or her parent or parents in the state currently is, and during the requisite 12-month qualifying period was, for the purpose of maintaining a bona fide domicile, rather than for the purpose of maintaining a mere temporary residence or abode incident to enrollment in an institution of higher education.

(3)

(b) Except as otherwise provided in this section, evidence of legal residence and its duration shall include clear and convincing documentation that residency in this state was for a minimum of 12 consecutive months prior to a student's initial enrollment in an institution of higher education. Time spent incarcerated in a county detention facility or state correctional facility must be credited toward the residency requirement, with any combination of documented time living in Florida before and after incarceration.

(c) Each institution of higher education shall affirmatively determine that an applicant who has been granted admission to that institution as a Florida resident meets the residency requirements of this section at the time of initial enrollment. The residency determination must be documented by the submission of written or electronic verification that includes two or more of the documents identified in this paragraph. No single piece of evidence shall be conclusive.

1. The documents must include at least one of the following:

- a. A Florida voter's registration card.
- b. A Florida driver license.
- c. A State of Florida identification card.

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d. A Florida vehicle registration.

e. Proof of a permanent home in Florida which is occupied as a primary residence by the individual or by the individual's parent if the individual is a dependent child.

f. Proof of a homestead exemption in Florida.

g. Transcripts from a Florida high school for multiple years if the Florida high school diploma or high school equivalency diploma was earned within the last 12 months.

h. Proof of permanent full-time employment in Florida for at least 30 hours per week for a 12-month period.

2. The documents may include one or more of the following:

a. A declaration of domicile in Florida.

b. A Florida professional or occupational license.

c. Florida incorporation.

d. A document evidencing family ties in Florida.

e. Proof of membership in a Florida-based charitable or professional organization.

f. Any other documentation that supports the student's request for resident status, including, but not limited to, utility bills and proof of 12 consecutive months of payments; a lease agreement and proof of 12 consecutive months of payments; or an official local, state, federal, or court document evidencing legal ties to Florida.

Section 9. The Office of Program Policy and Governmental Accountability (OPPAGA) must conduct a study to evaluate the various opportunities available to persons returning to the community from imprisonment. The study's scope must include, but need not be limited to, any barriers to such opportunities; the collateral consequences that are present, if applicable, for

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349 persons who are released from incarceration into the community;
350 and methods for reducing the collateral consequences identified.
351 OPPAGA must submit a report to the Governor, the President of
352 the Senate, the Minority Leader of the Senate, the Speaker of
353 the House of Representatives, and the Minority Leader of the
354 House of Representatives by November 1, 2020.

355 Section 10. This act shall take effect July 1, 2020.

Racial/Ethnic Impact Statement

SB1308

Prepared by
Florida State University
College of Criminology & Criminal Justice

For
The Florida Senate Criminal Justice Committee



SB1308

Executive Summary

SB1308 amends s. 775.082, F.S., which authorizes the retroactive resentencing and release of certain eligible juvenile and young adult offenders. A growing number of states have begun to enact legislation that provides for the sentencing review and possible release of juveniles and young adult offenders sentenced to lengthy prison terms. Prior research has found that Black juveniles and young adults have been disproportionately sentenced to life without parole and lengthy prison terms as compared to White juveniles and young adults. Using data from the Florida Department of Corrections (FDC), it was found that although a greater number of Black inmates would be eligible for resentencing and release, they have a similar eligibility rate to White inmates. The percent of Hispanic inmates eligible for resentencing and release is lower than that of the other racial/ethnic groups. Importantly, a disproportionate number of Black inmates who were sentenced as juveniles and young adults would still be ineligible for resentencing and release under SB 1308. Importantly, in 2019, 89 per 10,000 Black Florida residents between the ages of 15 and 24 were in prison, 18 per 10,000 White Florida residents between the ages of 15 and 24 were in prison, and 12 per 10,000 Hispanic Florida residents between the ages of 15 and 24 were in prison. Specifically, there were 4,647 Black inmates, 2,041 White inmates, and 1,024 Hispanic inmates between the ages of 15 and 24 in prison. Given that the base population of Black inmates who are sentenced to prison as juveniles and young adults is considerably greater than that of Whites and Hispanics, and although SB 1308 will provide for the resentencing and release some of this population, it will not resolve the underlying racial disparity.

Bill Summary

SB1308 amends s. 775.082, F.S., which authorizes the resentencing and release of certain eligible persons. Specifically, the bill amends the statutes for sentence reviews for juveniles and creates a statute for the changes to be applied retroactively. Eligible juveniles are those who have served at least 25 years of their sentence and have not been convicted of committing, or of conspiracy to commit murder, or if the murder was part of a separate criminal offense which resulted in the sentence. The bill also creates a new statute allowing for sentence review of young adult offenders (age 18-25) and for the statute to be applied retroactively. Eligible young adult offenders are those individuals who committed an offense from 18 to 24 years of age for which they were sentenced to a term of imprisonment in the custody of the FDC. Young adult offenders who have not been convicted of 1st or 2nd degree murder defined by Sections 782.04(1)(a)1., 782.04(1)(a)3., and 782.04(2) are eligible for sentence reviews.

Comparable Legislation and Prior Research

The 2012 U.S. Supreme Court ruling in *Miller v. Alabama* led to the revision of juvenile sentencing legislation throughout the United States. The Supreme Court ruled that it was unconstitutional to sentence juveniles to prison for mandatory life without parole sentences (Orians, 2013). Since 2012, 29 states and the District of Columbia have revised their laws on juvenile sentencing (Rovner, 2019). These legislative changes institute mandatory minimum sentences with the eligibility for parole ranging from 15 years time served (e.g., Nevada and West Virginia) to 40 years time served (e.g., Texas and Nebraska) (Rovner, 2019).

California, Wyoming, and Delaware were among the first states to change their policies in the wake of the *Miller v. Alabama* decision to no longer permit life without parole sentences for juveniles. California's Senate Bill 9, passed in October 2012, allowed for persons who committed felony murder before they were 18 years old to petition to have their sentence recalled and resentenced. This legislation required the juveniles to have served at least 15 years of their life sentence and excluded juveniles who tortured their victims or if their victim was a public safety official (CA S 9, 2012). Wyoming passed House Bill 23 in February 2013, which allowed youth convicted of first-degree murder to be eligible for parole consideration after serving 25 years of their sentence (Orians, 2013). Delaware's Senate Bill 9, passed in June 2013, allowed juveniles serving a sentence of 20 years or more to be eligible for review and resentencing (Orians, 2013).

Although most of the recent legislative policy changes have focused on juveniles who have been sentenced to lengthy prison terms, some states are amending their sentencing statutes to allow for the review and possible release of young adult offenders as well (individuals who committed an offense between the ages of 18 and 25). Because recent research has found that the adolescent and young adult brain is not fully developed, some states and the federal government are now categorizing young adult offenders as a distinct group that requires specialized treatment, which includes the reduction of lengthy prison terms. For example, in 2016, California passed legislation allowing for earlier parole eligibility among offenders who committed their crime before the age of 23 (Gupta-Kagan, 2018). Other practices include the establishment of young adult courts and rehabilitative programs that specifically target young adults. The U.S. Department of Justice also recognizes young adults, age 18 to 24, as their own category, and has issued guidelines for reducing the use of restrictive housing (U.S. Department of Justice, 2016).

Much of the research on racial/ethnic sentencing disparities among individuals under the age of 25 has focused specifically on the under-18 population. However, racial/ethnic disparities in sentencing have been observed across all age groups; with Black juveniles and young adults disproportionately receiving longer sentences (Lieber & Peck, 2013; Ryon, Chiricos, Siennick, Barrick, & Bales, 2017). For example, Mills, Dorn, and Hritz (2016) conducted a study of juvenile life without parole (JLWOP) policies and practices. Their findings suggested that the implementation of JLWOP increased in the mid-1990s, despite declines in juvenile homicide arrest rates. Furthermore, nearly two-thirds of all JLWOP sentences were concentrated in a small number of jurisdictions in California, Florida, Louisiana, Michigan, and Pennsylvania. The authors found that Black juveniles were disproportionately sentenced to JLWOP sentences compared to White juveniles. Between 1980 and 2013, of those juveniles arrested for murder, 56% were Black and 41% were White. Among these juveniles arrested for murder and sentenced to JLWOP, 65.8% were Black and 26.8% were White. This finding suggests the racial disparity in JLWOP sentences is not due to disparity in murder arrests; rather, it is due to disparity in sentencing practices.

Data and Methods for Racial/Ethnic Impact Forecast

Data from the FDC were used to prepare this racial/ethnic impact statement. The analyses for this impact statement included two phases; first, the numbers and percentages of individuals eligible for immediate resentencing and release, upon passage of the bill, were calculated and the racial/ethnic differences were assessed. Second, the numbers and percentages of individuals who would become eligible for resentencing and release over the next four years were calculated and the racial/ethnic differences were assessed.

Based on eligibility criteria set forth in the bill, three offender category groups were created. The first group consisted of juveniles who have served at least 25 years of their sentence and have not been previously convicted of committing, or of conspiracy to commit murder, or if the murder was part of a separate criminal offense which resulted in the sentence. Importantly, only those juveniles who were sentenced as adults and are under the jurisdiction of the FDC are included in the analyses.

Two groups of young adult offenders were created. The first group consisted of individuals who committed a life felony between the ages of 18 and 24, have been incarcerated for 20 years or more, and have not been convicted of 1st or 2nd degree murder defined by Sections 782.04(1)(a)1., 782.04(1)(a)3., and 782.04(2). The second group consists of individuals who committed a first-degree felony between the ages of 18 and 25 and have been incarcerated for 15 years or more.

Results

If SB 1308 is enacted, there will be a total of 1,305 individuals who were sentenced as juveniles (under the age of 18) and young adult offenders (between the ages of 18 and 24) eligible for resentencing and release on July 1, 2020. Over the next four years, an additional 456 inmates would become eligible. A greater number of Black inmates would be eligible for resentencing and release upon the immediate passage of the legislation and over the next four years, followed by Whites, and Hispanics.

Table 1 shows the numbers of inmates sentenced as juveniles and young adults who would be eligible and those who would be ineligible for resentencing and release on July 1, 2020, under SB 1308. As shown, the eligibility rates for resentencing and release are similar across the racial/ethnic groups, with a smaller percent of Hispanic inmates being eligible. However, a greater number of Black inmates would remain in prison because they were sentenced to prison as juveniles or young adults at a higher rate than Whites, Hispanics, and others.

Table 1: Numbers of Juvenile and Young Adult Offenders Eligible and Ineligible for Resentencing and Release on July 1, 2020

	Total Number in Prison	Ineligible for Resentencing and Release	Eligible for Resentencing and Release	Percent of Inmates Eligible for Resentencing and Release
White	6,075	5,729	346	5.7
Black	14,286	13,435	851	5.6
Hispanic	2,901	2,797	104	3.6
Other	80	76	4	5
Total	23,342	22,037	1,305	-

Table 2 shows the impact that the legislation would have, if passed, by providing the total numbers of Black, White, and Hispanic inmates who would be eligible for resentencing and release on July 1, 2020 and who would become eligible over the next four years.

Table 2: Numbers of Juvenile and Young Adult Offenders Eligible for Resentencing and Release from 2020-2024, by Race/Ethnicity

Juvenile Offenders Eligible for Resentencing and Release after Serving 25 Years, by Race/Ethnicity						
	2020	2021	2022	2023	2024	Total
White	10	0	0	0	0	10
Black	34	2	2	3	2	43
Hispanic	0	0	1	1	0	2
Other	0	0	0	0	0	0
Total	44	2	3	4	2	55
Young Adult Offenders Eligible for Resentencing and Release after Serving 20 Years, by Race/Ethnicity						
	2020	2021	2022	2023	2024	Total
White	96	5	3	6	2	112
Black	202	24	15	15	9	265
Hispanic	22	1	2	5	1	31
Other	3	0	0	0	0	3
Total	323	30	20	26	12	411
Young Adult Offenders Eligible for Resentencing and Release after Serving 15 Years, by Race/Ethnicity						
	2020	2021	2022	2023	2024	Total
White	240	20	25	21	28	334
Black	615	39	58	57	53	822
Hispanic	82	13	17	12	14	138
Other	1	0	0	0	0	1
Total	938	72	100	90	95	1,295

Racial/Ethnic Impact Statement for the Bill

SB1308 amends s. 775.082, F.S., which authorizes the resentencing and release of certain eligible inmates who were sentenced for offenses committed before they were 25 years of age and have served a specified number of years in the custody of the FDC. A greater number of Black inmates would be eligible for resentencing and release under the proposed legislation, despite having a similar eligibility rate to White inmates. The percent of Hispanic inmates eligible for resentencing and release is less than that of the other racial/ethnic groups. Given that the base population of Black inmates who are sentenced to prison as juveniles and young adults is considerably greater than that of Whites and Hispanics, and although SB 1308 will provide for the resentencing and release of some of this population, it will not resolve the underlying racial disparity.

References

- Gupta-Kagan, J. (2018). The intersection between young adult sentencing and mass incarceration. *Wisconsin Law Review*, 2018(4): pp. 669-734.
- Lieber, M., & Peck, J. (2013). Race in Juvenile Justice and Sentencing Policy: An Overview of Research and Policy Recommendations. *Law & Inequality: A Journal of Theory and Practice*, 31(2): 331-368.
- Mills, J. R., Dorn, A. M., and Hritz, A. C. (2016). Juvenile life without parole in law and practice: Chronicling the rapid change underway. *American University Law Review*, 65: pp. 535-605.
- Orians, K. (2013). One year later: State level response and implementation of Miller v. Alabama. Retrieved from <https://youthlaw.org/publication/one-year-later-state-level-response-and-implementation-of-miller-v-alabama/>
- Rovner, J. (2019). Juvenile life without parole: An overview. The Sentencing Project, Washington, D.C.
- Ryon, S.B., Chiricos, T., Siennick, S., Barrick, K., & Bales, W. (2017). Sentencing in Light on Collateral Consequences: Does Age Matter? *Journal of Criminal Justice*, 53: 1-11.
- U.S. Department of Justice. (2016). Report and recommendations concerning the use of restrictive housing. Retrieved from <https://www.justice.gov/archives/dag/file/815551/download>

Contributors
Racial/Ethnic Impact Statement
SB1308

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SB 1308 – Criminal Justice

This bill amends s. 775.082(9), F.S., creating an exception to when a prison releasee reoffender must serve 100 percent of the court-imposed sentence, stating that “a juvenile or young adult offender who is eligible for review of his or her sentence under s. 921.1401, F.S. or s. 921.1402, F.S. may be resentenced and released from imprisonment if a court deems the resentencing appropriate in accordance with the review requirements under such sections.”

This bill further amends s. 941.1402(2)(a), F.S. to read as follows for when a juvenile is not entitled to a review of his or her sentence after 25 years: “if he or she has previously been convicted of committing, or of conspiracy to commit, murder and if the murder for which the person was previously convicted was part of a separate criminal transaction or episode that resulted in the sentence under s. 775.082(1)(b)1, F.S.” The other offenses currently listed for when a juvenile is not entitled to a review are deleted.

The bill also creates s. 921.14021, F.S., stating that “a juvenile offender, as defined in s. 921.1402, F.S., who was convicted and sentenced under s. 921.1402(2)(a), F.S., excluding s. 921.1402(2)(a)1, F.S., as it existed on or before June 30, 2020, is entitled to a review of his or her sentence after 25 years or, if on July 1, 2020, 25 years have already passed since the sentencing, immediately.”

Finally, the bill creates s. 921.1403, F.S., defining young adult offender as someone who committed an offense prior to reaching 25 years of age and establishing two scenarios for when he or she is eligible for a sentence review. The first states the following: “A young adult offender who is convicted of an offense that is a life felony, that is punishable by a term of years not exceeding life imprisonment, or that was reclassified as a life felony, which was committed after the person attained 18 years of age and who is sentenced to a term of more than 20 years under s. 775.082(3)(a)1., 2., 3., 4., or 6., F.S. is entitled to a review of his or her sentence after 20 years.” This would not apply to a person eligible for sentencing under s. 775.082(3)(a)5, F.S. The second states that “a young adult offender who is convicted of an offense that is a felony of the first degree or that was reclassified as a felony of the first degree and who is sentenced to a term of more than 15 years under s. 775.082(3)(b)1, F.S. is entitled to a review of his or her sentence after 15 years.” A list of prior offenses are included for when a young adult offender is not eligible for a sentence review. The process of the sentence review is outlined, with the option of the court to modify the sentence once complete, with at least a 5 year probation term for a sentence of more than 20 years (first scenario) and at least a 3 year probation term for a sentence of more than 15 years (second scenario). This too would apply retroactively to eligible young adult offenders.

Per DOC, there are currently 4,259 inmates who are potentially eligible for sentencing review under the amended language. It is not known how the courts will respond to

those who are potentially eligible, therefore the impact on prison beds cannot be quantified. However, given the large number of inmates currently fitting this criteria, there is expected to be a significant impact.

EDR PROPOSED ESTIMATE: Negative Significant

Requested by: Senate



2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Corrections

<u>BILL INFORMATION</u>	
BILL NUMBER:	SB 1308
BILL TITLE:	Criminal Justice
BILL SPONSOR:	Senator Brandes
EFFECTIVE DATE:	July 1, 2020

<u>COMMITTEES OF REFERENCE</u>
1) Criminal Justice
2) Appropriations Subcommittee on Criminal and Civil Justice
3) Appropriations
4)
5)

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

<u>CURRENT COMMITTEE</u>

<u>SIMILAR BILLS</u>	
BILL NUMBER:	
SPONSOR:	

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?
No

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	February 3, 2020
LEAD AGENCY ANALYST:	Michelle Palmer
ADDITIONAL ANALYST(S):	Angela Fryar, Jennifer Rechichi, Lisa Kinard, Sibyle Walker
LEGAL ANALYST:	Dan Burke
FISCAL ANALYST:	Sharon McNeal

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Creates a short title, “The Second Look Act,”; authorizes the resentencing and release of certain persons who are eligible for sentence review under specific revisions; reenacts and amends s. 921.1402, F.S. (Sentencing Review); revising the circumstances under which a juvenile offender is not entitled to a review of his or her sentence after a specified timeframe; creating s. 921.14021, F.S.; providing for retroactive application of a specified provision relating to review of sentence for juvenile offenders convicted of murder; providing for immediate review of certain sentences; creating s. 921.1403, F.S.; defining the term “young adult offender” precluding eligibility for a sentence review for young adult offenders who previously committed, or conspired to commit, specified offenses; providing timeframes within which young adult offenders who commit specified crimes are entitled to a review of their sentences; providing applicability; requiring the Florida Department of Corrections (FDC or Department) to notify young adult offenders in writing of their eligibility for sentence review within certain timeframes; requiring a young adult offender seeking a sentence review or a subsequent sentence review to submit an application to the original sentence court and request a hearing; providing for legal representation of eligible young adult offenders; providing for one subsequent review hearing for the young adult offender after a certain timeframe if the inmate is not resentenced at the initial sentence review hearing; requires the original sentencing court to hold a sentence review hearing upon receiving an application from an eligible young adult offender; requiring the court to consider certain factors in determining whether to modify the inmate’s sentence if the court makes certain determinations; requiring the court to issue a written order stating certain information in specified circumstances; providing for retroactive application; amending s. 944.705, F.S., requiring the Department to provide inmates with certain information upon their release; creating s. 951.30, F.S.; requiring that administrators of county detention facilities provide inmates with certain information upon their release; amending s.1009.21, F.S.; providing that a specified period of time spent in a county detention facility or state correctional facility counts toward the 12-month residency requirement for tuition purposes; requiring OPAAGA to conduct a study to evaluate the various opportunities available to persons returning to the community from imprisonment; providing study requirements; requiring OPPAGA to submit a report to the Governor and the Legislature by a specified date; providing an effective date.

2. SUBSTANTIVE BILL ANALYSIS

1. **PRESENT SITUATION:**

Release Reoffender:

Effective May 30, 1997, the Re-offender Act, s.775.082(9), provides for enhanced punishment for offenders who commit certain crimes within 3 years after release from prison, or who commit a crime enumerated within the statute while serving a prison sentence or while on escape status from a prison. The law requires the court to impose at a minimum a sentence equal to the statutory maximum for the offense as follows:

- Life Felony – Life without parole
- 1st Degree - 30 years
- 2nd Degree – 15 years
- 3rd Degree – 5 years

A person sentenced as a prison release re-offender (PRR) must serve 100% of the minimum service requirement. Whether to file a notice of enhanced penalty is within the sole discretion of the state attorney; however, for every case in which the defendant meets the criteria for prison release reoffender and does not receive the minimum prison sentence, the state must explain the deviation in writing and place in the state attorney’s case file.

It should be noted, the court-imposed sentence can exceed the statutory maximum based on the felony degree (e.g. sentencing under s.775.084 habitual offender). The habitual designation authorizes the court to exceed the normal statutory maximum and impose a greater sentence. For example, the inmate may be sentenced to 30 years as a habitual offender for a second-degree felony which typically carries a statutory maximum of 15 years and also receive a 15-year minimum as a release reoffender as part of that same sentence.

The courts have clarified the interaction of the re-offender act with other sentencing provisions. As such, the prohibition of gain time under the re-offender provision applies only to that portion of the sentence designated as a re-offender sentence. When an inmate receives a sentence that is greater than the minimum under the release reoffender provision, the inmate is eligible to earn gain time as long as the release date is greater than the minimum service requirement date.

In *Grant v State*, 770 So.2d 655 (Fla. 2000), the Florida Supreme Court rejected the 4th DCA’s interpretation of the gain time implications of the re-offender act as set forth in *Adams v State*, 750 So.2d 659 (Fla. 4th DCA 1999). The

4th district had interpreted the re-offender act to function like a firearm mandatory, under which an inmate could not earn gain time at all until the minimum had been served. The court held that by sentencing the defendant “to the first fifteen years as a PRR, for which no gain time is credited, appellant would only accumulate the gain time in the last fifteen years of his concurrent 30 year habitual felony offender sentence, and would serve 12.75 additional years, or 27.75 years minimum, which would deprive him of allowable gain time under the habitual felony offender statute.”

The Supreme Court in Grant clarified the meaning of a re-offender act sentence imposed with a habitual offender sentence as follows:

“Where a defendant is convicted of a single offense which qualifies for a sentence longer than an applicable mandatory minimum established by the Legislature, and the Legislature has authorized imposition of such longer sentence in the act creating the mandatory minimum, gain time would still accrue with respect to the non-PRR sentence during the overlapping time that both the mandatory minimum sentence and a portion of the longer sentence are being served; however, such gain time would obviously apply only to the longer sentence, and not to the mandatory minimum.”

The re-offender act requires imposition and service of the statutory maximum penalty based on the felony degree of the crime for which sentence is being imposed. In cases where the sentencing orders reflect the defendant is a release re-offender but does not specify a minimum term in the sentencing order, the Department records the minimum term based on the felony degree per statute. For example, if the inmate has been sentenced to 5 years for a third degree and designated a release re-offender, but the court does not specify a minimum term, a five-year minimum, which is the statutory maximum for a third-degree felony, will be applied. This entry requires service of the entire 5 years without gain time. In this example, the inmate will serve 100% of the sentence imposed without gain-time.

If an inmate has been sentenced to a term longer than the normal statutory maximum by virtue of another enhancement provision such as habitual offender, gain time may accrue to reduce the longer overall term as long as the inmate serves at least the re-offender act minimum. For example, the statutory maximum for a second-degree felony is 15 years; however, an inmate sentenced as habitual offender for a second-degree felony may receive 30 years. If also sentenced as a re-offender, the sentence can be 30 years with 15 years minimum as a re-offender. In this scenario, the inmate would have a 15-year release reoffender provision, allowing gain time to apply to the entire 30-year sentence. The inmate would only be prevented from being released prior to serving the 15 years as a re-offender, he/she would not be prevented from earning gain time for the entire 30 years. The result in this example is that the re-offender provision has no effect on the release date since 85% of the 30-year sentence is far more than the 15 years required to be served under the re-offender provision. The inmate is NOT required to serve 100% of the 30-year habitual offender sentence, as a prison release re-offender.

Juvenile Sentencing/Reviews:

S. 921.1402, F.S., provides that a juvenile offender sentenced under s. 775.082, F.S., is entitled to review of his or her sentence after 25 years, 20 years, 15 years. A juvenile being defined as a person under the age of 18 at the time of the offense. The time of review after original sentencing is as follows:

- Homicide (under s. 782.04, F.S.,)
 - Intent to Kill - 25-year review
 - No intent to kill - 15-year review
- All other Non-homicides
 - 20-year review

For all inmates with offense dates prior to July 1, 2014, the court must first resentence the inmate under the new juvenile sentencing laws that went into effect on July 1, 2014, and (for Homicides) enter a written finding as to whether or not the inmate intended to kill the victim should be made and the court should order a resentencing review accordingly based on the finding. For all offenses committed on or after July 1, 2014, the court must sentence a person who was a juvenile at the time the offenses were committed in accordance with s.921.1401.

A juvenile offender is not entitled to review if he or she has a prior conviction for murder, manslaughter, sexual battery, armed burglary, armed robbery, armed carjacking, home invasion robbery, human trafficking for commercial sexual activity with a child under 18 years of age, false imprisonment under s. 787.02(3)(a), F.S., or kidnapping.

The Department currently provides notice of eligibility for judicial review to inmates who have been sentenced or resented pursuant to s. 921.1401, F.S., and who have served enough of that sentence to qualify for judicial review under s. 921.1402, F.S.

A juvenile offender seeking sentence review pursuant to subsection (2) must submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. The juvenile offender must submit a new application to the court of original jurisdiction to request subsequent sentence review hearings pursuant to paragraph (2)(d). The sentencing court shall retain original jurisdiction for the duration of the sentence for this purpose.

A juvenile offender who is eligible for a sentence review hearing is entitled to be represented by counsel, and the court shall appoint a public defender to represent the juvenile offender if the juvenile offender cannot afford an attorney.

Upon receiving an application from an eligible juvenile offender, the court of original sentencing jurisdiction shall hold a sentence review hearing to determine whether the juvenile offender's sentence should be modified. When determining if it is appropriate to modify the juvenile offender's sentence, the court shall consider multiple factors it deems appropriate.

If the court determines at a sentence review hearing that the juvenile offender has been rehabilitated and is reasonably believed to be fit to reenter society, the court shall modify the sentence and impose a term of probation of at least 5 years. If the court determines that the juvenile offender has not demonstrated rehabilitation or is not fit to reenter society, the court shall issue a written order stating the reasons why the sentence is not being modified.

Subsequent to enactment of s. 921.1402, F.S., multiple court decisions have ruled that s. 921.1401, F.S., and s. 921.1402, F.S., must be applied retroactively to inmates who were juveniles at the time of the offense.

For persons who commit an offense after they reach the age of 18, there is currently no mechanism in place, other than routine post-conviction relief motions, to have the court re-address the term imposed. Absent any post-conviction action by the court, they are required to serve the term originally imposed by the court.

Release:

Pursuant to s. 944.705, F.S., the department notifies every inmate of the following in their release documents:

- All outstanding terms of the inmate's sentence as defined in s. 98.0751, F.S.
- A "Warning" notice, notifying each inmate that they may be sentenced pursuant to s. 775.082(9), F.S., if the inmate commits any felony offense described in s. 775.082(9) within 3 years after the inmate's release

In addition, the Department presently provides every inmate, without exception, a discharge certificate that reflect their release date from incarceration.

Education:

The Department currently participates in the Second Chance Pell Experimental Sites Initiative which is a pilot program launched by the U.S. Department of Education and the Department of Justice that includes experimental sites that were selected through a competitive process. The grant allows eligible inmates to access Pell Grant funds for post-secondary education. Funds can only be used by the student to cover the costs of tuition, fees, books, and supplies.

The Department and Florida Gateway College partnered to offer the Second Chance Pell Program at Columbia C.I. Annex which commenced on January 24, 2017. Of the 67 colleges and 120 institutions selected nationwide, this is, currently, the only experimental program site in Florida and has been extended for another three-year period.

In May 2019, the Department graduated 47 students from this highly successful first cohort. Florida Gateway College will confer 26 Associate of Science degrees that include five (5) Magna Cum Laude honor graduates who have an average grade point average (GPA) of 3.6, and 21 Summa Cum Laude honor graduates who have an average GPA of 3.95. Florida Gateway College will confer 22 Associate of Arts degrees that include one Magna Cum Laude honor graduate with a GPA of 3.70, and 21 Summa Cum Laude honor graduates who have an average GPA of 3.97. The second cohort of students were recruited in August 2019, and the two program tracks currently offered are an Associate of Science in Business Management and an Associate of Science in Agribusiness Management. The program is due to expand to offer a Bachelor of Applied Science (B.A.S.) degree in Water Resources Management that will launch in Summer 2020.

The Florida Second Chance Pell Pilot Program is unique in that statewide recruitment is conducted to allow eligible inmates to transfer to Columbia C.I. Annex for program participation. All inmate-students live in the same dorm as a learning community; however, the program has limited capacity of 65 students.

While the Department is currently attempting to expand post-secondary opportunities for inmates, and is collaborating with several Florida colleges/universities with their applications to participate in the expansion of the Second Chance Pell Experimental Sites Initiative, statewide recruiting efforts to qualify students for admission and enrollment meet with enormous challenges with the current prohibition that the period of incarceration may not be considered in establishing Florida residency.

OPPAGA presently is not required to conduct a study to evaluate the various opportunities available to persons returning to the community from imprisonment.

2. EFFECT OF THE BILL:

The bill creates a short titled called the “Second look Act”.

The bill amends s. 775.082, F.S., providing for exception to persons sentenced under s. 775.082(9)(a), F.S., as a prison release reoffender by creating a new subsection that allows for resentencing for certain juveniles and young adult offenders. Although the language provides for an exception to include “young adult offenders”, the language only provides for resentencing under s. 921.1401, F.S., and s. 921.1402, F.S., and does not include the newly added language s. 921.1403, F.S., thus, not providing resentencing for the “young adult offender” that has been sentenced with a prison release reoffender provision. Without this language, only offender who were juveniles at the time of the offense and currently have a prison release reoffender provision would be entitled to resentencing. There are approximately 15 inmates that would fit this category. If the young adult offender were to be added, it appears this number would increase to approximately 110 inmates that would be entitled to review.

The proposed legislation indicates juveniles and young adult offenders who meet criteria for judicial review of their sentences may be entitled to resentencing and release. As indicated above, the enhanced penalty is within the sole discretion of the state attorney; however, for every case in which the defendant meets the criteria for prison release reoffender and does not received the minimum prison sentence, the state must explain the deviation in writing and place in the state attorney’s case file. It is unknown if the state would be amenable to removing this enhancement. The release reoffender statute mandates a minimum mandatory per felony degree. There may be a need for the enhancement to be removed at the time of resentencing to ensure the Department is not required to record the minimum sentencing provision.

Juvenile Sentencing Review:

The bill amends s. 921.1402, F.S., providing for a judicial sentencing review for inmates convicted of capital offenses with the exemption for a prior conviction for murder or conspiracy to commit murder, thereby removing the exclusions for prior convictions for manslaughter, sexual battery, armed burglary armed robbery, armed car-jacking, home invasion robbery, human trafficking for commercial sexual activity with a child under the age of 18, false imprisonment under s. 787.02(3)(a), F.S., or kidnapping. Inmates who were previously ineligible for review and resentencing will now be eligible.

There are approximately 28 inmates who would meet the criteria for sentencing review.

The proposed legislation creates s. 921.14021, F.S., allowing for retroactive application of the changes made to s. 921.1402(2)(a), F.S., to allow for review and resentencing for persons previously excluded. If 25 years have passed, those impacted would be entitled to a review immediately.

Of the current prison population, there would be approximately 9 inmates eligible for immediate review.

Young Adult Sentencing Review:

The bill creates s. 921.1403, F.S., allowing a new category of inmates that would be eligible for sentence review: “young adult offenders”—a person who committed an offense before age 25 resulting in a prison sentence term of years with the exception of murder related offenses and sentences pursuant to s. 775.082(3), F.S., excluding s. 775.082(3)(a)5, F.S., to include life felonies and a first degree felonies under s. 775.082(3)(b)1, F.S., that are punishable for a term of 30 year up to life in prison. The bill does not provide for resentencing for a young adult offenders convicted of a capital felony.

The bill does provide for judicial review for certain felony convictions as follows:

- Life and 1st degree punishable by life – review after 20 years for sentences greater than 20 years
- 1st degree felony – review after 15 years for sentences greater than 15 years

S. 921.1403, F.S., may have possible impact for approximately 4,259 currently incarcerated inmates. Some inmates within this eligibility pool have multiple offenses that fall with the different notification requirement periods. The total potentially sentence eligibility that will require notification is 5,312.

Notification:

The bill requires the Department notify the young adult offender in writing of their entitlement to a sentencing review hearing. An inmate meeting specified requirements as a young adult offender will have to submit an application to the court requesting the sentence review hearing.

Based on the number of inmates that would require notification or resentencing, the Department would need one Correctional Services Consultant to perform these duties. If these inmates are resentenced, this will increase the work load for the Victim Services to provide victim notification upon release.

The original sentencing court retains jurisdiction for the duration of the sentence, and entitlement to be represented by an attorney. If the initial sentence review is denied, the offender will be eligible for a subsequent review hearing 5 years after the initial hearing. The bill outlines criteria the court must take into consideration if it deems appropriate. If the court determines an offender has been rehabilitated, the court may modify the sentence and impose a term of probation of at least 5 years or 3 years based on if they were seeking sentencing review under paragraph (3)(a) or (3)(b). If the court determines the offender has not demonstrated rehabilitation or is not fit to reenter society, it must enter a written order stating the reasons why the sentence is not being modified.

There will be a possible increase to supervision case load; however, as the number of inmates being resentenced is indeterminate, the impact is unknown.

Release Information:

The bill amends s. 944.705, F.S., that requires the Department to provide every inmate in their release documents the admission date and release date from the Department's custody including the length of the term served.

Inmates often have multiple sentences with various admission dates, release dates and terms imposed. Sentences are calculated individually, taking into consideration the imposition date, credit awarded, term imposed and gain time earned. As an inmate may have multiple endpoints of their various sentences, this would require significant programming changes to generate this information.

County Release Information:

The bill creates s. 951.30, F.S., to require the administrator of a county detention facility to provide each inmate upon release from custody of the facility the admission and release date from the custody of the facility including the total length of the term of imprisonment from which he or she is being released.

Time Served/Residential Requirements:

The proposed legislation will greatly benefit the Department in its expansion efforts to offer post-secondary programming to its population. By assisting potential inmate students to declare Florida residency by allowing the 12 months of incarceration in a county detention facility or a state correctional facility to count toward the residency requirement, this will not only benefit the Florida Colleges and Universities system with an extended demographic of potential students, but will also assist potential students to alleviate undue fiscal burdens of cost generated by out-of-state tuition and fees, costs that cannot be realistically met through state financial aid programs and/or personal means.

The effectiveness of such programming is corroborated by the United States Department of Education's decision to expand the initial Experimental Sites Initiative, and the proposed legislation provides an achievable and equitable opportunity for students to off-set post-secondary educational costs incurred as declared Florida resident by accessing state and federal aid, as opposed to costs that are insurmountable, even with financial assistance, due to the application of additional out-of-state tuition and fees.

OPAAGA:

The proposed legislation mandates that the Office of Program Policy and Governmental Accountability (OPPAGA) conduct a study to evaluate the various opportunities available to persons returning to the community from imprisonment. It outlines the scope of the study to include, but does not limit to, any barriers to such opportunities; the collateral consequences that are present; and methods for reducing collateral consequences identified. The report is to be submitted to the Governor, President of the Senate, the Minority Leader of the Senate, and Speaker of the House of Representatives by November 1, 2020.

Legislation will take effect July 1, 2020. The department requests the effective date be changed to October 1, 2020 to allow for programming.

3. **DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?** Y ☐ N ☒

If yes, explain:	
Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?Y ☒ N ☐

If yes, provide a description:	The bill requires OPAAGA conduct a study to evaluate the various opportunities available to persons returning to the community from imprisonment.
Date Due:	November 1, 2020
Bill Section Number(s):	Section 9

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?Y ☐ N ☐

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS**1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?**Y ☐ N ☐

Revenues:	Unknown
Expenditures:	Unknown
Does the legislation increase local taxes or fees? If yes, explain.	No.
If yes, does the legislation provide for a local	

referendum or local governing body public vote prior to implementation of the tax or fee increase?	
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2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?

Y ☐ N ☐

Revenues:	Indeterminate																																																																	
Expenditures:	<p>If this bill is passed, the overall fiscal impact to inmate and community supervision population is indeterminate.</p> <p>However, when inmate population is impacted in small increments statewide, the inmate variable per diem of \$21.70 is the most appropriate to use. This per diem includes costs more directly aligned with individual inmate care such as medical, food, inmate clothing, personal care items, etc. The Department's FY 18-19 average per diem for community supervision was \$5.62.</p> <p>In addition, it is anticipated that the Department will need one position to notify the young adult offender in writing of their entitlement to a sentencing review hearing and technology impact due the changes that will need to be made to CPC and the sentencing screens in OBIS due to minimum mandatory sentencing changes, estimated costs are as follows:</p> <table border="1"> <thead> <tr> <th>Class Title</th> <th>Class Code</th> <th>Salary & Benefits</th> <th>FTE #</th> <th>Year 1 Annual Costs</th> </tr> </thead> <tbody> <tr> <td>Correctional Services Consultant</td> <td>8058</td> <td>68,931</td> <td>1</td> <td>68,931</td> </tr> <tr> <td>Total salaries & benefits</td> <td></td> <td></td> <td>1</td> <td>68,931</td> </tr> <tr> <td>Recurring expense - Prof light travel</td> <td></td> <td>\$ 3,378</td> <td></td> <td>3,378</td> </tr> <tr> <td>Non-recurring expense - Prof light travel</td> <td></td> <td>4,429</td> <td></td> <td>4,429</td> </tr> <tr> <td>Total expenses</td> <td></td> <td></td> <td></td> <td>7,807</td> </tr> <tr> <td>Human Resource Services</td> <td></td> <td>\$ 329</td> <td></td> <td>329</td> </tr> <tr> <td>Office of Information Technology</td> <td></td> <td></td> <td></td> <td>17,400</td> </tr> <tr> <td>Total</td> <td></td> <td></td> <td>1</td> <td>\$ 94,467</td> </tr> <tr> <td colspan="5">Summary of Costs</td> </tr> <tr> <td></td> <td></td> <td>Recurring</td> <td></td> <td>\$ 72,638</td> </tr> <tr> <td></td> <td></td> <td>Non-recurring</td> <td></td> <td>21,829</td> </tr> <tr> <td></td> <td></td> <td>Total</td> <td></td> <td>\$ 94,467</td> </tr> </tbody> </table>	Class Title	Class Code	Salary & Benefits	FTE #	Year 1 Annual Costs	Correctional Services Consultant	8058	68,931	1	68,931	Total salaries & benefits			1	68,931	Recurring expense - Prof light travel		\$ 3,378		3,378	Non-recurring expense - Prof light travel		4,429		4,429	Total expenses				7,807	Human Resource Services		\$ 329		329	Office of Information Technology				17,400	Total			1	\$ 94,467	Summary of Costs							Recurring		\$ 72,638			Non-recurring		21,829			Total		\$ 94,467
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		Non-recurring		21,829																																																														
		Total		\$ 94,467																																																														
Does the legislation contain a State Government appropriation?	No																																																																	
If yes, was this appropriated last year?																																																																		

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?

Y ☐ N ☐

Revenues:	Unknown
Expenditures:	Unknown
Other:	

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?Y ☐ N ☐

If yes, explain impact.	
Bill Section Number:	

TECHNOLOGY IMPACT

1. **DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?** Y ☒ N ☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	<p>Although the analysis received states indeterminate impact, there will be significant technology impact due the changes that will need to be made to CPC and the sentencing screens in OBIS due to minimum mandatory sentencing changes.</p> <p>Cost estimate</p> <table><tr><td>estimated hours</td><td>200</td></tr><tr><td>estimated cost per hour</td><td>\$87.00</td></tr><tr><td>total estimated cost</td><td>\$17, 400</td></tr></table>	estimated hours	200	estimated cost per hour	\$87.00	total estimated cost	\$17, 400
estimated hours	200						
estimated cost per hour	\$87.00						
total estimated cost	\$17, 400						

FEDERAL IMPACT

1. **DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?** Y ☐ N ☒

If yes, describe the anticipated impact including any fiscal impact.	
--	--

ADDITIONAL COMMENTS

N/A.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	N/A.
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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/20
Meeting Date

1308
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Angie Hatfield

Job Title _____

Address ~~3400 White Tower~~ PO Box 225
Street
Lakeland FL 33802
City State Zip

Phone 954-952-6220

Email aguenmerie@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing The Incarcerated

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-4-20
Meeting Date

1302
Bill Number (if applicable)

Topic Prison Reform

Amendment Barcode (if applicable)

Name Brenda Mills

Job Title

Address 2504 Begonia Dr
Street

Phone 904-412-2106

Midway FL 32068
City State Zip

Email Brenda.Mills22@gmail.com

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)

2/4/20
Meeting Date1308
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title Florida State Director

Address 605 Middlebrooks Circle

Phone 954-557-0016

Street

Tallahassee

FL

32312

City

State

Zip

Email cmurphy@rightoncrime.com

Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Right on Crime

Appearing at request of Chair: ☐ Yes ☐ NoLobbyist 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)

2 4 20

Meeting Date

1308

Bill Number (if applicable)

Topic CRIMINAL JUSTICE

Amendment Barcode (if applicable)

Name Dan Hendrickson

Job Title president Tallahassee Veterans Legal Collaborative

Address PO Box 1201

Phone 850/570-1967

Street

Tallahassee

FL

32302

Email danbhendrickson@comcast.net

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing TALLAHASSEE VETERANS LEGAL COLLABORATIVE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE
APPEARANCE RECORD

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

04 FEB 2020

Meeting Date

SB 1308

Bill Number (if applicable)

Topic SB 1308 - Youthful Offenders

Amendment Barcode (if applicable)

Name Angeline Newcomb

Job Title _____

Address 110 Hamilton Rd

Street

Edgewater

City

FL

State

32132

Zip

Phone 386 402 2625

Email apetracca07@hotmail

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Myself / My Husband

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)

04 FEB 2020

Meeting Date

SB 1308

Bill Number (if applicable)

Topic SB 1308 Youthful Offenders

Amendment Barcode (if applicable)

Name Grace Newcomb

Job Title _____

Address 41 Rosewood Trail

Street

Phone 386-748-8635

DeLand

City

FL

State

32724

Zip

Email savannah20081@hotmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Myself / My Brother

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)

2/4/20

Meeting Date

1308

Bill Number (if applicable)

Topic Resentencing

Amendment Barcode (if applicable)

Name Carlos Martinez

Job Title Public Defender, 11th Judicial Circuit

Address 1320 Nw 14th St

Phone 305-545-1900

Street

Miami

FL

33125

Email cmartinez@pdmiami.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

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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CS-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)

2-4-20

Meeting Date

SB 1308

Bill Number (if applicable)

Topic C.J. Second Look Act

Amendment Barcode (if applicable)

Name Lesea Wilson

Job Title DISABLED

Address 35 E LAKESHORE DR.
Street

Phone 870-476-3503

CHEROKEE VILLAGE AR
City State

72521
Zip

Email LESEAWILSON2@gmail.com

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)

2-4-20

Meeting Date

1308

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title Fla. Director

Address PO Box 142933

Street

Gainesville

City

FL

State

32614

Zip

Phone 352.682.2542

Email gnewburn@famr.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FAMM

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)

2-4-20

Meeting Date

~~0076~~ 1308

Bill Number (if applicable)

Topic ~~LEGISLATION~~ SENTENCING

Amendment Barcode (if applicable)

Name SAL NUZZO

Job Title _____

Address 100 N DUVAL

Street

Phone _____

TAI/ATASSEE FL 32301

City

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing THE JAMES MADISON INSTITUTE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/4/2020

Meeting Date

1308

Bill Number (if applicable)

Topic

Sentencing

Amendment Barcode (if applicable)

Name

Jorge Chamito

Job Title

Attorney

Address

108 South Monroe Street

Phone

(850) 681-0024

Street

Tallahassee, FL 32301

Email

jorge@flapartners.com

City

State

Zip

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

FACDL

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

Committee Agenda Request

To: Senator Keith Perry
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 13, 2019

I respectfully request that **Senate Bill #1308**, relating to **Criminal Justice**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

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

Senator Jeff Brandes
Florida Senate, District 24

The Florida Senate
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 1396

INTRODUCER: Criminal Justice Committee and Senator Simmons

SUBJECT: Driving Under the Influence

DATE: February 5, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1396 creates s. 316.19395, F.S., which provides that a Driving Under the Influence Diversion Pilot Program (pilot program) must be established in each judicial circuit. The purpose of the pilot program is to offer a person with a first offense of driving under the influence (DUI), contrary to s. 316.193, F.S., an opportunity to avoid a criminal history record associated with a DUI, while ensuring the person receives substance abuse treatment if necessary.

Additionally, this bill provides for the eligibility requirements for participation in the pilot program, and the requirements for successful completion of the pilot program. Successful completion of the pilot program must result in a plea offer for the offense of reckless driving, contrary to s. 316.192, F.S. If the person accepts the offer, the court must withhold adjudication.

This bill also requires the state attorney from each judicial circuit to annually report the results of the pilot program to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

This bill requires the Department of Highway Safety and Motor Vehicles (DHSMV) to establish a statewide database of participants of the pilot program by July 1, 2023.

The Criminal Justice Impact Conference estimates this bill will have a “negative insignificant” prison bed impact (a decrease of 10 or fewer prison beds). See Section V. Fiscal Impact Statement.

This bill is effective July 1, 2020.

II. Present Situation:

There are multiple pre-trial diversion programs that are intended to divert individuals charged with crimes from the traditional criminal justice system. While some diversion programs are provided in statute, other programs may vary depending upon what judicial circuit they are established in. Some diversion programs that are included in statute include, the prison diversion program,¹ the state attorney bad check diversion program,² and the pretrial intervention program.³

Counties, including Miami-Dade,⁴ Orange,⁵ Sarasota, Manatee, DeSoto,⁶ and Palm Beach⁷ all have DUI diversion programs. There is no uniform standard for DUI diversion programs. One example, Palm Beach County's DUI Offender Program, permits eligible participants to complete program requirements within two months in order to obtain a plea offer to reckless driving. The program requirements include 20 hours of community service, successful completion of DUI School, successful completion of the Victim Impact Panel, and successful installation of the Ignition Interlock alcohol monitoring device.⁸

There were 43,725 criminal violations for DUI in 2018.⁹ According to the American Addiction Centers, drunk driving may be a behavioral sign of alcohol abuse.¹⁰

¹ Section 921.00241, F.S., provides that a court may divert an offender from the state correctional system, who would otherwise be sentenced to a state facility, by sentencing the offender to a nonstate prison sanction if the offender meets certain criteria.

² Section 832.08, F.S., provides that the state attorney may divert offenders who have issued a bad check from prosecution.

³ Section 948.08, F.S., provides that any first offender, or an offender who does not have more than one nonviolent misdemeanor, and who is charged with any misdemeanor or third degree felony is eligible to participate in a pretrial intervention program upon consent of the victim, the state attorney, and the judge. The offender may have his or her charges dismissed upon successful completion of the pretrial intervention program.

⁴ Miami-Dade State Attorney Katherine Fernandez Rundle, *Diversion Programs*, available at <http://www.miamisao.com/services/diversion-programs/> (last visited January 31, 2020).

⁵ Office of the State Attorney Aramis D. Ayala, *Diversion Programs*, available at <https://www.sao9.net/diversion-programs.html> (last visited January 31, 2020).

⁶ Office of the State Attorney Ed Brodsky, *Driver Enhanced Treatment Education Rehabilitation (DETER)*, available at <https://www.sao12.org/divisions/driver-enhanced-treatment-education-rehabilitation> (last visited January 31, 2020).

⁷ Office of the State Attorney Dave Aronberg, *Palm Beach County 1st Time DUI Offender Program*, available at <http://www.sa15.state.fl.us/stateattorney/ResourceInformation/Content/DUI/DUIFirstTimeOffenderProgram-2020.pdf> (last visited January 30, 2020).

⁸ *Id.*

⁹ Florida Department of Highway Safety and Motor Vehicles, *Annual Uniform Traffic Citation Report*, available at <https://services.flhsmv.gov/SpecialtyPlates/UniformTrafficCitationReport> (last visited January 16, 2020).

¹⁰ American Addiction Centers, *Alcoholism: Symptoms and Signs*, June 8, 2019, available at <https://americanaddictioncenters.org/alcoholism-treatment/symptoms-and-signs> (last visited January 16, 2020).

Driving Under the Influence

A person is guilty of DUI if he or she drives or is in actual physical control of a vehicle and he or she:

- Is under the influence of alcoholic beverages, any controlled substance set forth in s. 877.111, F.S., or any substance controlled under ch. 893, F.S., to the extent that the person's normal faculties are impaired;
- Has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- Has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.¹¹

The criminal penalties for DUI vary depending on numerous factors such as the number of prior convictions, the length of time between convictions, and the defendant's blood alcohol level.¹²

The penalties for a first time DUI offense are punishable by:

- A period of probation not exceeding one year;
- A fine of not less than \$500 or more than \$1,000;
- Imprisonment for not more than six months;
- A mandatory 50 hours of community service; and
- A mandatory ten-day vehicle impoundment.¹³

The court must place all offenders convicted of violating this section on monthly reporting probation, and as a condition of probation, must require:

- Completion of a substance abuse course conducted by a DUI program licensed by the Department of Highway Safety and Motor Vehicles (DHSMV) under s. 322.292, F.S., which must include a psychosocial evaluation.
- Completion of substance abuse treatment, if the offender is referred to such treatment.¹⁴

Section 316.656, F.S., prohibits a court from withholding adjudication of guilt for any violation of s. 316.193, F.S., the offense of DUI. This means the court must order the person adjudicated guilty. A conviction for the offense of DUI may have long lasting repercussions even if it is the person's only offense. For example, an adjudication of guilt for DUI prevents a person from petitioning the court for expunction.¹⁵

Section 316.656, F.S., also prohibits the court from accepting a plea of guilty to a lesser offense from a person who has been given a breath or blood test to determine blood or breath alcohol content by weight of 0.15 percent or more. The offense of reckless driving, contrary to s. 316.192, F.S., is not a lesser included offense of DUI.¹⁶

Ignition Interlock Device

An ignition interlock device is a dashboard-mounted breathalyzer that requires a driver to blow in the breathalyzer in order to operate the motor vehicle. The driver must breathe into the device

¹¹ Section 316.193(1), F.S.

¹² Section 316.193, F.S.

¹³ Section 316.193(2) and (6)(a), F.S.

¹⁴ Section 316.193(5), F.S.

¹⁵ Section 943.0585, F.S.

¹⁶ See Fla. Std. Jury Inst. (Crim.) 28.1; *Anguille v. State*, 243 So. 3d 410, 413 (Fla. 4th DCA 2018).

approximately every 30 minutes.¹⁷ Section 316.193, F.S., requires an ignition interlock device to be installed on the vehicles of persons convicted of certain DUI offenses. For a first DUI offense, the court may order the placement of an ignition interlock device for at least six continuous months.¹⁸

Section 316.1937, F.S., provides that a court must determine the defendant's ability to pay for the installation of the ignition interlock device if he or she claims inability to pay. If the court determines that the defendant is unable to pay for the installation of the device, the court can order that any portion of a fine paid for violating s. 316.193, F.S., be allocated to defray the costs of installing the ignition interlock device.¹⁹

The table below summarizes when an ignition interlock device is required in Florida.²⁰

DUI conviction	Ignition interlock device required
1st conviction	If court orders for at least 6 continuous months
1st conviction if blood-alcohol level is \geq 0.15, or minor in car	Mandatory for at least 6 continuous months
2nd conviction	Mandatory for at least 1 year
2nd conviction if blood-alcohol level is \geq 0.15, or minor in car	Mandatory for at least 2 continuous years
3rd conviction	Mandatory for at least 2 years

The DHSMV contracts with vendors to provide ignition interlock devices for offenders in Florida. The devices must meet or exceed the current standards of the National Highway Traffic Safety Administration.²¹ The DHSMV oversees and monitors the ignition interlock devices and must adopt rules for the implementation of ignition interlock devices.²²

The Florida Legislature's Office of Program Policy Analysis and Government Accountability conducted a study researching ignition interlock devices and DUI offense recidivism rates. The research showed that ignition interlock devices, while installed, were more effective at reducing re-arrest rates for alcohol-impaired driving when compared to other sanctions, such as license suspensions.²³

¹⁷ DMV Florida, *Florida Ignition Interlock*, available at <https://www.dmvflorida.org/florida-traffic-laws/ignition-interlock> (last visited January 16, 2020).

¹⁸ Section 316.193(2)(c), F.S.

¹⁹ Section 316.1937(2)(d), F.S.

²⁰ Section 316.193, F.S.

²¹ Section 316.1938, F.S.

²² Sections 316.1938 and 316.193(11), F.S.

²³ Office of Program Policy Analysis & Government Accountability, *Ignition Interlock Devices and DUI Recidivism Rates*, Report No. 14-14, (December 2014) available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1414rpt.pdf> (last visited January 16, 2020).

The study also found the six month recidivism rate for first-time DUI offenders that were not required to install an ignition interlock device was 1.74 percent compared to the recidivism rate for first-time offenders required to use the ignition interlock device which was less with a rate of 0.34 percent.²⁴ However, only 49 percent of Florida's DUI offenders installed an ignition interlock device, as required, after completing their period of license revocation.²⁵

Reckless Driving

A person is guilty of reckless driving if he or she drives a vehicle in a willful or wanton disregard for the safety of persons or property. Fleeing a law enforcement officer in a motor vehicle is reckless driving *per se*.²⁶

A first conviction of reckless driving may be punished:

- By a term of imprisonment not exceeding 90 days; or
- By a fine, not less than \$25 nor more than \$500; or
- By both fine and imprisonment.

If the court has reasonable cause to believe the use of alcohol, chemical substances as set forth in s. 877.111, F.S., or controlled substances under ch. 893, F.S., contributed to the violation, the court must direct the person to complete a DUI program substance abuse education course and evaluation as provided in s. 316.193(5), F.S.

III. Effect of Proposed Changes:

This bill creates s. 316.19395, F.S., which provides that a Driving Under the Influence Diversion Pilot Program must be established in each judicial circuit. The purpose of the pilot program is to offer a person with a first offense of DUI, contrary to s. 316.193, F.S., an opportunity to avoid a criminal history record associated with a DUI, while ensuring the person receives substance abuse treatment if necessary.

The state attorney in each judicial circuit must develop policies and procedures for the pilot program, including program implementation and operation and the selection of approved program providers. The state attorney must consult with local law enforcement, county probation, the public defender, and local program providers to develop the policies and procedures of the pilot program.

A person charged with DUI is eligible for the pilot program if he or she:

- Has not been charged with a prior alcohol-related or drug-related criminal traffic offense, regardless of disposition.
- Does not have a prior or pending felony conviction.
- Has no more than two prior misdemeanor convictions.
- Was not involved in a motor vehicle crash or accident relating to the charge of DUI.

²⁴ *Id.* at 8.

²⁵ *Id.* at 4-5.

²⁶ Section 316.192(1), F.S.

- Was not, at the time of the offense, accompanied in the vehicle by a person under 18 years of age.
- Did not, at the time of the offense, have a blood-alcohol level or breath-alcohol level of 0.20 or higher.
- Has not previously participated in the pilot program.
- Waives speedy trial.

Additionally, this bill provides for program requirements. A person who participates in the pilot program must:

- Participate for 12 months, during which period he or she may not possess or consume alcohol, or any controlled substance as set forth in ch. 893, F.S., unless the controlled substance was lawfully obtained from a or pursuant to a valid prescription. He or she must complete the following as administered by an approved program provider:
 - Fifty hours of community service if, at the time of the offense, the person had a blood-alcohol level of 0.15 or less grams of alcohol per 100 milliliters of blood; or a breath-alcohol level of 0.15 or less grams of alcohol per 210 liters of breath.
 - Seventy-five hours of community service if, at the time of the offense, the person had a blood-alcohol level more than 0.15, but less than 0.20 grams of alcohol per 100 milliliters of blood; or breath-alcohol level more than 0.15, but less than 0.20 grams of alcohol per 210 liters of breath; or did not provide a blood or breath sample.
 - A substance abuse course conducted by a DUI program licensed by the DHSMV under s. 322.292, F.S., which must include a psychosocial evaluation of the person, and any substance abuse treatment required by such program.
 - A victim's impact panel session, if such panel exists within the judicial circuit, or a victim's impact class.
- Pay all fines and standard costs imposed by the judicial circuit.
- Have all motor vehicles that are individually or jointly leased or owned and routinely operated by the person impounded or immobilized for a period of 10 days.
- After the impoundment or immobilization of the vehicle, install and use an ignition interlock device approved by the department in accordance with s. 316.1938, F.S., for a period of:
 - Ninety days if, at the time of the offense, the person had a blood-alcohol level of 0.15 or lower, grams of alcohol per 100 milliliters of blood; or breath-alcohol level of 0.15 or lower, grams of alcohol per 210 liters of breath.
 - One hundred eighty days if, at the time of the offense, the person had a blood-alcohol level more than 0.15, but less than 0.20 grams of alcohol per 100 milliliters of blood; or breath-alcohol level more than 0.15, but less than 0.20 grams of alcohol per 210 liters of breath; or did not provide a blood or breath sample.

The bill provides a formula for determining whether the person has the ability to pay for the ignition interlock. If the person claims they have an inability to pay for an ignition interlock device, and the court finds that they are unable to pay, the monthly leasing fee will be discounted by 50 or 25 percent, depending upon the person's income. A person who qualifies for a discount is not required to pay cost of installation or deinstallation.

Successful completion of the pilot program must result in a plea offer for the offense of reckless driving, contrary to s. 316.192, F.S. If the person accepts the offer, the court must withhold

adjudication. If the person fails to successfully complete the pilot program, the state attorney may discharge the person from the pilot program and pursue prosecution for the offense of DUI.

This bill also requires the state attorney from each judicial circuit to report the results of the pilot program to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Each judicial circuit must provide the number of:

- Cases diverted from prosecution of DUI.
- Persons who successfully completed the pilot program.
- Persons who failed to successfully complete the pilot program and were discharged from the program.
- Persons who successfully completed the pilot program who were later charged with another alcohol-related or drug-related traffic offense.

Additionally the DHSMV must establish a statewide database of participants of the pilot program by July 1, 2023. Each judicial circuit must provide monthly reports of the number of participants in the program.

This bill is effective July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill relates to the prosecution and punishment for certain DUI offenses and criminal laws are exempt from the requirement of Article VII, Section 18 of the Florida Constitution, relating to unfunded mandates.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates this bill will have a “negative insignificant” prison bed impact (a decrease of 10 or fewer prison beds).²⁷

The CJIC provides the following information relevant to its estimate:²⁸

Given that three or more DUI’s result in felonies, it is possible that some of those diverted under this program would either take longer to reach that number due to the first offense not being a DUI or no longer drive under the influence due to the program when they would have reached that number without it. Per [Department of Corrections], in FY 18-19, there were 152 new commitments to prison who were convicted of a DUI three or more times.

Additionally, this bill may have a negative fiscal impact on the DHSMV because they must establish a statewide database of persons who participate in the pilot program. The DHSMV has not provided an analysis for this bill.

VI. Technical Deficiencies:

Lines 89-90, which reference fines and standard costs may need clarification. It is unclear whether the state attorney must establish fines and standard costs associated with the program, or if the intent is to impose the same or similar fines and standard costs associated with s. 316.193, F.S.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 316.19395 of the Florida Statutes.

²⁷ CJIC SB 1396-Driving Under the Influence (Identical HB 1145), January 27, 2020, on file with the Senate Committee on Criminal Justice.

²⁸ *Id.*

IX. Additional Information:

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

CS by Criminal Justice on February 4, 2020:

The committee substitute:

- Makes technical changes to provide the appropriate cross reference to ch. 893, F.S. Additionally it provides language that is consistent with s. 316.193, F.S.
- Specifies that a pilot program participant must waive speedy trial as a requirement to participate in the program.
- Adds “county probation” as an entity that the state attorney must consult with in developing the program. The state attorney must also consult with local law enforcement, the public defender, and local program providers.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2020	.	
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	.	
	.	

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

Senate Amendment

Delete lines 37 - 131
and insert:
provided in s. 316.193 the opportunity to avoid a conviction for
the offense while ensuring the person receives substance abuse
treatment if necessary. The state attorney of the judicial
circuit shall develop policies and procedures of the pilot
program, including program implementation and operation and the
selection of approved program providers. In developing such



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11 policies and procedures, the state attorney shall consult local
12 law enforcement agency representatives, county probation, the
13 public defender, and local program providers. The state attorney
14 of each judicial circuit shall operate that circuit's pilot
15 program. Each judicial circuit shall publish the terms and
16 conditions of the pilot program on the website of the office of
17 the state attorney.

18 (2) ELIGIBILITY REQUIREMENTS.—

19 (a) A person charged with driving under the influence,
20 contrary to s. 316.193, is eligible for participation in the
21 pilot program if he or she:

22 1. Has not been charged with a prior alcohol-related or
23 drug-related criminal traffic offense, regardless of
24 disposition.

25 2. Does not have a pending felony or prior felony
26 conviction.

27 3. Has no more than two prior misdemeanor convictions.

28 4. Was not involved in a motor vehicle crash or accident
29 relating to the charge of driving under the influence.

30 5. Was not, at the time of the offense, accompanied in the
31 vehicle by a person under 18 years of age.

32 6. Did not, at the time of the offense, have a blood-
33 alcohol level of 0.20 or more grams of alcohol per 100
34 milliliters of blood; or a breath-alcohol level of 0.20 or more
35 grams of alcohol per 210 liters of breath.

36 7. Has not previously participated in the pilot program.

37 8. Waives the speedy trial period. The speedy trial period
38 is tolled immediately upon entry into the pilot program until
39 the participant completes all terms and enters a plea pursuant



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to subsection (4) or the participant is discharged from the pilot program pursuant to subsection (5).

(b) For purposes of this subsection, the term "conviction" means a determination of guilt which is the result of a plea or trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

(3) PILOT PROGRAM REQUIREMENTS.—

(a) A person must participate in the pilot program for 12 months, during which period he or she may not possess or consume alcohol, or any controlled substance as set forth in ch. 893, unless the controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription, and must complete the following as administered by an approved program provider:

1. Fifty hours of community service if, at the time of the offense, the person had a blood-alcohol level of 0.15 or less grams of alcohol per 100 milliliters of blood; or a breath-alcohol level of 0.15 or less grams of alcohol per 210 liters of breath.

2. Seventy-five hours of community service if, at the time of the offense, the person had a blood-alcohol level more than 0.15, but less than 0.20 grams of alcohol per 100 milliliters of blood; or breath-alcohol level more than 0.15, but less than 0.20 grams of alcohol per 210 liters of breath; or did not provide a blood or breath sample.

3. A substance abuse course conducted by a DUI program licensed by the department under s. 322.292, which shall include a psychosocial evaluation of the person, and any substance abuse treatment recommendations by such program.



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69 4. A victim's impact panel session, if such a panel exists
70 within the judicial circuit, or a victim's impact class.

71 (b) A person who participates in the pilot program must pay
72 all fines and standard costs imposed by the judicial circuit.

73 (c) Upon commencement of the person's participation in the
74 pilot program, all motor vehicles that are individually or
75 jointly leased or owned and routinely operated by the person
76 shall be impounded or immobilized for a period of 10 days.

77 (d)1. After the impoundment or immobilization period
78 required by paragraph (c), the person shall have installed on
79 all such vehicles, and must successfully use, an ignition
80 interlock device approved by the department in accordance with
81 s. 316.1938 for a period of:

82 a. Ninety days if, at the time of the offense, the person
83 had blood-alcohol level of 0.15 or lower, grams of alcohol per
84 100 milliliters of blood; or breath-alcohol level of 0.15 or
85 lower, grams of alcohol per 210 liters of breath.

86 b. One hundred eighty days if, at the time of the offense,
87 the person had a blood-alcohol level more than 0.15, but less
88 than 0.20 grams of alcohol per 100 milliliters of blood; or
89 breath-alcohol level more than 0.15, but less than 0.20 grams of
90 alcohol per 210 liters of breath; or did not provide a blood or
91 breath sample.

92 2. If the person claims inability to pay for an ignition
93 interlock device and:

94 a. The person's family income is at or below 100 percent of
95 the federal poverty level as documented by written order of the
96 court, the regular monthly leasing fee charged to all customers
97 by the ignition interlock device provider shall be discounted



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for that person by 50 percent.

b. The person's family income is greater than 100 percent but at or below 149 percent of the federal poverty level as documented by written order of the court, the regular monthly leasing fee charged to all customers by the ignition interlock device provider shall be discounted for that person by 25 percent.

3. A person who qualifies for a discounted monthly leasing fee pursuant to subparagraph 2. is not required to pay the cost of installation or deinstallation of the ignition interlock device.

(4) COMPLETION OF PILOT PROGRAM.—If a person complies with this section and successfully completes the pilot program, he or she shall be offered an agreement providing for a plea of guilty or nolo contendere to the offense of reckless driving as provided in s. 316.192. A person who accepts such plea agreement is not subject to the provisions of this chapter relating to the offense of driving under the influence, and the trial judge shall withhold adjudication for reckless driving notwithstanding s. 316.656.

By Senator Simmons

9-01629-20

20201396__

A bill to be entitled

An act relating to driving under the influence; creating s. 316.19395, F.S.; requiring each judicial circuit to establish a Driving Under the Influence Diversion Pilot Program; providing the purpose of the pilot program; requiring the state attorney of each judicial circuit to develop and operate the pilot program; requiring the policies and procedures of the pilot program to be published on the website of the office of the state attorney; providing eligibility requirements; defining the term "conviction"; providing pilot program requirements; requiring that a person who completes the pilot program be offered a certain plea agreement; providing for withholding of adjudication; authorizing the state attorney to discharge a person who fails to complete the pilot program and pursue prosecution of driving under the influence; requiring state attorneys to annually report certain information to the Governor and the Legislature, by a specified date; requiring the Department of Highway Safety and Motor Vehicles to establish a certain statewide database, by a certain date; requiring judicial circuits to provide a certain monthly report to the department; providing an effective date.

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

Section 1. Section 316.19395, Florida Statutes, is created

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

9-01629-20

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to read:

316.19395 Driving Under the Influence Diversion Pilot Program.—

(1) DEVELOPMENT; IMPLEMENTATION; OPERATION.—A Driving Under the Influence Diversion Pilot Program shall be established in each judicial circuit for the purpose of offering a person charged with a first offense of driving under the influence as provided in s. 316.193 the opportunity to avoid a permanent criminal history record associated with the offense while ensuring the person receives substance abuse treatment if necessary. The state attorney of the judicial circuit shall develop the policies and procedures of the pilot program, including program implementation and operation and the selection of approved program providers. In developing such policies and procedures, the state attorney shall consult local law enforcement agency representatives, the public defender, and local program providers. The state attorney of each judicial circuit shall operate that circuit's pilot program. Each judicial circuit shall publish the terms and conditions of the pilot program on the website of the office of the state attorney.

(2) ELIGIBILITY REQUIREMENTS.—

(a) A person charged with driving under the influence is eligible for participation in the pilot program if he or she:

1. Has not been charged with a prior alcohol-related or drug-related criminal traffic offense, regardless of disposition.

2. Does not have a prior or pending felony conviction.

3. Has no more than two prior misdemeanor convictions.

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

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4. Was not involved in a motor vehicle crash or accident relating to the charge of driving under the influence.

5. Was not, at the time of the offense, accompanied in the vehicle by a person under 18 years of age.

6. Did not, at the time of the offense, have a blood-alcohol level or breath-alcohol level of 0.20 or higher.

7. Has not previously participated in the pilot program.

(b) For purposes of this subsection, the term "conviction" means a determination of guilt which is the result of a plea or trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

(3) PILOT PROGRAM REQUIREMENTS.—

(a) A person who participates in the pilot program must do so for 12 months, during which period he or she may not possess or consume alcohol, illegal drugs, or prescription drugs not prescribed for him or her and must complete the following as administered by an approved program provider:

1. Fifty hours of community service if, at the time of the offense, the person had a blood-alcohol level or breath-alcohol level of 0.15 or lower.

2. Seventy-five hours of community service if, at the time of the offense, the person had a blood-alcohol level or breath-alcohol level higher than 0.15 but lower than 0.20 or did not provide a blood or breath sample.

3. A substance abuse course conducted by a DUI program licensed by the department under s. 322.292, which shall include a psychosocial evaluation of the person, and any substance abuse treatment required by such program.

4. A victim's impact panel session, if such a panel exists

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within the judicial circuit, or a victim's impact class.

(b) A person who participates in the pilot program must pay all fines and standard costs imposed by the judicial circuit.

(c) Upon commencement of the person's participation in the pilot program, all motor vehicles that are individually or jointly leased or owned and routinely operated by the person shall be impounded or immobilized for a period of 10 days.

(d) 1. After the impoundment or immobilization period required by paragraph (c), the person shall have installed on all such vehicles, and must successfully use, an ignition interlock device approved by the department in accordance with s. 316.1938 for a period of:

a. Ninety days if, at the time of the offense, the person had a blood-alcohol level or breath-alcohol level of 0.15 or lower.

b. One hundred eighty days if, at the time of the offense, the person had a blood-alcohol level or breath-alcohol level higher than 0.15 but lower than 0.20 or did not provide a blood or breath sample.

2. If the person claims inability to pay for an ignition interlock device and:

a. The person's family income is at or below 100 percent of the federal poverty level as documented by written order of the court, the regular monthly leasing fee charged to all customers by the ignition interlock device provider shall be discounted for that person by 50 percent.

b. The person's family income is greater than 100 percent but at or below 149 percent of the federal poverty level as documented by written order of the court, the regular monthly

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117 leasing fee charged to all customers by the ignition interlock
 118 device provider shall be discounted for that person by 25
 119 percent.

120 3. A person who qualifies for a discounted monthly leasing
 121 fee pursuant to subparagraph 2. is not required to pay the cost
 122 of installation or deinstallation of the ignition interlock
 123 device.

124 (4) COMPLETION OF PILOT PROGRAM.—If a person complies with
 125 this section and successfully completes the pilot program, he or
 126 she shall be offered an agreement providing for a plea of guilty
 127 to the offense of reckless driving as provided in s. 316.192. A
 128 person who accepts such plea agreement is not subject to the
 129 provisions of this chapter relating to the offense of driving
 130 under the influence, and the trial judge shall withhold
 131 adjudication for reckless driving notwithstanding s. 316.656.

132 (5) FAILURE TO COMPLETE PILOT PROGRAM.—If a person does not
 133 comply with this section and fails to successfully complete the
 134 pilot program, the state attorney operating the pilot program
 135 may discharge the person from the program and pursue prosecution
 136 of the offense of driving under the influence.

137 (6) ANNUAL REPORT.—By October 1 of each year beginning in
 138 2021, the state attorney of each judicial circuit shall report
 139 the results of the pilot program to the Governor, the President
 140 of the Senate, and the Speaker of the House of Representatives.
 141 The report shall include:

142 (a) The number of cases diverted from prosecution of
 143 driving under the influence.

144 (b) The number of persons who successfully completed the
 145 pilot program.

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146 (c) The number of persons who failed to successfully
 147 complete the pilot program and were discharged from the program.

148 (d) The number of persons who successfully completed the
 149 pilot program who were later charged with another alcohol-
 150 related or drug-related criminal traffic offense.

151 (e) The number of persons who failed to successfully
 152 complete the pilot program who were later charged with another
 153 alcohol-related or drug-related criminal traffic offense.

154 (7) STATEWIDE DATABASE.—By July 1, 2023, the department
 155 shall establish a statewide database of persons who participate
 156 in the pilot program. Each judicial circuit must provide monthly
 157 reports to the department of the number of persons who have
 158 elected to participate in the pilot program.

159 Section 2. This act shall take effect July 1, 2020.

Racial/Ethnic Impact Statement

SB1396

Prepared by
Florida State University
College of Criminology & Criminal Justice

For
The Florida Senate Criminal Justice Committee



SB1396

Executive Summary

SB1396 creates s. 316.19395, F.S., which requires each judicial circuit to establish a Driving Under the Influence (DUI) Diversion Pilot Program. Prior research on DUI diversion programs has found that the programs generally reduce rates of recidivism among participants. Importantly, research has also found that White individuals are more likely to be eligible to participate in the programs than are other racial/ethnic groups. Using data from the Florida Department of Law Enforcement (FDLE), it was found that White individuals are more likely to be charged with a DUI, but also that a greater percentage of White individuals would be eligible for participation in the DUI diversion program. The observed racial disparity in program participation eligibility can be attributed to Black DUI offenders being more likely than White DUI offenders to have prior felony and misdemeanor convictions. Therefore, although DUI offending rates are higher among White individuals, this bill may contribute to some racial disparity in the punishment for this offense.

Bill Summary

SB1396 creates s. 316.19395, F.S., which requires each judicial circuit to establish a DUI Diversion Pilot Program that would be operated by the circuit's state attorney's office. The bill would require that individuals who complete the program be offered a plea agreement for a charge of reckless driving and provides for the withholding of adjudication. The bill also authorizes the state attorney to discharge a person from the program for failing to comply with the program's requirements and pursue prosecution for the DUI offense. To successfully complete the program, participants would be required to remain in the program for 12 months and must not be in possession of, or consume, drugs or alcohol. Participants would also be required to complete community service, attend a substance abuse course, participate in a victim impact panel session or class, pay all fines and imposed costs, submit to mandatory vehicle impoundment for 10 days, and use an ignition interlock device for a specified period of time.

Individuals will be eligible for participation in the program if:

1. They have not been charged with a prior alcohol- or drug-related criminal traffic offense, regardless of disposition;
2. They do not have a prior or pending felony conviction;
3. They have no more than two prior misdemeanor convictions;
4. They have not been involved in a vehicle crash or accident related to a charge of driving under the influence;
5. They were not, at the time of the offense, accompanied in the vehicle by a person under 18 years of age;
6. They did not, at the time of the offense, have a blood-alcohol level or breath-alcohol level of .20 or higher;
7. They have not previously participated in the pilot program.

Comparable Legislation and Prior Research

Seven states offer statewide DUI diversion programs similar to the program proposed in SB1396; namely, Georgia, Indiana, Kansas, Louisiana, Oregon, Pennsylvania, and Texas. The programs in these states require some combination of drug treatment, community service, temporary suspension of driving privileges, and the use of an ignition interlock device. The seven statewide programs, as well as three countywide programs in Florida are described below. It is important to note that Pennsylvania's program is the only program that has been evaluated for effectiveness and potential racial/ethnic disparities.

Georgia's (O.C.G.A. 15-18-80) program is not a formal DUI diversion program, but individuals who are charged with DUI can be eligible for diversion under the state's general first-time offense diversion program. The program requires 6 to 9 months of supervision, community service, and participation in counseling or education programming. Specific program requirements are negotiated with each district's Diversion Coordinator and District Attorney.

Indiana's (Indiana Code 33-39-8-5(c)) program allows for the diversion of DUI cases at the discretion of the prosecutor. The program excludes individuals whose DUI offenses involved injury or death, DUI cases where the driver holds a commercial license or was operating a commercial vehicle, and individuals who had passengers younger than 18 in the vehicle at the time, had previous convictions for DUI or drug offenses, or had a blood alcohol level exceeding 0.15. The requirements for completion of the program vary by case at the discretion of the prosecutor, but generally include participation in drug treatment and driver education programs.

Kansas' (K.S.A 22-2906) program allows for the diversion of individuals charged with a DUI whose blood alcohol level was less than 0.24. In addition, the individual must not have had a passenger under 14 or been driving on a suspended license. Kansas allows the local district attorney to mandate additional conditions for program participation, including, but not limited to, community service, counseling, and employment.

Louisiana's (Louisiana Revised Statute 14.98) program allows for the diversion of individuals with blood alcohol levels less than 0.10. It is notably not restricted to first time offenders; however, those convicted of four or more previous offenses are excluded from eligibility. Requirements to participate in the diversion program are set by each parish, however, most require a one year participation period in counseling, community service, and victim impact panels, along with the use of an ignition interlock device.

Oregon's (O.R.S 813.215) program allows for the diversion of individuals with no prior DUI or drug convictions, no prior participation in a DUI or drug diversion program, no prior felony convictions, and cases where no accident, crash, death, or serious bodily injury was committed during the offense, the driver was not a commercial driver, or operating a commercial vehicle, and the court determines the person would be a good candidate for the program. Participants are required to be in the program for 12 months, during which time they are required to complete drug/substance treatment courses and use an ignition interlock device.

Pennsylvania's (Pennsylvania Code Title 234, Rule 300) program is part of the state's Accelerated Rehabilitative Disposition (ARD) program. ARD is a pretrial diversion program for first time non-violent offenders. Participants must be approved for participation by the local district attorney and generally must complete drug or alcohol treatment at a facility, complete a driving safety course, and accept a license suspension. The local district attorney may stipulate other conditions, such as community service, or an ignition impairment device.

Texas' (Texas Code of Criminal Procedure Art. 16.23) program allows counties and courts to make the determination as to appropriate requirements for each case. Common requirements for participation are no previous criminal history, DUI offenses that did not involve passengers who are minors, and DUI offenses that did not result in injury or death. The requirements for completion of the program depend on the jurisdiction, but usually include drug treatment, community service, fines, and use of an ignition interlock device.

Orange County, Florida's diversion program requires participants to meet the following conditions: no more than two prior misdemeanor convictions, no related crash or accident in the course of the DUI offense, and a blood alcohol level not exceeding 0.22. The county requires the Office of the State Attorney to approve program participants. Participants are required to participate in victim impact classes and substance abuse treatment, and to submit to 10 days of vehicle impoundment and 2-6 months of ignition interlock device use.

Palm Beach County, Florida's diversion program requires participants to meet the following conditions: no prior commissions of similar offenses, a blood alcohol level below 0.20 at the time of arrest, no minors in the car at the time of the DUI arrest, no accident in the course of the DUI, no prior prison time served, not driving without a license or on a suspended/revoked license at the time of the DUI, and no drug charges accompanying the DUI arrest. The program requires participants to complete 20 hours of community service, DUI school, a victim impact panel, and use an ignition inhibition device for a variable amount of months based on the participant's blood alcohol level at the time of arrest.

Miami-Dade County, Florida's diversion program requires participants to meet the following conditions: no more than one previous non-violent felony conviction or two misdemeanor convictions, no more than one previous participation in a diversion program, no minors in the vehicle at the time of arrest, no accident related to the DUI, and the offender was not driving with a suspended/revoked license. Individuals who had a blood alcohol level below 0.15 are required to complete 6 to 9 months in the program, DUI school, substance abuse counseling, 40 hours of community service, and a victim impact class. Those with a blood alcohol level above 0.15 are required to complete 12 months in the program, 60 hours of community service, DUI school, substance abuse counseling, 60 hours of community service, a victim impact class, and 6 months with an ignition interlock device.

Prior research has found that rates of DUI vary across racial and ethnic groups. For example, the U.S. Department of Transportation, National Highway Traffic Safety Administration (2010) found that Native American and White drivers were the most at risk for alcohol impaired driving. Similarly, self-reported rates of DUI are highest among White males, followed by Native American males, and then mixed-race males (Caetano & McGrath, 2005).

Prior research has generally found that DUI diversion programs reduce recidivism and/or extend the time between completion and recidivism (for example, Knoth & Ruback, 2019; Lucker & Osti, 1997; Miller, Curtis, Sonderlund, Day, & Droste, 2015; Rivolta, 2013). However, the programs typically contain multiple components or requirements and research has not determined which component or component combination is most effective. A limited amount of research has examined the racial/ethnic differences among eligible program participants and program completers. Knoth and Ruback (2019) caution that participation in these programs may be biased towards specific groups based on gender, age, and race. In their study of Pennsylvania's statewide diversion program, the authors found that women, older offenders, those with fewer prior arrests, those with lower blood alcohol levels at time of arrest, and White individuals were more likely to participate in the diversion program. Very importantly, participation in the program generally resulted in lower rates of recidivism across all gender and ethnicity groups.

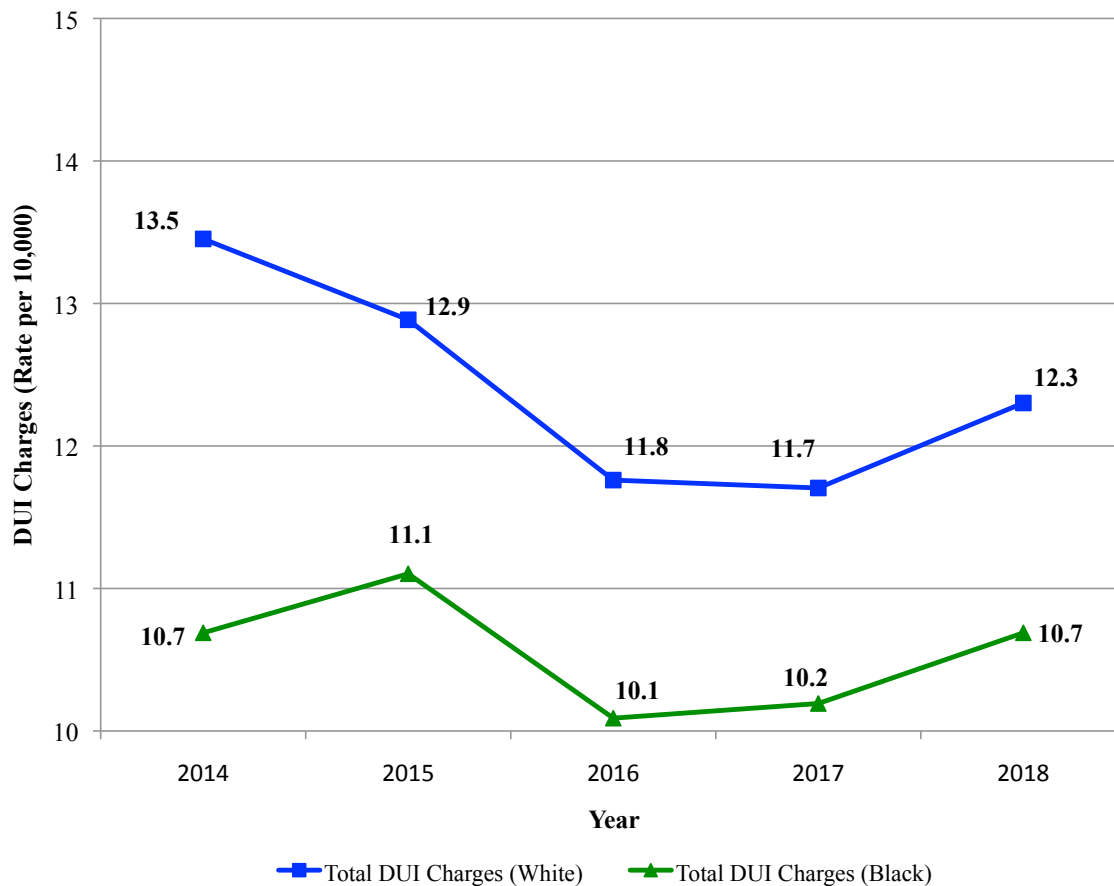
Data and Methods for Racial/Ethnic Impact Forecast

Data from FDLE were used to prepare this racial/ethnic impact statement. Individuals who were charged with a DUI offense under s. 316.193, F.S. for the first time between 2014 and 2018 and had no DUI charges, felony convictions, and no more than 2 misdemeanor convictions over the past 5 years were included in the analyses. Due to data limitations, we were required to restrict the number of years in which we were able to identify prior felonies and misdemeanors. Further, the available data did not allow us to consider the individual's blood alcohol level, age of passengers in the car, or whether the DUI resulted in a crash or accident. Therefore, our analyses may capture some individuals who would not be eligible for participation in the diversion program. It is important to note that the analyses in this impact statement show racial disparities among individuals with DUI charges who would be eligible for participation in the diversion program. We will be unable to assess racial differences among individuals who participate in and complete the DUI diversion program until after the program has been implemented.

Results

From 2014-2018, more White individuals were charged DUI offenses than were Black individuals. Graph 1 shows the rates of DUI charges per 10,000 Florida residents. In 2018, 12.3 White individuals per 10,000 White Florida residents were charged with a DUI offense whereas 10.7 Black individuals per 10,000 Black Florida residents were charged with a DUI offense.

Graph 1: Rates of DUI Charges, by Race



In 2018, there were 18,323 Black and White individuals charged with a DUI offense. Of those, 15,772 were first time offenders with no prior felony convictions and no more than two prior misdemeanor convictions. During the same year, 87% of White DUI offenders would have been eligible for the DUI diversion program, compared with 81% of Black DUI offenders. Table 1 provides the total number of DUI charges, the total number of individuals who would be eligible for participation in the DUI diversion program (those who had no prior DUI charges, felony convictions, and no more than two misdemeanors), and the percent of total offenders who would be eligible for the past five years. As shown, each year, most DUI offenders, regardless of their race, would be eligible for participation in the proposed DUI diversion program; however, a smaller percentage of Black offenders than White offenders would be eligible. White individuals are more likely than Black individuals to be charged with a DUI and more likely to be eligible for participation in the program. The observed racial disparity in the eligibility for program participation can be attributed to Black DUI offenders being more likely than White DUI offenders to have prior felony and misdemeanor convictions.

Table 1: Total DUI Charges and Total Individuals Eligible for Diversion, by Year and Race

Year	White DUI Offenders			Black DUI Offenders		
	Total DUI	Eligible for Diversion	Percent Eligible	Total DUI	Eligible for Diversion	Percent Eligible
2014	16,204	13,968	86	2,279	1,793	79
2015	15,769	13,588	86	2,056	1,645	80
2016	14,608	12,533	86	2,020	1,605	79
2017	14,767	12,859	87	2,296	1,852	81
2018	15,782	13,713	87	2,541	2,059	81
Total	77,130	66,661	86	11,192	8,954	80

Racial/Ethnic Impact Statement for the Bill

SB1396 creates s. 316.19395, F.S., which requires each judicial circuit to establish a DUI Diversion Pilot Program. Prior research on DUI diversion programs has found that the programs generally reduce rates of recidivism among participants. Importantly, research has also found that White individuals are more likely to be eligible to participate in the programs than are other racial/ethnic groups. Using data from FDLE, it was found that White individuals have higher DUI offending rates than Black individuals, but also a greater percentage of White individuals would be eligible for participation in the DUI diversion program. The observed racial disparity in program participation eligibility can be attributed to Black DUI offenders being more likely than White DUI offenders to have prior convictions. Therefore, although DUI offending rates are higher among White individuals, this bill may contribute to some racial disparity in the punishment of this offense given that Black DUI offenders are more likely to have prior felony and misdemeanor convictions that would disqualify them from participation in the proposed DUI Diversion Pilot Program.

References

- Caetano, R. & McGrath, C. (2005). Driving under the influence (DUI) among U.S. ethnic groups. *Accident Analysis & Prevention*, 37(2): 217-224.
- Lucker, G. W., & Osti, J. R. (1997). Reduced recidivism among first-time DWI offenders as a correlate of pre-trial intervention. *Journal of Offender Rehabilitation*, 24(3-4): 1-17.
- Kansas Statute Annotated 22-2906, retrieved from <https://www.sedgwickcounty.org/media/40269/dui-diversion-guidelines.pdf>
- Knoth, L. K., & Ruback, R. B. (2019). Conviction or diversion and the labeling of first-time DUI offenders: An analysis of sentencing and recidivism in Pennsylvania. *Justice Quarterly*, 1-29.
- Miller, P. G., Curtis, A., Sønderlund, A., Day, A., & Droste, N. (2015). Effectiveness of interventions for convicted DUI offenders in reducing recidivism: A systematic review of the peer-reviewed scientific literature. *The American Journal of Drug and Alcohol Abuse*, 41(1): 16-29.
- National Highway Traffic Safety Administration. (2010). *Alcohol and Highway Safety: A Special Report on Race/Ethnicity and Impaired Driving*. Washington, DC: United States Department of Transportation.
- Oregon Revised Statute 813.215, retrieved from https://www.oregonlegislature.gov/bills_laws/ors/ors813.html
- Pennsylvania Code title 234, rule 300. Accelerated Rehabilitative Disposition in Summary Cases, retrieved from <https://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/234/chapter3/s300html&searchunitkeywords=ARD&origQuery=ARD&operator=OR&title=null>
- Rivolta, P. M. (2013). *Pretrial diversion for first-time DWI offenders? An evaluation of the 'DIVERT' program* (3571394) (Doctoral dissertation). Retrieved from ProQuest Dissertations and Theses database. (3571394)
- SUPERIOR COURT OF THE DISTRICT OF COLUMBIA ADMINISTRATIVE ORDER 16-09*. (n.d.). Retrieved from <https://www.dccourts.gov/sites/default/files/divisionspdfs/16-09MentalHealthCommunityCourtCaseManagementPlan.pdf>

Contributors
Racial/Ethnic Impact Statement
SB1396

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FLORIDA STATE UNIVERSITY
COLLEGE OF CRIMINOLOGY & CRIMINAL JUSTICE

SB 1396 – Driving Under the Influence (Identical HB 1145)

This bill creates s. 316.19395, F.S., establishing “a Driving Under the Influence Diversion Pilot Program...in each judicial circuit for the purpose of offering a person charged with a first offense of driving under the influence...the opportunity to avoid a permanent criminal history record associated with the offense while ensuring the person receives substance abuse treatment if necessary.” A successful completion of the pilot program will result in an offer of “an agreement providing for a plea of guilty to the offense of reckless driving,” and “such plea agreement is not subject to the provisions of this chapter relating to the offense of driving under the influence.”

Given that three or more DUI's result in felonies, it is possible that some of those diverted under this program would either take longer to reach that number due to the first offense not being a DUI or no longer drive under the influence due to the program when they would have reached that number without it. Per DOC, in FY 18-19, there were 152 new commitments to prison who were convicted of a DUI three or more times.

CONFERENCE ADOPTED ESTIMATE: Negative Insignificant

Requested by: Senate

THE FLORIDA SENATE
APPEARANCE RECORD

2 4 20

Meeting Date

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

1396

Bill Number (if applicable)

Topic DUI DIVERSION

Name Dan Hendrickson

Amendment Barcode (if applicable)

Job Title president Tallahassee Veterans Legal Collaborative

Address PO Box 1201

Street

Tallahassee

City

FL

State

32302

Zip

Phone 850/570-1967

Email danbhendrickson@comcast.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing TALLAHASSEE VETERANS LEGAL COLLABORATIVE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/4/20
Meeting Date

1396
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title Florida State Director

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FL

32312

Email cmurphy@rightoncrime.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Right on Crime

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2/4/20

Meeting Date

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

1396

Bill Number (if applicable)

Topic Driving under Influence

Amendment Barcode (if applicable)

Name Carlos Martinez

Job Title Public Defender, 11th Judicial Circuit

Address 1320 Nw 14th St

Phone 305-545-1900

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33125

City

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/4/20

Meeting Date

1396

Bill Number (if applicable)

Topic

DUI Diversion

Amendment Barcode (if applicable)

Name

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Job Title

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Tallahassee FL 32301

Email

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City

State

Zip

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

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

Representing

Alcohol Countermeasure Systems

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

Committee Agenda Request

To: Senator Keith Perry, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 15, 2020

I respectfully request that **Senate Bill 1396**, relating to Driving Under the Influence, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons", is written over a horizontal line.

Senator David Simmons
Florida Senate, District 9

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 1416

INTRODUCER: Criminal Justice Committee and Senator Perry

SUBJECT: Assaults on Specified Persons

DATE: February 5, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1416 creates s. 341.0611, F.S., which provides that:

- By January 1, 2021, every public transit provider operating regularly scheduled transit service for the general public must post in at least one conspicuous place at the entrance of each public transit vehicle a sign in accordance with specifications in the bill containing the following statement: “ATTENTION: ASSAULTING A TRANSIT WORKER IS A FELONY PUNISHABLE BY UP TO 5 YEARS IN PRISON.”
- By July 1, 2021, such public transit provider must create and implement a risk reduction program. Each risk reduction program must include conflict de-escalation training for transit operators, and may include the deployment of assault mitigation infrastructure and technology on public transit, including barriers to restrict the unwanted entry of individuals and objects into transit operator’s workstations.

The bill also amends s. 784.07, F.S., which reclassifies the felony or misdemeanor degree of assaults and batteries on certain officers or employees to provide that an assault against any of these officers or employees is reclassified from a second degree misdemeanor to a third degree felony. Currently, an assault is reclassified from a second degree misdemeanor to a first degree misdemeanor. The effect of this change is that an assault reclassified under this statute as amended by the bill has a maximum penalty of five years in state prison; in contrast, the maximum penalty for an assault reclassified under the current statute is a year in county jail.

The Criminal Justice Impact Conference estimates that the bill will have a “positive significant” prison bed impact (an increase of more than 25 prison beds). The bill may also have a fiscal impact on public transit providers. See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2020.

II. Present Situation:

Section 784.07(2), F.S., reclassifies the misdemeanor or felony degree of assault,¹ aggravated assault,² battery,³ and aggravated battery⁴ when a person is charged with knowingly committing any of these offenses upon an officer or employee described as follows while that officer or employee is engaged in the lawful performance of his or her duties:

- A law enforcement officer;
- A firefighter;
- An emergency medical care provider;
- A railroad special officer;
- A traffic accident investigation officer;
- A nonsworn law enforcement agency employee who is certified as an agency inspector, a blood alcohol analyst, or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI;
- A law enforcement explorer;
- A traffic infraction enforcement officer;
- A parking enforcement specialist;
- A person licensed as a security officer and wearing a uniform bearing at least one patch or emblem that is visible at all times and clearly identifies the person’s employing agency and that the person is a licensed security officer;
- A security officer employed by the board of trustees of a community college; or
- A public transit employee or agent.⁵

¹ Assault, which is a second degree misdemeanor, is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. Section 784.011(1) and (2), F.S.

² Aggravated assault, which is a third degree felony, is the commission of an assault using a deadly weapon without intent to kill or the commission of an assault with the intent to commit a felony. Section 784.021(1) and (2), F.S.

³ Simple battery, which is a first degree misdemeanor, is actually and intentionally touching or striking another person against the will of that person or intentionally causing bodily harm to another person. Section 784.03(1)(a), F.S.

⁴ A person commits aggravated battery, a second degree felony, if the person, in committing a battery: intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; uses a deadly weapon; or the person who was the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant. Section 784.045(1) and (2), F.S.

⁵ “Public transit employees or agents” is defined in s. 784.07(1)(e), F.S., as bus operators, train operators, revenue collectors, security personnel, equipment maintenance personnel, or field supervisors, who are employees or agents of a transit agency as described in s. 812.015(1)(l), F.S. There is no specific reference in the statute to a public transit employee or agent in the list of officers and employees referenced as being subject to an assault or battery, which triggers the reclassification if the assault or battery occurs while the officer or employee is engaged in his or her lawful duties. A public transit employee or agent is only referenced in regard to a listed officer or employee engaged in performance of his or her lawful duties. Further, the Florida jury instruction for s. 784.07(2)(a), F.S. (relating to reclassification of the degree of assault) does not specifically reference a public transit employee or agent. Fla. Std. Jury Instr. (Crim.) 8.10. (See “Technical Deficiencies” section of this analysis.) However, notwithstanding the specific reference omission, it appears that the statute has been applied when the

The reclassification of the degree of the offense is as follows:

- In the case of assault, from a second degree misdemeanor to a first degree misdemeanor;
- In the case of battery, from a first degree misdemeanor to a third degree felony;
- In the case of aggravated assault, from a third degree felony to a second degree felony, and any person convicted of aggravated assault upon a law enforcement officer is subject to a mandatory three-year minimum term of imprisonment; and
- In the case of aggravated battery, from a second degree felony to a first degree felony, and any person convicted of aggravated battery of a law enforcement officer is subject to a mandatory five-year minimum term of imprisonment.

Further, if the person, during the commission of a battery subject to reclassification as a third degree felony, possessed:

- A firearm or destructive device, the person is subject to a mandatory minimum term of imprisonment of three years; or
- A semiautomatic firearm and its high-capacity detachable box magazine or a machine gun, the person is subject to a mandatory minimum term of imprisonment of eight years.⁶

Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for an offense. The maximum sentence that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony:

- Sixty days in a county jail for a second degree misdemeanor;
- One year in a county jail for a first degree misdemeanor;
- Five years in state prison for a third degree felony;
- Fifteen years in state prison for a second degree felony; and
- Generally, 30 years in state prison for a first degree felony.⁷

III. Effect of Proposed Changes:

New Requirements Relating to Certain Public Transit Providers

The bill creates s. 341.0611, F.S., which provides that:

- By January 1, 2021, every public transit provider operating regularly scheduled transit service for the general public must post in at least one conspicuous place at the entrance of each public transit vehicle a sign in accordance with specifications in the bill containing the

victim is a public transit employee. *See, e.g., Walker v. State*, 193 So.3d 946, 948-949 (Fla. 4th DCA 2016), rehearing denied, 193 So.3d 990 (Fla. 4th DCA 2016) (appellate court stating that the charges against the appellant included a count relating to battery on a public transit employee in violation of ss. 784.03(1), 784.07(1)(e), and 784.07(2)(b), F.S., and the appellant was found guilty as charged on this count).

⁶ Section 784.07(3)(a) and (b), F.S. Additionally, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release, prior to serving the minimum sentence. Section 784.07(3), F.S.

⁷ Section 775.082, F.S. (maximum penalties). Fines may also be imposed, and those fines escalate based on the degree of the offense. Section 775.082, F.S., provides the following maximum fines: \$500 for a second degree misdemeanor; \$1,000 for a first degree misdemeanor; \$5,000 for a third degree felony; and \$10,000 for a second degree felony and a first degree felony.

following statement: “ATTENTION: ASSAULTING A TRANSIT WORKER IS A FELONY PUNISHABLE BY UP TO 5 YEARS IN PRISON.”

- By July 1, 2021, such public transit provider must create and implement a risk reduction program. Each risk reduction program must include conflict de-escalation training for transit operators, and may include the deployment of assault mitigation infrastructure and technology on public transit, including barriers to restrict the unwanted entry of individuals and objects into transit operator’s workstations.

Declaration of Important State Interest

The bill includes a declaration of important state interest supporting the requirements that public transit providers conspicuously post signage that provides notification of the criminal penalties for assault on a public transit worker, and also create and implement a risk reduction program that includes conflict-de-escalation training.

Revision of the Offense Degree Designation for an Assault Reclassified under s. 784.07, F.S.

The bill amends s. 784.07, F.S., which reclassifies the felony or misdemeanor degree of assaults and batteries on certain officers or employees to provide that an assault against any of these officers or employees is reclassified from a second degree misdemeanor to a third degree felony. Currently, an assault is reclassified from a second degree misdemeanor to a first degree misdemeanor. The effect of this change is that an assault reclassified under this statute as amended by the bill has a maximum penalty of five years in state prison; in contrast, the maximum penalty for an assault reclassified under the current statute is a year in county jail.

The bill also amends s. 784.07, F.S., to include specific reference to a public transit employee or agent in the list of officers or employees who have been assaulted or battered (as charged).

Effective Date

The bill takes effect October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides that: “No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: ...the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature....”

This bill requires public transit providers to post signage (as specified in the bill), and create and implement a risk reduction program, which includes entry barriers and conflict de-escalation training for transit operators. These requirements may cause public transit providers to spend funds.

Article VII, section 18(d) of the State Constitution, provides eight exemptions, which, if any single one is met, exempts the law from the limitations on mandates. If the bill does qualify as a mandate, and no exemption applies, in order to be binding on the counties, the bill must include a finding of important state interest and final passage must be approved by two-thirds of the membership of each house of the Legislature.

The bill includes a declaration of an important state interest supporting the requirements that public transit providers conspicuously post signage that provides notification of the criminal penalties for assault on a public transit worker, and also create and implement a risk reduction program that includes conflict-de-escalation training (see “Effect of Proposed Changes” section of this analysis).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires public transit providers to post signage (as specified in the bill), and create and implement a risk reduction program, which includes entry barriers and conflict de-escalation training for transit operators. Public transit providers will likely see an increase in costs to comply with the bill’s requirements.

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates that the bill will have a “positive significant” prison bed impact (an increase of more than 25 prison beds).⁸

The EDR provides the following information relevant to its preliminary estimate:

Per [Department of Corrections], in FY 18-19, there were 400 new commitments to prison for these offenses, though it is not known how many transit workers were victims. In FY 17-18, simple battery had an incarceration rate of 16.3% (adj.).⁹ Per [Florida Department of Law Enforcement], in FY 18-19, there were 259 guilty/convicted and 77 adjudication withheld where a 2nd degree misdemeanor was increased to a 1st degree felony under s. 784.07, F.S. While it is expected that 2nd degree assault would have a lower incarceration rate as a 3rd degree felony, the large number of those impacted would be expected to be enough to reach significance.¹⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 784.07 of the Florida Statutes.

This bill creates section 341.0611 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 February 4, 2020:

The committee substitute:

- Authorizes (rather than requires) public transit providers operating regularly scheduled transit service for the general public to include the deployment of assault mitigation infrastructure and technology on public transit, including barriers to

⁸ The CJIC meeting at which this bill estimate was made occurred during a meeting of the Criminal Justice Estimating Conference on Jan. 27, 2020. The meeting is available on video on the Florida Channel at <https://thefloridachannel.org/videos/1-27-20-criminal-justice-estimating-conference/> (last visited on Jan. 29, 2020).

⁹ The abbreviation “adj.” means “adjusted.” Sentencing data from the Department of Corrections is incomplete, which means that the number the EDR receives are potentially lower than what the actual numbers are. The EDR adjusts these numbers by the percentage of scoresheets received for the applicable fiscal year.

¹⁰ The EDR’s estimate is on file with the Senate Committee on Criminal Justice.

restrict the unwanted entry of individuals and objects into transit operator's workstations.

- Amends s. 784.07, F.S., to include specific reference to a public transit employee or agent in the list of officers or employees who have been assaulted or battered (as charged).

B. Amendments:

None.

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



111654

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2020	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 21 - 51
and insert:
black, bold type font no smaller than 48 point containing the
following statement:

"ATTENTION: ASSAULTING A TRANSIT WORKER IS A FELONY
PUNISHABLE BY UP TO 5 YEARS IN PRISON."

(2) By July 1, 2021, every public transit provider
operating regularly scheduled transit service for the general



111654

public shall create and implement a risk reduction program. Each risk reduction program shall include conflict de-escalation training for transit operators. The risk reduction program may include the deployment of assault mitigation infrastructure and technology on public transit, including barriers to restrict the unwanted entry of individuals and objects into transit operator's workstations.

Section 2. The Legislature finds that public transit workers may be subject to assault while performing their jobs. The Legislature further finds and declares that this act fulfills an important state interest in protecting the safety of public transit workers by requiring any public transit providers operating regularly scheduled transit service to conspicuously post signage that provides notification of the criminal penalties for assault on a public transit worker, and to also create and implement a risk reduction program that includes conflict-de-escalation training. The Legislature further finds that these reasonable measures may reduce or prevent attacks on public transit workers.

Section 3. Paragraph (a) of subsection (2) of section 784.07, Florida Statutes, is amended to read:

784.07 Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.—

(2) Whenever any person is charged with knowingly committing an assault or battery upon a law enforcement officer, a firefighter, an emergency medical care provider, a railroad special officer, a traffic accident investigation officer as



111654

described in s. 316.640, a nonsworn law enforcement agency employee who is certified as an agency inspector, a blood alcohol analyst, or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI, a law enforcement explorer, a traffic infraction enforcement officer as described in s. 316.640, a parking enforcement specialist as defined in s. 316.640, a public transit employee or agent, a person

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

And the title is amended as follows:

Delete line 8

and insert:

such a program; authorizing public transit providers to deploy assault mitigation infrastructure; providing a declaration of important state interest; amending s. 784.07, F.S.; providing a specific reference to assault or battery on a public transit employee or agent; revising the



684444

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/03/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 21 - 51
and insert:
black, bold type font no smaller than 48 point containing the following statement:

"ATTENTION: ASSAULTING A TRANSIT WORKER IS A FELONY
PUNISHABLE BY UP TO 5 YEARS IN PRISON."

(2) By July 1, 2021, every public transit provider
operating regularly scheduled transit service for the general



684444

public shall create and implement a risk reduction program. Each risk reduction program shall include conflict de-escalation training for transit operators. The risk reduction program may include the deployment of assault mitigation infrastructure and technology on public transit, including barriers to restrict the unwanted entry of individuals and objects into transit operator's workstations.

Section 2. Paragraph (a) of subsection (2) of section 784.07, Florida Statutes, is amended to read:

784.07 Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.—

(2) Whenever any person is charged with knowingly committing an assault or battery upon a law enforcement officer, a firefighter, an emergency medical care provider, a railroad special officer, a traffic accident investigation officer as described in s. 316.640, a nonsworn law enforcement agency employee who is certified as an agency inspector, a blood alcohol analyst, or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI, a law enforcement explorer, a traffic infraction enforcement officer as described in s. 316.640, a parking enforcement specialist as defined in s. 316.640, a public transit employee or agent, a person

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



684444

40 And the title is amended as follows:
41 Delete line 8
42 and insert:
43 such a program; authorizing public transit providers
44 to deploy assault mitigation infrastructure; amending
45 s. 784.07, F.S.; providing a specific reference to
46 assault or battery on a public transit employee or
47 agent; revising the



921370

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2020	.	
	.	
	.	
	.	

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

Senate Amendment to Amendment (111654)

Delete lines 30 - 48

and insert:

Section 3. Subsection (2) of section 784.07, Florida Statutes, is amended to read:

784.07 Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.—



921370

(2) Whenever any person is charged with knowingly committing an assault or battery upon a law enforcement officer, a firefighter, an emergency medical care provider, a railroad special officer, a traffic accident investigation officer as described in s. 316.640, a nonsworn law enforcement agency employee who is certified as an agency inspector, a blood alcohol analyst, or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI, a law enforcement explorer, a traffic infraction enforcement officer as described in s. 316.640, a parking enforcement specialist as defined in s. 316.640, a public transit employee or agent, a person licensed as a security officer as defined in s. 493.6101 and wearing a uniform that bears at least one patch or emblem that is visible at all times that clearly identifies the employing agency and that clearly identifies the person as a licensed security officer, or a security officer employed by the board of trustees of a community college, while the officer, firefighter, emergency medical care provider, railroad special officer, traffic accident investigation officer, traffic infraction enforcement officer, inspector, analyst, operator, law enforcement explorer, parking enforcement specialist, public transit employee or agent, or security officer is engaged in the lawful performance of his or her duties, the offense for which the person is charged shall be reclassified as follows:

(a) In the case of assault, from a misdemeanor of the second degree to a felony ~~misdemeanor~~ of the third ~~first~~ degree.

(b) In the case of battery, from a misdemeanor of the first



921370

degree to a felony of the third degree.

(c) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree. Notwithstanding any other provision of law, any person convicted of aggravated assault upon a law enforcement officer shall be sentenced to a minimum term of imprisonment of 3 years.

(d) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree. Notwithstanding any other provision of law, any person convicted of aggravated battery of a law enforcement officer shall be sentenced to a minimum term of imprisonment of 5 years.

By Senator Perry

8-01289A-20

20201416__

A bill to be entitled

An act relating to assaults on specified persons; creating s. 341.0611, F.S.; requiring public transit providers to post a specified sign concerning assaulting a transit operator; requiring public transit providers to create and implement a risk reduction program; specifying minimum requirements for such a program; amending s. 784.07, F.S.; revising the reclassification of the offense of assault on specified persons; providing an effective date.

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

Section 1. Section 341.0611, Florida Statutes, is created to read:

341.0611 Transit worker safety.-

(1) By January 1, 2021, every public transit provider operating regularly scheduled transit service for the general public shall post in at least one conspicuous place at the entrance of each public transit vehicle a yellow sign with black, bold type no smaller than 48 point containing the following statement:

"ATTENTION: ASSAULTING A TRANSIT WORKER IS A FELONY PUNISHABLE BY UP TO 5 YEARS IN PRISON."

(2) By July 1, 2021, every public transit provider operating regularly scheduled transit service for the general public shall create and implement a risk reduction program. At a minimum, each risk reduction program shall include:

(a) The deployment of assault mitigation infrastructure and

Page 1 of 3

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

8-01289A-20

20201416__

technology on public transit, including barriers to restrict the unwanted entry of individuals and objects into transit operator's workstations.

(b) Conflict de-escalation training for transit operators.

Section 2. Paragraph (a) of subsection (2) of section 784.07, Florida Statutes, is amended to read:

784.07 Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.-

(2) Whenever any person is charged with knowingly committing an assault or battery upon a law enforcement officer, a firefighter, an emergency medical care provider, a railroad special officer, a traffic accident investigation officer as described in s. 316.640, a nonsworn law enforcement agency employee who is certified as an agency inspector, a blood alcohol analyst, or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI, a law enforcement explorer, a traffic infraction enforcement officer as described in s. 316.640, a parking enforcement specialist as defined in s. 316.640, a person licensed as a security officer as defined in s. 493.6101 and wearing a uniform that bears at least one patch or emblem that is visible at all times that clearly identifies the employing agency and that clearly identifies the person as a licensed security officer, or a security officer employed by the board of trustees of a community college, while the officer, firefighter, emergency medical care provider, railroad special officer,

Page 2 of 3

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

8-01289A-20

20201416__

59 traffic accident investigation officer, traffic infraction
60 enforcement officer, inspector, analyst, operator, law
61 enforcement explorer, parking enforcement specialist, public
62 transit employee or agent, or security officer is engaged in the
63 lawful performance of his or her duties, the offense for which
64 the person is charged shall be reclassified as follows:

65 (a) In the case of assault, from a misdemeanor of the
66 second degree to a felony ~~misdemeanor~~ of the third ~~first~~ degree.

67 Section 3. This act shall take effect October 1, 2020.

SB 1416 – Assaults on Specified Persons (Identical HB 951)

This bill creates s. 341.0611, F.S., requiring that a transit provider include a sign noting that assault is a felony punishable by up to five years in prison, as well creating assault mitigating infrastructure and conflict de-escalation training for transit operators. It also amends s. 784.07, F.S., changing the current reclassification of a 2nd degree assault to a 1st degree misdemeanor, where a 2nd degree misdemeanor assault would now be a 3rd degree felony.

Per DOC, in FY 18-19, there were 400 new commitments to prison for these offenses, though it is not known how many transit workers were victims. In FY 17-18, simple battery had an incarceration rate of 16.3% (adj.). Per FDLE, in FY 18-19, there were 259 guilty/convicted and 77 adjudication withheld where a 2nd degree misdemeanor was increased to a 1st degree felony under s. 784.07, F.S. While it is expected that 2nd degree assault would have a lower incarceration rate as a 3rd degree felony, the large number of those impacted would be expected to be enough to reach significance.

EDR PROPOSED ESTIMATE: Positive Significant

Requested by: Senate

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.4.20

Meeting Date

SB 1416

Bill Number (if applicable)

Topic

ASSAULTS ON SPECIFIED PERSON

Amendment Barcode (if applicable)

Name

PETER CHAMBERS

Job Title

BUS OPERATOR (SCHOOL BUS)

Address

2919 NW 48TH ST

Phone

954 226-6545

Street

TAMARAC

FL

33309

City

State

Zip

Email

PETERCHAMBERS251@gmail.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.

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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)

2/4/2020
Meeting Date

SB 1416
Bill Number (if applicable)

Topic Assault on Specified Persons

Amendment Barcode (if applicable)

Name Linda Lewis

Job Title Bus Agent

Address 1700 NW 66 Ave

Phone 954-609-6159

Street
City Ft. Lauderdale FL 33312

Email linda.lewis

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/4/2020

Meeting Date

SB 1416

Bill Number (if applicable)

Topic Assaults on Specified Persons

Amendment Barcode (if applicable)

Name Maurice Johnson

Job Title Senior Equip Operator

Address 2304 NW 14 Court

Phone 954 657-1429

Street

Fort Lauderdale

City

FL

State

33311

Zip

Email j-jumpin@hotmail.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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-4-20

Meeting Date

SB 1416

Bill Number (if applicable)

Topic ASSAULTS ON SPECIFIED PERSONS

Amendment Barcode (if applicable)

Name Gene Cannoli

Job Title RETIRED

Address P.O. Box 1518
Street

Phone 727-742-1640

DOVER, FL 33527
City State Zip

Email Fmmanaw3@yahoo.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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

9/04/2020

Meeting Date

1416

Bill Number (if applicable)

Topic ASSAULT on Public Transit operators

Amendment Barcode (if applicable)

Name SHARON MARAS

Job Title Bus Operator

Address 16393 E PRESTWICH DR
Street

Phone 501-537-6989

LOXAHATCHEE
City

FL
State

33470
Zip

Email Sharonsudas@bellsouth.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

02-04-2020

Meeting Date

1416

Bill Number (if applicable)

Topic ASSAULT to BUS DRIVERS

Amendment Barcode (if applicable)

Name EUGENIE LUZINCOURT

Job Title BUS OPERATOR

Address 9637 HERITAGE
Street

Phone 561-774-7999

BOCA RATON FL 33427
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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

02.04.20

Meeting Date

1416

Bill Number (if applicable)

Topic ASSAULT

Amendment Barcode (if applicable)

Name WILLIE CARTER

Job Title DRIVER

Address 1207 W. GREGORY ST
Street

Phone 850-791-8630

PNB 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)

2/04/2020

Meeting Date

1416

Bill Number (if applicable)

Topic Assault on Public Transit Operators

Amendment Barcode (if applicable)

Name KAGENIA BALLANTINE

Job Title Bus Operator

Address 7505 Kimbrey Blvd Apt 126

Street

N. Lauderdale FL 33068

City

State

Zip

Phone 954-483-1916

Email Kageniab@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Myself

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)

2-4-20

Meeting Date

1416

Bill Number (if applicable)

Topic Assault

Amendment Barcode (if applicable)

Name Christopher River

Job Title Bus Operator

Address 5035 Wiles Rd #101
Street

Phone 954-592-0959

Coconut Creek FL 33073
City State Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Bus Operators in Broward County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

This form is part of the public record for this meeting

CS-001 (02/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2/4/20

Meeting Date

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

1416

Bill Number (if applicable)

Topic Assault

Amendment Barcode (if applicable)

Name Michael Lowery

Job Title Bus Operator

Address 4302 YARMOUTH PLACE

Street

Phone 850 554-6034

PENSACOLA

City

FL

State

32514

Zip

Email Mlowerygate1395@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Self / Bus Operators ECAT - ESCambia County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

This form is part of the public record for this meeting

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/

Meeting Date

1416

Bill Number (if applicable)

Topic Assault Public Transit operator

Amendment Barcode (if applicable)

Name IRAN ACEVEDO

Job Title Bus operator

Address 3892 Lake View

Phone (561) 424-1393

Street

WPL

City

FL

State

33409

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing My 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.

THE FLORIDA SENATE
APPEARANCE RECORD

02/04/2020

Meeting Date

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

1416

Bill Number (if applicable)

Topic Assault on Public Transit Operators

Both Amen

Amendment Barcode (if applicable)

Name Dwight Mattingly

Job Title Bus Operator

Address 8907 SE Ane Cone Lane

Street

Phone 561-523-8525

Hobe Sound FL 33455

City

State

Zip

Email atu1577@bellsouth.net

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Bus Operator in Palm Beach County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

This form is part of the public record for this meeting

S 001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-4-2020

Meeting Date

SB 1416

Bill Number (if applicable)

Topic Assaults on Specified Persons

Amendment Barcode (if applicable)

Name Frank A. ~~Marinacci~~ MARINACCI

Job Title Letter Carrier

Address 1167 Sunwave Road
Street

Phone 386-246-1625

Daytona Beach FL 32114
City State Zip

Email PoolFun10@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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/4/2020
Meeting Date

1416
Bill Number (if applicable)

Topic AJ Nault

Amendment Barcode (if applicable)

Name Marcos Rodriguez

Job Title Bus Operator

Address 3485 S.W. Fairwinds St

Phone 772-928-5493

Street

P.J.L.

City

FL

State

34953

Zip

Email ceto local 1577@gmail.com

Speaking: ☒ For ☒ Against ☐ Information

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

Representing NO

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-4-20

Meeting Date

1416

Bill Number (if applicable)

Topic Assaults on Specified Persons

Amendment Barcode (if applicable)

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive
Street

Phone 850 874 2145

Tallahassee FL 32308
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/4/2010

Meeting Date

SB 1416

Bill Number (if applicable)

Topic ASSAULTS ON SPECIFIED PERSONS

Amendment Barcode (if applicable)

Name LEVIN BYRNE

Job Title

Address 256 SE Todd Avenue

Phone 772 979 5809

Street

Port St. Lucie

FL

34983

City

State

Zip

Email levinjbyrne54@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing myself

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)

2/4/2020
Meeting Date

SB 476
Bill Number (if applicable)

Topic ASSAULTS ON SPECIAL PERSONS

Amendment Barcode (if applicable)

Name BILLIE NUTTER

Job Title _____

Address 19616 BOBOLINK DRIVE
Street

Phone _____

HIALLAND FL 33015
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing MYSELF

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 (10/11/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/4/2020

Meeting Date

SB1416

Bill Number (if applicable)

Topic ASSAULTS ON SPECIAL PERSON

Amendment Barcode (if applicable)

Name FRANK RAMIREZ

Job Title

Address 25131 SW 120 PL

Phone

Street

HONESTAD

FL

33032

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing MYSER

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

This form is part of the public record for this meeting

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/4/2020

Meeting Date

SB 1416

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name O.D. ELLIOTT

Job Title RETIRED

Address 101 - 78th AVE NE
Street

Phone 727-608-6027

ST. PETE

City

State

Zip

Email odebt1477@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

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)

2/4/2020

Meeting Date

1416

Bill Number (if applicable)

Topic Passenger Assaults

Amendment Barcode (if applicable)

Name Lisa Bacot

Job Title Executive Director

Address PO Box 10168

Phone 850 445 8329

Tallahassee FL 32302

City

State

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Public Transportation Assoc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/4/2020

Meeting Date

1416

Bill Number (if applicable)

Topic Senate Criminal Justice

Amendment Barcode (if applicable)

Name William Ross

Job Title EO4

Address 4833 Pat Ann Terrace

Phone _____

Street

Orlando

City

FL

State

32808

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

This form is part of the public record for this meeting

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-4-20

Meeting Date

SB1416

Bill Number (if applicable)

Topic Assault on specified persons

Amendment Barcode (if applicable)

Name Raymond Caldwell

Job Title laborer

Address 552 Bison Circle
Street

Phone 407-670-4560

Apopka Florida 32712
City State Zip

Email Bigtrogg82@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/4/20

Meeting Date

1416

Bill Number (if applicable)

Topic Assaults on Specified persons

Amendment Barcode (if applicable)

Name Robert Howell

Job Title Laborer

Address 31829 Sunpark Cir

Street

Phone (407) 284-9801

Leesburg

City

FL

State

34748

Zip

Email BobHowell78@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE
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2-4-20

Meeting Date

1416

Bill Number (if applicable)

Topic Assault on workers

Amendment Barcode (if applicable)

Name James Ingle

Job Title Electrician

Address 3509 NW 22nd Dr
Street

Phone 901-483-4800

Gainesville FL 32605
City State Zip

Email James@IBEW1205.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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2/4/20

Meeting Date

SB 1416

Bill Number (if applicable)

Topic Assault on Specified Persons

Amendment Barcode (if applicable)

Name KAYLA MILLER-KOEHLMOOS

Job Title Electrician

Address 1216 NE 17th Ave

Phone _____

Street

Gainesville

City

FL

State

32609

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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APPEARANCE RECORD

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2/4/20

Meeting Date

SB 1416

Bill Number (if applicable)

Topic Assault on specified persons

Amendment Barcode (if applicable)

Name Brett Farrel

Job Title Electrician

Address 504 SW Buechi Glen
Street

Phone 352-615-4886

Fort White FL 32038
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2/4/20

Meeting Date

1416

Bill Number (if applicable)

Topic Assaults on specified persons

Amendment Barcode (if applicable)

Name Matthew Nelson

Job Title Electrician

Address 1172 Tracy Drive

Phone

Street

Port Orange FL 32129

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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2-4-2020

Meeting Date

1416

Bill Number (if applicable)

Topic Assaults on Specified Persons

Amendment Barcode (if applicable)

Name Cheney George

Job Title Electrician

Address 2146 Pope Avenue

Street

South Daytona

City

Fl.

State

32119

Zip

Phone _____

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

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2/4/20

Meeting Date

SB 1416

Bill Number (if applicable)

Topic Assaults on Specified Persons

Amendment Barcode (if applicable)

Name GRAHAM HADLEY

Job Title Electrician

Address 3303 W PRICE AVE

Phone 863-529-6367

Street

TAMPA

City

FL

State

33611

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/4/20

Meeting Date

SB 1416

Bill Number (if applicable)

Topic Assaults on Specified Persons

Name Mike Budd

Job Title Retired educator

Address 2047 Newcastle C

Street

Boca Raton FL

City

State

33434

Zip

Phone _____

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/4/20

Meeting Date

SB 1416

Bill Number (if applicable)

Topic Assaults of Specified Persons

Amendment Barcode (if applicable)

Name Savannah Staats

Job Title Electrical Apprentice

Address 1217 NW 39th Dr

Phone

Street

Gainesville

FL

32605

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-4-2020

Meeting Date

SOB 37 9 Am

SB 1416

Bill Number (if applicable)

Topic Assaults on Specified Persons

Amendment Barcode (if applicable)

Name Amy Datz

Job Title Retired Environmental Scientist (Former State Transit Environmental Planner)

Address _____
Street

Phone (850) 322-7599

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Email amalie.datz@mac.com

Representing Environmental Caucus 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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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)

2-4-2020

Meeting Date

1416

Bill Number (if applicable)

Topic Assaults on specified Persons

Amendment Barcode (if applicable)

Name Joseph Shaffer

Job Title _____

Address 3432 Dante Dr.

Street

Phone 941-586-2629

Sarasota

City

FL

State

34235

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

THE FLORIDA SENATE
APPEARANCE RECORD

2-4-2020

Meeting Date

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

1416

Bill Number (if applicable)

Topic ASSAULTS ON SPECIFIED PERSONS

Amendment Barcode (if applicable)

Name DAVID STOVER

Job Title _____

Address 386 SE HORNHILL DRIVE

Phone _____

Street

PORT ST. LOUISE, FL

34983

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing MYSELF

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)

2-4-20

Meeting Date

1416

Bill Number (if applicable)

Topic Transit Worker Safety Bill

Amendment Barcode (if applicable)

Name Blin Mulloy

Job Title Director of Safety

Address 3616 West Temple Circle

Phone 813-955-1210

Street

Tampa Florida 33629

City

State

Zip

Email mulloyc@gochar.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Hillsborough Area Regional Transit

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 is a 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 1504

INTRODUCER: Criminal Justice Committee and Senator Brandes and others

SUBJECT: Sentencing

DATE: February 5, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1504 creates s. 322.3401, F.S., expressly providing for the retroactive application of the changes made by CS/HB 7125 (2019) to s. 322.34, F.S., related to the offense of driving while license suspended or revoked (DWLSR).

The bill defines two terms for purposes of s. 322.3401, F.S., including the term:

- “Former s. 322.34”, which means a reference to s. 322.34, F.S., as it existed at any time before its amendment by ch. 2019-167, L.O.F.; and
- “New s. 322.34”, which means a reference to s. 322.34, F.S., as it exists after the amendments made by ch. 2019-167, L.O.F., became effective.

The bill requires a person who committed the offense of DWLSR:

- Before October 1, 2019, but who was not sentenced under former s. 322.34, F.S., before October 1, 2020, to be sentenced for the degree of offense as provided for in the new s. 322.34, F.S.
- Before October 1, 2019, and who was sentenced before October 1, 2019, to a term of imprisonment or supervision pursuant to former s. 322.34, F.S., and who is serving such penalty on or after October 1, 2020, to be resentenced to the degree of offense that is consistent with the new s. 322.34, F.S.

The bill provides procedures for the resentencing of eligible persons and requires the court of original jurisdiction, upon receiving an application for sentence review from the eligible person,

to hold a sentence review hearing to determine if the eligible person meets the criteria for resentencing.

The bill provides that if the court determines at the sentence review hearing that the eligible person meets the criteria, the court must resentence the person in accordance to the offense as it is classified under the new s. 322.34, F.S. Further, the sentence cannot exceed the person's original sentence with credit for time served. If the court determines that the person does not meet the criteria for resentencing, the court must provide written reasons for such determination.

In addition to the retroactive application of sentencing provisions of the new s. 322.34, F.S., the bill provides that a person who has been convicted of a felony under former s. 322.34, F.S., and whose offense would not be classified as a felony under the new s. 322.34, F.S., must have all outstanding fines, fees, and costs related to such felony conviction waived.

Further, he or she must be treated as if he or she had been convicted of a misdemeanor for purposes of any right, privilege, benefit, remedy, or collateral consequence that the person might be entitled to but for such felony conviction. However, the bill provides that this provision does not serve to remove the designation of the person as a convicted felon, but the statutory consequences of such felony conviction no longer apply.

The bill also creates s. 943.0587, F.S., providing that a person is eligible to expunge a criminal history record of a conviction that resulted from former s. 322.34, F.S., in specified circumstances.

In part, the bill provides for the retroactive application of changes made to the offense of DWLSR in the 2019 Legislative session. To the extent that the bill results in persons being resentenced and released from imprisonment, the bill will have an indeterminate negative prison bed impact (i.e. an unquantifiable decrease). Additionally, the DOC reports that the bill will have a significant, but temporary positive fiscal impact to conduct eligibility reviews. See Section V. Fiscal Impact Statement.

Section 1 of the bill, which relates to the retroactive application of the changes to the DWLSR offense, is effective October 1, 2020. Section 2, which relates to the expunction of certain DWLSR offenses is effective on the same date as SB 1506 or similar legislation, which is tied to this bill, goes into effect if such legislation is adopted during this session.

II. Present Situation:

Driver Licenses

Florida law requires a person to hold a driver license¹ or be exempted from licensure to operate a motor vehicle on the state's roadways.² Exemptions to the licensure requirement include nonresidents who possess a valid driver license issued by their home states, federal government,

¹ "Driver license" is a certificate that, subject to all other requirements of law, authorizes an individual to drive a motor vehicle and denotes an operator's license as defined in 49 U.S.C. s. 30301. Section 322.01(17), F.S.

² Section 322.03(1), F.S.

employees operating a government vehicle for official business, and people operating a road machine, tractor, or golf cart.³

The Department of Highway Safety and Motor Vehicles (DHSMV) can suspend or revoke a driver license or driving privilege for both driving-related and non-driving related reasons. Suspension means the temporary withdrawal of the privilege to drive⁴ and revocation means a termination of the privilege to drive.⁵

Among the driving-related reasons that a person may have had his or her license suspended or revoked are convictions for fleeing or attempting to elude a law enforcement officer,⁶ driving under the influence (DUI),⁷ and refusal to submit to a lawful breath, blood, or urine test in a DUI investigation.⁸ Alternatively, some of the non-driving related convictions a person may have his or her license suspended or revoked for are graffiti by a minor⁹ and certain drug offenses.¹⁰

Additionally, the clerk of the court can direct the DHSMV to suspend a license for several reasons, including failure to comply with civil penalties.¹¹ Such a suspension lasts until the individual is compliant with the court's requirements for reinstatement¹² or if the court grants relief from the suspension.¹³ A person with a suspended or revoked license cannot drive, which can inhibit his or her ability to work and can further impede the process of resolving outstanding financial obligations.¹⁴

Section 322.34, F.S. (2018)

Prior to October 1, 2019, a person committed the offense of driving while license suspended, revoked, canceled, or disqualified (DWLSR) if his or her driver license or driving privilege had been canceled, suspended, or revoked and he or she, knowing of such cancellation, suspension, revocation, or suspension,¹⁵ drove any motor vehicle. The penalties for DWLSR ranged from a moving traffic violation to a third degree felony.¹⁶

³ Section 322.04, F.S.

⁴ Section 322.01(40), F.S.

⁵ Section 322.01(36), F.S.

⁶ Section 316.1935(5), F.S.

⁷ See ss. 316.193, 322.26, 322.271, and 322.28, F.S.

⁸ See ss. 316.193 and 322.2615(1)(b), F.S.

⁹ Section 806.13, F.S.

¹⁰ Section 322.055, F.S.

¹¹ Section 322.245, F.S.

¹² See ss. 318.15(2) and 322.245(5), F.S.

¹³ Section 322.245(5), F.S.

¹⁴ Section 322.271, F.S., allows a person to have his or her driving privilege reinstated on a restricted basis solely for business or employment purposes under certain circumstances.

¹⁵ The element of knowledge is satisfied in several ways, including: if the person has been previously cited as provided in s. 322.34(1), F.S., the person admits to knowledge of the cancellation, suspension, or revocation, or the person received notice of such status. There is a rebuttable presumption that the knowledge requirement is satisfied if a judgment or order appears in the DHSMV's records for any case except for one involving a suspension by the department for failure to pay a traffic fine or for a financial responsibility violation. See s. 322.34(2), F.S.

¹⁶ See s. 322.34(2), F.S.

Under the former provisions, a person could be charged with a third-degree felony¹⁷ for the offense of DWLSR if:

- He or she knew of the suspension or revocation and had at least two prior convictions for DWLSR;
- He or she qualified as a habitual traffic offender;¹⁸ or
- His or her license had been permanently revoked.¹⁹

Section 322.34, F.S. (2019) and CS/HB 7125 (2019)

The 2019 Legislature passed and the Governor signed into law CS/HB 7125, which, in part, amended the provisions related to DWLSR.²⁰ Subsequent to the effective date of CS/HB 7125 (2019), the offense of DWLSR is classified as a:

- Misdemeanor of the second degree, upon a first conviction.²¹
- Misdemeanor of the first degree, upon a second or subsequent conviction, unless the suspension is related to an enumerated offense discussed below.²²
- A felony of the third degree, upon a third or subsequent conviction if the current violation of DWLSR or the most recent prior violation of DWLSR is resulting from a violation of:
 - DUI;
 - Refusal to submit to a urine, breath-alcohol, or blood alcohol test;
 - A traffic offense causing death or serious bodily injury; or
 - Fleeing or eluding.²³

CS/HB 7125 (2019) also added the term “suspension or revocation equivalent status” to ch. 322, F.S., and defined it to mean a designation for a person who does not have a driver license or driving privilege but would qualify for suspension or revocation of his or her driver license or driving privilege if licensed.²⁴ This term was added to s. 322.34(2), F.S., therefore expanding the criminal penalties for DWLSR to apply to a person who does not have a driver license or driving privilege, but is under suspension or revocation equivalent status.

¹⁷ A third degree felony is punishable by up to 5 years’ incarceration and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

¹⁸ See s. 322.264, F.S.

¹⁹ See ss. 322.34 and 322.341, F.S. (2018).

²⁰ Chapter 2019-167, L.O.F.

²¹ Section 322.34(2)(a), F.S. A second degree misdemeanor is punishable by up to 60 days in jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

²² Additionally, a person convicted under this paragraph for a third or subsequent conviction must serve a minimum of ten days in jail. Section 322.34(2)(b), F.S. A first degree misdemeanor is punishable by up to one year in jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

²³ The penalties amended in CS/HB 7125 (2019) do not apply to all persons who commit the offense of DWLSR. Section 322.34(5)-(7) and (10), F.S., provide different penalties for certain offenders who violate these provisions.

²⁴ The DHSMV is authorized to designate a person as having suspension or revocation equivalent status in the same manner as it is authorized to suspend or revoke a driver license or driving privilege by law. See s. 322.34(41), F.S.

Collateral Consequences of Felony Convictions

A collateral consequence is any adverse legal effect of a conviction that is not a part of a sentence.²⁵ Such consequences are legal and regulatory restrictions that limit or prohibit people convicted of crimes from accessing employment, business and occupational licensing, housing, voting, education, and other rights, benefits, and opportunities.²⁶ Some examples of collateral consequences that occur upon any felony conviction in Florida include the loss of the right to vote,²⁷ hold public office,²⁸ serve on a jury,²⁹ obtain certain professional licenses,³⁰ and owning or possessing a firearm.³¹ There are additional collateral consequences that can occur as a result of a felony conviction of specified offenses, such as the loss of driving privileges related to drug and theft offenses.³²

The History of Florida's Constitutional Savings Clause

Prior to 2019, Florida and two other states had a constitutional savings clause.³³ In 1885, Florida adopted Article III, Section 32 of the Florida Constitution. This provision was the predecessor to Article X, Section 9 of the Florida Constitution, which remained in place until 2019.³⁴ Article III, Section 32 provided:

The repeal or amendment of any criminal statute shall not affect the prosecution or punishment of any crime committed before such repeal or amendment.³⁵

²⁵ The Miami-Dade Florida Public Defender's Office, *What You Don't Know Can Hurt You: The Collateral Consequences of a Conviction in Florida*, Updated April 2019, p. 7, available at <http://www.pdmiami.com/ConsequencesManual.pdf> (last visited January 21, 2020).

²⁶ U.S. Commission on Civil Rights, *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities*, Executive Summary, June 2019, p. 1, available at <https://www.usccr.gov/pubs/2019/06-13-Collateral-Consequences.pdf> (last visited January 21, 2020).

²⁷ Art. VI, s. 4, FLA. CONST.; s. 97.041, F.S.

²⁸ *Id.*

²⁹ Section 40.013(1), F.S.

³⁰ For example, see chs. 455, 489, and 626, F.S.

³¹ Section 790.23, F.S.

³² See ss. 322.055 and 812.0155, F.S.

³³ Oklahoma and New Mexico. See OKLA. CONST. art. V, s. 54 and N.M. CONST. art. IV, s. 33.

³⁴ *State v. Watts*, 558 So.2d 994, 999 (Fla. 1990). It appears that at various times Florida had a general savings statute for criminal laws. See *Reynolds v. State*, 33 Fla. 301, 303 (Fla. 1894) (describing Section 2523, Rev. Stat.) and *Castle v. State*, 330 So.2d 10, 11 (Fla. 1976) (describing s. 775.12, F.S. (1973)).

³⁵ "The effect of this constitutional provision is to give to all criminal legislation a prospective effectiveness; that is to say, the repeal or amendment, by subsequent legislation, of a pre-existing criminal statute, does not become effective, either as a repeal or as an amendment of such pre-existing statute, in so far as offenses are concerned that have already been committed prior to the taking effect of such repealing or amending law." *Raines v. State*, 42 Fla. 141, 145 (1900). "Courts have interpreted this section the same as its successor provision in the 1968 revision." *State v. Watts*, 558 So.2d at 999 n. 5.

The Florida Supreme Court has discussed the origin of this savings clause:

[In *Ex parte Pells*, 28 Fla. 67 (1891),] [w]e explained that article III, section 32 originated after the Court decided the case of *Higgenbotham v. State*, 19 Fla. 557 (1882). In *Higgenbotham*, the Court invalidated a conviction of assault with intent to commit murder because the assault statute was repealed after the crime was committed but before prosecution took place, and there was no savings clause in the statute to allow the then-pending prosecution to proceed. Under those circumstances, we reasoned, “no further proceedings can, after the repealing law takes effect, be taken under the law so repealed.” *Ex parte Pells*, 28 Fla. at 73, 9 So. at 834. We then inferred that the people of Florida approved article III, Section 32, in 1885 to provide a constitutional savings clause, thereby negating the effect of the *Higgenbotham* holding. *See also Sigsbee v. State*, 43 Fla. 524, 529, 30 So. 816, 817 (1901).³⁶

In 1968, Florida adopted Article X, Section 9 of the Florida Constitution, which provided:

Repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed.

In 2018, Florida adopted the following amendment to Article X, Section 9 of the Florida Constitution:

Repeal ~~or amendment~~ of a criminal statute shall not affect prosecution ~~or punishment~~ for any crime ~~previously~~ committed before such repeal.

Revised Article X, Section 9 of the Florida Constitution only prohibits applying the repeal of a criminal statute to any crime committed before such repeal if this retroactive application “affects prosecution.” The revised constitutional savings clause does not expressly prohibit retroactive application of a repeal that does not affect prosecution, a repeal that affects punishment, or an amendment of a criminal statute that affects prosecution or punishment.

The elimination of the expressed prohibition on certain retroactive applications is not a directive to the Legislature to retroactively apply what was formerly prohibited. As the Florida Supreme Court recently stated: “... [T]here will no longer be any provision in the Florida Constitution that would prohibit the Legislature from applying an amended criminal statute retroactively to pending prosecutions or sentences. However, nothing in our constitution does or will require the Legislature to do so, and the repeal of the prohibition will not require that they do so.”³⁷

Terms Used in Florida’s Constitutional Savings Clause

For purposes of the constitutional savings clause, the Florida Supreme Court has defined the term “criminal statute” broadly: “In *Washington v. Dowling*, 92 Fla. 601, 109 So. 588 (1926), this Court provided the following definition for the words ‘criminal statute’: ‘[A]n act of the

³⁶ *State v. Watts*, 558 So.2d at 999.

³⁷ *Jimenez v. Jones*, 261 So.3d 502, 504 (Fla. 2018).

Legislature as an organized body relating to crime or punishment ... defining crime, treating of its nature, or providing for its punishment.’ *Id.*, 109 So. at 591.”³⁸

In regard to Article X, Section 9 of the Florida Constitution, the Florida Supreme Court does not appear to have ever clearly indicated whether a “criminal statute” also includes its parts or provisions and whether an amendment can “repeal” those parts or provisions. An amendment can modify a part or provision of a statute but it can also eliminate or nullify it. In several cases unrelated to Article X, Section 9 of the Florida Constitution, the Court and several Florida appellate courts have described amendments repealing or effectively repealing subsections or paragraphs of statutes.³⁹ However, courts do not always describe an amendment deleting a provision as a repeal or causing a repeal.⁴⁰

There is little guidance on what retroactive repeals “affect prosecution” in violation of Article X, Section 9 of the Florida Constitution, other than the Florida Supreme Court indicating that purely procedural changes do not “affect prosecution.” The Court has construed the constitutional savings clause as “saving” substantive rights and liabilities. “Remedial statutes or statutes relating to remedies or modes of procedure, which do not create new or take away vested rights but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the legal conception of a retrospective law, or the general rule against retrospective operation of statutes.”⁴¹ However, “a statute that achieves ‘remedial purpose by creating substantive new rights or imposing new legal burdens’ is treated as a substantive change in the law.”⁴²

Florida’s Statutory Savings Clause (Section 775.022, F.S.)

CS/SB 1656 (2019) created s. 775.022, F.S., which is a general savings statute for criminal statutes.⁴³ Typically, a general savings statute prevents the repeal of a criminal statute from abating pending criminal prosecutions, unless the repealing act expressly provides for abatement. “Abatement” means no further prosecution for the criminal violation.

Section 775.022, F.S., defines a “criminal statute” to mean a statute, whether substantive or procedural, dealing in any way with a crime or its punishment, defining a crime or a defense to a crime, or providing for the punishment of a crime.

³⁸ *Smiley v. State*, 966 So. 2d 330, 337 (Fla. 2007).

³⁹ *See, e.g., State v. Lindsay*, 284 So.2d 377, 378 n. 1 (Fla. 1973) (Florida Supreme Court noting that ch. 72-179, L.O.F., “repealed Subsections (2) and (3) of Section 39.01”); *L. Ross, Inc. v. R.W. Roberts Constr. Co., Inc.*, 466 So.2d 1096, 1097 (Fla. 5th DCA 1985) (footnote omitted), *approved*, 481 So.2d 484 (Fla. 1986) (court stating that “[t]his case involves the retroactive application of a statutory amendment which repealed a limitation in the amount of attorney’s fees made recoverable by statute in certain actions”); and *State v. Richardson*, 915 So.2d 86, 89 (Fla. 2005) (Florida Supreme Court noting that in its previous decision it “held that the Legislature had effectively repealed the sequential conviction rule because the then current version of the statute, which had recently been significantly amended in 1988, did not contain the sequential conviction requirement”).

⁴⁰ *See, e.g., Macchione v. State*, 123 So. 3d 114 (Fla. 2013) (describing various amendments to s. 836.10, F.S., including the deletion of language, without describing any of the changes as a repeal).

⁴¹ *City of Lakeland v. Catinella*, 129 So.2d 133, 136 (Fla. 1961).

⁴² *Smiley v. State*, 966 So.2d at 334, quoting *Arrow Air v. Walsh*, 645 So.2d 422, 424 (Fla. 1994).

⁴³ *See* ch. 2019-63, L.O.F.

In part, s. 775.022, F.S., states that, except as expressly provided in an act of the Legislature or as provided in two specified exceptions, the reenactment or amendment of a criminal statute must operate prospectively and will not affect or abate any of the following:

- The prior operation of the statute or a prosecution or enforcement under the criminal statute;
- A violation of the criminal statute based on any act or omission occurring before the effective date of the act; and
- A prior penalty, prior forfeiture, or prior punishment incurred or imposed under the statute.

The effect of the first exception mentioned above is that the penalty, forfeiture, or punishment for a violation of a criminal statute through a reenactment or an amendment of a criminal statute must be imposed retroactively if the sentence has not been imposed, including in the instance when the sentence is imposed after the effective date of the amendment.

Further, s. 775.022, F.S., does not preclude the Legislature from expressly providing for a more extensive retroactive application either to legislation in the future or legislation that was enacted prior to the effective date of the general savings statute. This is because the general savings statute specifically provides for a legislative exception to the default position of prospectivity.

Expunction of Criminal History Records

Overview

Another consequence of a felony conviction in Florida is the prohibition of obtaining a court-ordered expunction. Florida law makes adult criminal history records accessible to the public unless the record has been sealed or expunged.⁴⁴ Criminal history records related to certain offenses are barred from being expunged through the court-order process.⁴⁵ Section 943.0585, F.S., sets forth procedures for expunging criminal history records through court-order. When a criminal history record is expunged, criminal justice agencies other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record.⁴⁶ Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order. The FDLE is required to retain expunged records.⁴⁷

⁴⁴ Florida Department of Law Enforcement, *Seal and Expunge Process*, available at <http://www.fdle.state.fl.us/Seal-and-Expunge-Process/Seal-and-Expunge-Home.aspx> (last visited January 21, 2020). *See also* s. 943.053, F.S.

⁴⁵ *See* 943.0584, F.S., for a complete list of offenses that are ineligible for court-ordered expunction.

⁴⁶ Section 943.0585(6)(a), F.S. Section 943.045(16), F.S., defines “expunction of a criminal history record” to mean the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order, except that criminal history records in the custody of the FDLE must be retained in all cases for purposes of evaluating subsequent requests by the subject of the record for sealing or expunction, or for purposes of recreating the record in the event an order to expunge is vacated by a court of competent jurisdiction.

⁴⁷ Section 943.0585(6)(a), F.S.

Records that have been expunged are confidential and exempt⁴⁸ from the public records law.⁴⁹

Persons who have had their criminal history records expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment,⁵⁰ petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.⁵¹

Process for Obtaining a Court-Ordered Expunction

To qualify for a court-ordered expunction, a person must first obtain a certificate of eligibility (COE) from the FDLE.⁵² To obtain the COE from the FDLE, a person must comply with a number of requirements, including, in part, that he or she has never been adjudicated guilty or delinquent of a:

- Criminal offense;
- Comparable ordinance violation; or
- Specified felony or misdemeanor prior to the COE application date.⁵³

Further, a person may seek a court-ordered expunction immediately, provided the person is no longer subject to court supervision, if none of the charges related to the arrest or alleged criminal activity resulted in a trial or relate to an offense enumerated in s. 943.0584, F.S., and:

- An indictment, information, or other charging document was not filed or issued in the case (no-information); or
- An indictment, information, or other charging document was filed or issued in the case, but it was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction (dismissal).⁵⁴

Upon receipt of a COE, the person must then petition the court to expunge the criminal history record. The petition must include the COE and a sworn statement from the petitioner that he or she is eligible for expunction to the best of his or her knowledge.⁵⁵ A copy of the completed

⁴⁸ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. *See* 85-62 Fla. Op. Att’y Gen. (1985).

⁴⁹ Section 943.0585(6)(d), F.S.

⁵⁰ These include candidates for employment with a criminal justice agency; applicants for admission to the Florida Bar; those seeking a sensitive position involving direct contact with children, the developmentally disabled, or the elderly with the Department of Children and Family Services, Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice; persons seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; or a Florida seaport.

⁵¹ Section 943.0585(6)(a), F.S.

⁵² *See* s. 943.0585(2), F.S.

⁵³ *See* s. 943.0585(1) and (2), F.S., for full requirements for obtaining a COE.

⁵⁴ *See* s. 943.0585(1), F.S.

⁵⁵ *See* s. 943.0585(3)(b), F.S.

petition is then served upon the appropriate state attorney or statewide prosecutor and the arresting agency, any of which may respond to the court regarding the petition.⁵⁶

There is no statutory right to a court-ordered expunction and any request for such an expunction of a criminal history record may be denied at the sole discretion of the court.⁵⁷ The court is only authorized to order the expunction of a record that pertains to one arrest or one incident of alleged criminal activity.⁵⁸ However, the court may order the expunction of a record pertaining to more than one arrest if such additional arrests directly relate to the original arrest.⁵⁹

Effect of an Expunction

Any record that the court grants the expunction of must be physically destroyed or obliterated by any criminal justice agency having such record. The FDLE, however, is required to maintain the record. That record is confidential and exempt from disclosure requirements under the public records laws. Only a court order would make the record available to a person or entity that is otherwise excluded.⁶⁰

III. Effect of Proposed Changes:

Retroactive Application of the New DWLSR Offense

The bill creates s. 322.3401, F.S., expressly providing for the retroactive application of the changes made by CS/HB 7125 (2019) to s. 322.34, F.S., related to the offense of DWLSR.

The bill provides legislative intent language, which states:

It is the intent of the Legislature to retroactively apply section 12 of chapter 2019-167, Laws of Florida, only as provided in this section, to persons who committed driving while license suspended, revoked, canceled, or disqualified before October 1, 2019, the effective date of section 12 of chapter 2019-167, Laws of Florida, which amended s. 322.34 to modify criminal penalties and collateral consequences for offenses under that section.

The bill defines two terms for purposes of s. 322.3401, F.S., including the term:

- “Former s. 322.34”, which means a reference to s. 322.34, F.S., as it existed at any time before its amendment by ch. 2019-167, L.O.F.
- “New s. 322.34”, which means a reference to s. 322.34, F.S., as it exists after the amendments made by ch. 2019-167, L.O.F., became effective.

⁵⁶ Section 943.0585(5)(a), F.S.

⁵⁷ Section 943.0585(4)(e), F.S.

⁵⁸ Section 943.0585(4)(c), F.S.

⁵⁹ *Id.* The court must articulate in writing its intention to expunge or seal a record pertaining to multiple arrests and a criminal justice agency may not expunge or seal multiple records without such written documentation. The court is also permitted to expunge or seal only a portion of a record.

⁶⁰ *See* s. 943.0585(6), F.S.

The bill requires a person who committed the offense of DWLSR:

- Before October 1, 2019, but who was not sentenced under former s. 322.34, F.S., before October 1, 2020, to be sentenced for the degree of offense as provided for in the new s. 322.34, F.S.
- Before October 1, 2019, who was sentenced before October 1, 2019, to a term of imprisonment or supervision pursuant to former s. 322.34, F.S., and who is serving such penalty on or after October 1, 2020, to be resentenced to the degree of offense that is consistent with the degree provided for in the new s. 322.34, F.S.

The bill provides procedures for the resentencing of eligible persons. Specifically:

- A person who is eligible for resentencing under the bill must be given notification of such eligibility by the facility in which the person is imprisoned or the entity who is supervising the person.
- A person seeking a sentence review must submit an application to the court of original jurisdiction requesting that a sentence review hearing be conducted. This request serves to initiate the review procedures provided for under the bill.
- The sentencing court must retain original jurisdiction for the duration of the sentence for the purpose of conducting sentence review hearings.
- A person who is eligible for a sentence review hearing may be represented by counsel and the court is required to appoint a public defender to represent the person if he or she cannot afford an attorney.

Upon receiving an application for sentence review from the eligible person, the court of original jurisdiction must hold a sentence review hearing to determine if the eligible person meets the criteria for resentencing.

If the court determines at the sentence review hearing that the eligible person meets the criteria, the court must resentence the person in the above-mentioned manner and cannot exceed the person's original sentence with credit for time served. If the court determines that such person does not meet the criteria for resentencing, the court must provide written reasons for such determination.

In addition to the retroactive application of sentencing provisions of the new s. 322.34, F.S., the bill provides that a person who has been convicted of a felony under former s. 322.34, F.S., and whose offense would not be classified as a felony under the new s. 322.34, F.S., must have all outstanding fines, fees, and costs related to such felony conviction waived.

Further, he or she must be treated as if he or she had been convicted of a misdemeanor for purposes of any right, privilege, benefit, remedy, or collateral consequence that the person might be entitled to but for such felony conviction. However, the bill provides that this provision does not serve to remove the designation of the person as a convicted felon, but the statutory consequences of such felony conviction no longer apply.

Because the bill expressly provides for retroactive application of the changes the bill makes, the bill has provided a legislative exception to the default position of prospectively.

Expunction Related to DWLSR Offenses

The bill also creates s. 943.0587, F.S., authorizing a person to petition a court to expunge a criminal history record for a conviction under former s. 322.34, F.S., under certain circumstances, including if the person:

- Received a withholding of adjudication or adjudication of guilt for a violation of DWLSR under former s. 322.34, F.S., and whose conviction would not be classified as a felony under the new s. 322.34, F.S.; and
- Only has felony convictions for the offense of DWLSR pursuant to the former s. 322.34, F.S.

The bill defines the terms of “former s. 322.34” and “new s. 322.34” in the same manner as described above.

Unlike other expunctions, an expunction granted in accordance with the bill does not prevent the person who receives such relief from petitioning for the expunction or sealing of a later criminal history record as provided for in ss. 943.0583, 943.0585, and 943.059, F.S., if the person is otherwise eligible under those sections.

The bill provides that a person seeking to expunge a criminal history record must apply to the FDLE for a COE prior to petitioning a court to expunge a criminal history record for eligible DWLSR offenses. The FDLE is required to adopt rules to establish procedures for applying for and issuing a COE for expunction. The FDLE is required to issue the COE to a person who is the subject of a criminal history record eligible under the bill if that person:

- Satisfies the eligibility criteria listed below;
- Has submitted to the FDLE a written certified statement from the appropriate state attorney or statewide prosecutor which confirms the criminal history record complies with the criteria of the bill;
- Has submitted to the FDLE a certified copy of the disposition of the charge to which the petition to expunge pertains; and
- Remits a \$75 processing fee to the FDLE for placement in the Department of Law Enforcement Operating Trust Fund, unless the executive director waives such fee.

As with COE certificates for other court-ordered expunctions, the bill provides that the COE is valid for 12 months after the date stamped on the certificate when issued by the FDLE. After that time, the petitioner must reapply for a new COE. The petitioner’s status and the law in effect at the time of the renewal application determine the petitioner’s eligibility.

The bill provides that a petition to expunge a criminal history record must be accompanied by:

- A valid COE issued by the FDLE.
- The petitioner’s sworn statement that he or she:
 - Satisfies the eligibility requirements for expunction in accordance with the provisions of the bill; and
 - Is eligible for expunction to the best of his or her knowledge.

Further, the bill provides that it is a third degree felony for a person to knowingly provide false information on a sworn statement for expunction pursuant to the bill. This is a similar penalty as is provided for in s. 943.0585, F.S.

The bill requires a copy of the completed petition to expunge to be served upon the appropriate state attorney or the statewide prosecutor and upon the arresting agency, which entity is then able to respond to the court regarding the completed petition to expunge.

If relief is granted by the court, the following actions must be taken:

- The clerk of the court must certify copies of the order to the appropriate state attorney or the statewide prosecutor and the arresting agency.
- The arresting agency is required to forward the order to any other agency to which the arresting agency disseminated the criminal history record information to which the order pertains.
- The FDLE must forward the order to expunge to the Federal Bureau of Investigation.
- The clerk of the court must certify a copy of the order to any other agency which the records of the court reflect has received the criminal history record from the court.

The FDLE or any other criminal justice agency is not required to act on an order to expunge entered by a court when such order does not comply with the requirements of the bill. Upon receipt of such an order, the FDLE must notify the issuing court, the appropriate state attorney or statewide prosecutor, the petitioner or the petitioner's attorney, and the arresting agency of the reason for noncompliance. The appropriate state attorney or statewide prosecutor must take action within 60 days to correct the record and petition the court to void the order. The bill provides that a cause of action, including contempt of court, does not arise against any criminal justice agency for failure to comply with an order to expunge when the petitioner for such order failed to obtain the COE as required or when the order does not otherwise comply with the requirements.

The bill provides that the effect of the expunction order is identical to the effect of court-ordered expunction orders that have been issued pursuant to s. 943.0585, F.S. Specifically, the bill provides:

- The person who is the subject of a criminal history record that is expunged may lawfully deny or fail to acknowledge the arrests and convictions covered by the expunged record, except when the subject of the record:
 - Is a candidate for employment with a criminal justice agency;
 - Is a defendant in a criminal prosecution;
 - Concurrently or subsequently petitions for relief under this section, s. 943.0583, F.S., s. 943.059, F.S., or s. 943.0585, F.S.;
 - Is a candidate for admission to The Florida Bar;
 - Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation of the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;
 - Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities;

- Is seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services; or
- Is seeking to be appointed as a guardian pursuant to s. 744.3125, F.S.
- Except as mentioned above, a person who has been granted an expunction may not be held to commit perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge an expunged criminal history record.

Section 1 of the bill, which relates to the retroactive application of the changes to the DWLSR offense, is effective October 1, 2020. Section 2, which relates to the expunction of certain DWLSR offenses is effective on the same date as SB 1506 or similar legislation, which is tied to this bill, goes into effect if such legislation is adopted during this session.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not heard the bill yet, but the Office of Economic and Demographic Research (EDR) prepared a preliminary estimate for the

overall bill stating that the bill will have a negative significant prison bed impact (i.e. decrease of more than 25 beds).⁶¹

Retroactive Application of the DWLSR Offense Amendments

The EDR further stated that the provisions related to the retroactive application of amendments made to s. 322.34, F.S. (2018), in the 2019 Legislative session will have a negative significant prison bed impact.⁶²

The bill also allows for people to be sentenced to misdemeanor penalties, rather than to prison for such offenses. To the extent that the bill results in persons being sentenced to non-state sanctions or resentenced and released from imprisonment with the DOC, the bill will have an indeterminate negative prison bed impact (i.e. an unquantifiable decrease).

The DOC reports that there are currently 2,086 inmates in custody for the offense of DWLSR who were sentenced under former 322.34, F.S., which would need to be reviewed for eligibility under the bill. Further, the DOC states that the bill would result in a significant, but temporary fiscal impact on the DOC. The DOC states that it would require one full-time non-recurring Correctional Services Assistant Consultant position to conduct the review for eligibility of certain offenders.⁶³

Expunction Provisions

The EDR also stated that the bill will have a positive insignificant prison bed impact for the provisions of the bill creating penalties related to the expunction provisions of the bill (i.e. an increase of 10 or fewer prison beds).⁶⁴

The bill allows for certain persons to have any specified criminal history records related to a DWLSR conviction expunged. To the effect that this additional category of records eligible for expunction increase the workload to process such expunctions, the bill may result in a negative fiscal impact on the FDLE. Such workload may result in the FDLE needing additional staff or resources, which may be offset in part by the \$75 fee collected for each application for COE associated with this additional category of expunction records.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁶¹ The EDR, Preliminary Estimate on SB 1504 – Sentencing, p. 2 (on file with the Senate Criminal Justice Committee) (hereinafter cited as “Preliminary Estimate for SB 1504”).

⁶² Preliminary Estimate for SB 1504, p. 1.

⁶³ The DOC, Agency Analysis for SB 1504, January 31, 2020, p. 3 (on file with Senate Criminal Justice Committee).

⁶⁴ Preliminary Estimate for SB 1504, p. 2.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 322.3401 and 943.0587.

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 February 4, 2020:

The committee substitute:

- Includes the tied bill number in the effective date clauses;
- Ensures that the resentencing portions of the bill apply to people convicted of the felony DWLSR offense that were sentenced to supervision, rather than only imprisonment; and
- Clarifies that the treatment of persons as a misdemeanor applies only to statutory consequences that are impacted subsequent to a felony conviction.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2020	.	
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The Committee on Criminal Justice (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 65 - 105
and insert:
or supervision pursuant to former s. 322.34, and who is serving
such penalty on or after October 1, 2020, must be resentenced in
accordance with paragraph (c). The person must be resentenced to
a sentence as provided in s. 775.082, s. 775.083, or s. 775.084.
(c) Resentencing under this section must occur in the
following manner:



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11 1. A person described in paragraph (b) who is eligible to
12 request a sentence review hearing pursuant to this section shall
13 be notified of such eligibility by the facility in which the
14 person is imprisoned or the entity who is supervising the
15 person.

16 2. A person seeking sentence review hearing under this
17 section must submit an application to the court of original
18 jurisdiction requesting such hearing to be conducted. Such
19 request by the person serves to initiate the procedures provided
20 for in this section. The sentencing court shall retain original
21 jurisdiction for the duration of the sentence for this purpose.

22 3. A person who is eligible for a sentence review hearing
23 under this section is entitled to be represented by counsel, and
24 the court shall appoint a public defender to represent the
25 person if he or she cannot afford an attorney.

26 4. Upon receiving an application from the eligible person,
27 the court of original jurisdiction shall hold a sentence review
28 hearing to determine if the eligible person meets the criteria
29 for resentencing under this section. If the court determines at
30 the sentence review hearing that the eligible person meets the
31 criteria in this section for resentencing, the court must
32 resentence the person as provided in this section; however, the
33 new sentence may not exceed the person's original sentence with
34 credit for time served. If the court determines that such person
35 does not meet the criteria for resentencing under this section,
36 the court must provide written reasons why such person does not
37 meet such criteria.

38 (4) Notwithstanding any other law, a person who has been
39 convicted of a felony under former s. 322.34 and whose offense



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would not be classified as a felony under the new s. 322.34,
must have all outstanding fines, fees, and costs related to such
felony conviction waived. In addition, such person must be
treated as if he or she had been convicted of a misdemeanor
violation of s. 322.34 for purposes of any right, privilege,
benefit, remedy, or collateral consequence that the person might
be entitled to but for such felony conviction. This provision
does not serve to remove the designation of the person as a
convicted felon. However, the consequences of such felony
conviction that are solely statutory in nature and are imposed
as a result of such conviction shall no longer apply.

Section 2. Effective upon the same date that SB 1506 or

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

And the title is amended as follows:

Delete lines 11 - 15

and insert:

imprisonment or supervision; specifying the procedures
for such resentencing; requiring certain persons
convicted of driving while license suspended, revoked,
canceled, or disqualified to have such conviction
treated as a misdemeanor for specified purposes;
requiring outstanding fines,

By Senator Brandes

24-01806A-20

20201504__

1 A bill to be entitled
 2 An act relating to sentencing; creating s. 322.3401,
 3 F.S.; providing legislative intent; defining terms;
 4 requiring certain persons convicted of driving while
 5 license suspended, revoked, canceled, or disqualified
 6 committed before a specified date to be sentenced in a
 7 specified manner in accordance with the amendments in
 8 chapter 2019-167, Laws of Florida; requiring
 9 resentencing for persons who committed such violations
 10 before a specified date and are serving terms of
 11 imprisonment; specifying the procedures for such
 12 resentencing; requiring certain persons convicted of
 13 driving while license suspended, revoked, canceled, or
 14 disqualified to have such conviction treated as a
 15 misdemeanor for specified purposes; requiring fines,
 16 fees, and costs to be waived; creating s. 943.0587,
 17 F.S.; defining terms; providing that persons who meet
 18 specified criteria are eligible to petition a court to
 19 expunge a criminal history record for convictions of
 20 driving while license suspended, revoked, canceled, or
 21 disqualified; requiring such persons to apply to the
 22 Department of Law Enforcement for a certificate of
 23 eligibility for expunction; requiring the department to
 24 adopt rules; requiring the department to issue such
 25 certificates if specified conditions are met;
 26 providing for the timeframe during which a certificate
 27 is valid; providing requirements for such petitions;
 28 providing criminal penalties; providing court
 29 procedures relating to a petition to expunge;

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30 providing for the effects of expunction orders;
 31 providing effective dates.
 32

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

34
 35 Section 1. Section 322.3401, Florida Statutes, is created
 36 to read:

37 322.3401 Retroactive application relating to s. 322.34;
 38 legislative intent; prohibiting certain sentences for specified
 39 offenses; resentencing procedures.-

40 (1) It is the intent of the Legislature to retroactively
 41 apply section 12 of chapter 2019-167, Laws of Florida, only as
 42 provided in this section, to persons who committed driving while
 43 license suspended, revoked, canceled, or disqualified before
 44 October 1, 2019, the effective date of section 12 of chapter
 45 2019-167, Laws of Florida, which amended s. 322.34 to modify
 46 criminal penalties and collateral consequences for offenses
 47 under that section.

48 (2) As used in this section, the term:

49 (a) "Former s. 322.34" is a reference to s. 322.34 as it
 50 existed at any time before its amendment by chapter 2019-167,
 51 Laws of Florida.

52 (b) "New s. 322.34" is a reference to s. 322.34 as it
 53 exists after the amendments made by chapter 2019-167, Laws of
 54 Florida, became effective.

55 (3) (a) A person who committed driving while license
 56 suspended, revoked, canceled, or disqualified before October 1,
 57 2019, but who was not sentenced under former s. 322.34 before
 58 October 1, 2020, the effective date of this act, must be

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59 sentenced in accordance with s. 775.082, s. 775.083, or s.
60 775.084 for the degree of offense as provided for in the new s.
61 322.34.

62 (b) A person who committed driving while license suspended,
63 revoked, canceled, or disqualified before October 1, 2019, who
64 was sentenced before October 1, 2019, to a term of imprisonment
65 pursuant to former s. 322.34, and who is serving such term of
66 imprisonment on or after October 1, 2020, must be resentenced in
67 accordance with paragraph (c). The person must be resentenced to
68 a sentence as provided in s. 775.082, s. 775.083, or s. 775.084.

69 (c) Resentencing under this section must occur in the
70 following manner:

71 1. The Department of Corrections shall notify the person
72 described in paragraph (b) of his or her eligibility to request
73 a sentence review hearing.

74 2. The person seeking sentence review under this section
75 may submit an application to the court of original jurisdiction
76 requesting that a sentence review hearing be held. The
77 sentencing court shall retain original jurisdiction for the
78 duration of the sentence for this purpose.

79 3. A person who is eligible for a sentence review hearing
80 under this section is entitled to be represented by counsel, and
81 the court shall appoint a public defender to represent the
82 person if he or she cannot afford an attorney.

83 4. Upon receiving an application from the eligible person,
84 the court of original jurisdiction shall hold a sentence review
85 hearing to determine if the eligible person meets the criteria
86 for resentencing under this section. If the court determines at
87 the sentence review hearing that the eligible person meets the

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88 criteria in this section for resentencing, the court must
89 resentence the person as provided in this section; however, the
90 new sentence may not exceed the person's original sentence with
91 credit for time served. If the court determines that such person
92 does not meet the criteria for resentencing under this section,
93 the court must provide written reasons why such person does not
94 meet such criteria.

95 (4) Notwithstanding any other law, a person who has been
96 convicted of a felony under former s. 322.34 and whose offense
97 would not be classified as a felony under the new s. 322.34,
98 must:

99 (a) Be treated as if he or she had been convicted of a
100 misdemeanor violation of s. 322.34 for purposes of any right,
101 privilege, benefit, remedy, or collateral consequence that the
102 person might be entitled to but for such felony conviction.

103 (b) Have all fines, fees, and costs related to such felony
104 conviction waived.

105 Section 2. Effective upon the same date that SB ____ or
106 similar legislation takes effect, only if such legislation is
107 adopted in the same legislative session or an extension thereof
108 and becomes a law, section 943.0587, Florida Statutes, is
109 created to read:

110 943.0587 Driving while license suspended, revoked,
111 canceled, or disqualified expunction.-

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

113 (a) "Former s. 322.34" is a reference to s. 322.34 as it
114 existed at any time before its amendment by chapter 2019-167,
115 Laws of Florida.

116 (b) "New s. 322.34" is a reference to s. 322.34 as it

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exists after the amendments made by chapter 2019-167, Laws of Florida, became effective.

(c) "Expunction" has the same meaning ascribed in and effect as s. 943.0585.

(2) ELIGIBILITY.—Notwithstanding any other law, a person is eligible to petition a court to expunge a criminal history record for a conviction under former s. 322.34 if:

(a) The person received a withholding of adjudication or adjudication of guilt for a violation of former s. 322.34 for driving while license suspended, revoked, canceled, or disqualified and whose conviction would not be classified as a felony under new s. 322.34; and

(b) The person has never been convicted of a felony other than for the felony offenses of the former s. 322.34 for driving while license suspended, revoked, canceled, or disqualified.

(3) CERTIFICATE OF ELIGIBILITY.—Before petitioning a court to expunge a criminal history record under this section, a person seeking to expunge a criminal history record must apply to the department for a certificate of eligibility for expunction. The department shall adopt rules to establish procedures for applying for and issuing a certificate of eligibility for expunction.

(a) The department shall issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record under this section if that person:

1. Satisfies the eligibility criteria in subsection (2);

2. Has submitted to the department a written certified statement from the appropriate state attorney or statewide prosecutor which confirms the criminal history record complies

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with the criteria in subsection (2);

3. Has submitted to the department a certified copy of the disposition of the charge to which the petition to expunge pertains; and

4. Remits a \$75 processing fee to the department for placement in the Department of Law Enforcement Operating Trust Fund, unless the executive director waives such fee.

(b) A certificate of eligibility for expunction is valid for 12 months after the date stamped on the certificate when issued by the department. After that time, the petitioner must reapply to the department for a new certificate of eligibility. The petitioner's status and the law in effect at the time of the renewal application determine the petitioner's eligibility.

(4) PETITION.—Each petition to expunge a criminal history record must be accompanied by the following:

(a) A valid certificate of eligibility issued by the department.

(b) The petitioner's sworn statement that he or she:

1. Satisfies the eligibility requirements for expunction in subsection (2); and

2. Is eligible for expunction to the best of his or her knowledge.

(5) PENALTIES.—A person who knowingly provides false information on such sworn statement commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) COURT AUTHORITY.—

(a) The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and

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correction of judicial records containing criminal history information to the extent that such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section.

(b) A court of competent jurisdiction shall order a criminal justice agency to expunge the criminal history record of a person who complies with the requirements of this section. The court may not order a criminal justice agency to expunge a criminal history record under this section until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility under subsection (3).

(c) Expunction granted under this section does not prevent the person who receives such relief from petitioning for the expunction or sealing of a later criminal history record as provided for in ss. 943.0583, 943.0585, and 943.059, if the person is otherwise eligible under those sections.

(7) PROCESSING OF A PETITION OR AN ORDER.—

(a) In a judicial proceeding under this section, a copy of the completed petition to expunge shall be served upon the appropriate state attorney or the statewide prosecutor and upon the arresting agency; however, it is not necessary to make any agency other than the state a party. The appropriate state attorney or the statewide prosecutor and the arresting agency may respond to the court regarding the completed petition to expunge.

(b) If relief is granted by the court, the clerk of the court shall certify copies of the order to the appropriate state attorney or the statewide prosecutor and the arresting agency. The arresting agency shall forward the order to any other agency

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to which the arresting agency disseminated the criminal history record information to which the order pertains. The department shall forward the order to expunge to the Federal Bureau of Investigation. The clerk of the court shall certify a copy of the order to any other agency which the records of the court reflect has received the criminal history record from the court.

(c) The department or any other criminal justice agency is not required to act on an order to expunge entered by a court when such order does not comply with the requirements of this section. Upon receipt of such an order, the department must notify the issuing court, the appropriate state attorney or statewide prosecutor, the petitioner or the petitioner's attorney, and the arresting agency of the reason for noncompliance. The appropriate state attorney or statewide prosecutor shall take action within 60 days to correct the record and petition the court to void the order. No cause of action, including contempt of court, shall arise against any criminal justice agency for failure to comply with an order to expunge when the petitioner for such order failed to obtain the certificate of eligibility as required by this section or such order does not otherwise comply with the requirements of this section.

(8) EFFECT OF EXPUNCTION ORDER.—

(a) The person who is the subject of a criminal history record that is expunged under this section may lawfully deny or fail to acknowledge the arrests and convictions covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

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233 2. Is a defendant in a criminal prosecution;
 234 3. Concurrently or subsequently petitions for relief under
 235 this section, s. 943.0583, s. 943.059, or s. 943.0585;
 236 4. Is a candidate for admission to The Florida Bar;
 237 5. Is seeking to be employed or licensed by or to contract
 238 with the Department of Children and Families, the Division of
 239 Vocational Rehabilitation of the Department of Education, the
 240 Agency for Health Care Administration, the Agency for Persons
 241 with Disabilities, the Department of Health, the Department of
 242 Elderly Affairs, or the Department of Juvenile Justice or to be
 243 employed or used by such contractor or licensee in a sensitive
 244 position having direct contact with children, the disabled, or
 245 the elderly;
 246 6. Is seeking to be employed or licensed by the Department
 247 of Education, any district school board, any university
 248 laboratory school, any charter school, any private or parochial
 249 school, or any local governmental entity that licenses child
 250 care facilities;
 251 7. Is seeking to be licensed by the Division of Insurance
 252 Agent and Agency Services within the Department of Financial
 253 Services; or
 254 8. Is seeking to be appointed as a guardian pursuant to s.
 255 744.3125.
 256 (b) Subject to the exceptions in paragraph (a), a person
 257 who has been granted an expunction under this section may not be
 258 held under any law of this state to commit perjury or to be
 259 otherwise liable for giving a false statement by reason of such
 260 person's failure to recite or acknowledge an expunged criminal
 261 history record.

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262 Section 3. Except as otherwise expressly provided in this
 263 act, this act shall take effect October 1, 2020.

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Racial/Ethnic Impact Statement

SB1504

Prepared by
Florida State University
College of Criminology & Criminal Justice

For
The Florida Senate Criminal Justice Committee



SB1504

Executive Summary

SB1504 creates a new statute, s. 322.3401, F.S., that provides for the retroactive application of s. 322.34, which was amended on October 1, 2019, to persons who committed the offense of driving with a suspended, revoked, canceled, or disqualified license prior to last year's amended statute. The bill would allow for the resentencing of eligible persons who are serving terms of imprisonment for the offense. Currently, six states consider driving with a suspended, revoked, or otherwise invalid license to be a felony offense. Prior research has found that Black drivers are more likely to have their licenses suspended and to be stopped, ticketed, and arrested for driving without a valid license than are other racial and ethnic groups. Using data from the Florida Office of the State Court Administrator (OSCA), Offender Based Tracking System (OBTS), it was found that Black drivers were convicted for driving with a suspended, revoked, or otherwise invalid license at higher rates than were White drivers. However, the percent of those imprisoned for the offense were similar across Black and White drivers.

Bill Summary

SB1504 creates a new statute, s. 322.3401, F.S., that provides for the retroactive application of s. 322.34, which was amended October 1, 2019, to persons who committed the offense of driving with a suspended, revoked, canceled, or disqualified license before October 1, 2019. The bill would allow resentencing under the new legislation for those individuals who were sentenced prior to October 1, 2019 (under the former s. 322.34) and are serving terms of imprisonment. The statute requires that the prior felony conviction be treated as a misdemeanor and that fines, fees, and costs be waived. The bill also provides for automatic notification by the Department of Corrections to those eligible for resentencing, the right to a public defender at the sentence review hearing, and record expunction. These changes do not apply to anyone who has been labeled a "habitual traffic offender" under s. 322.264, F.S.

Comparable Legislation and Prior Research

All states have penalties for driving with a suspended, revoked, or otherwise invalid driver's license. Penalties include fines, additional suspension, and in some instances, imprisonment. The offense is typically classified as a misdemeanor, with the possibility of being upgraded to a felony if the individual has committed multiple traffic-related misdemeanor offenses and has been labeled as a "habitual traffic offender". Currently, driving with a suspended, revoked, or otherwise invalid driver's license is considered a felony in six states, namely, Florida, Georgia, Illinois, Indiana, Kentucky, and Missouri (NCSL, 2016). A majority of these states consider the offense a felony if the individual has been convicted multiple times. The laws are described below.

Georgia (O.C.G.A. § 40-5-121) considers the fourth offense for driving on a suspended, revoked, or otherwise invalid license to be a felony, with penalties of up to five years imprisonment, and fines up to \$5,000.

Illinois (625 Ill. Comp. Stat. Ann. § 5/6-205) considers driving on a suspended, revoked, or otherwise invalid license to be a felony on the second or subsequent offense, with penalties of up to 3 years imprisonment, fines up to \$25,000, and impoundment of the vehicle. Fourth and subsequent offenses can result in the revocation of the driver's license plate, and immobilization of the vehicle.

Indiana (IC § 9-30-10-16) considers driving on a suspended, revoked, or otherwise invalid license a felony on the first offense. Penalties include up to 2.5 years imprisonment, and fines up to \$10,000.

Kentucky (KY Rev Stat § 186.620) considers driving on a suspended, revoked, or otherwise invalid license a felony on the third or subsequent offense. Penalties include up to 5 years imprisonment and revocation of the license for an additional 2 years.

Missouri (§302.321) considers driving on a suspended, revoked, or otherwise invalid license a felony on the third or subsequent offense. Penalties include imprisonment for no more than 4 years.

Recent research has found that Black drivers are more likely than White and Hispanic drivers to experience a traffic stop (BJS, 2018; Pierson, et al, 2019). Specifically, in 2018, the Bureau of Justice Statistics found that of the 223.3 million U.S. drivers, 8.6% experienced a stop as the driver of a motor vehicle. Black drivers (9.8%) were more likely than White drivers (8.6%) and Hispanic drivers (7.6%) to be the driver in a traffic stop (BJS, 2018). In particular, Pierson and colleagues (2019) found that among state patrol stops, the annual per capita stop rate for Black drivers was 0.11 compared to 0.08 for White drivers; and among municipal police stops, the annual per capita stop rate for Black drivers was 0.23 compared to 0.17 for White drivers. For Hispanic drivers (.05), the stop rates were lower than for White drivers. Research has also indicated that Black drivers are more likely to receive a ticket as a result of a traffic stop. For example, research on traffic violations has found that Black drivers in Cleveland were much more likely than any other racial group to receive a ticket at a traffic stop (Regoecki & Kent, 2014).

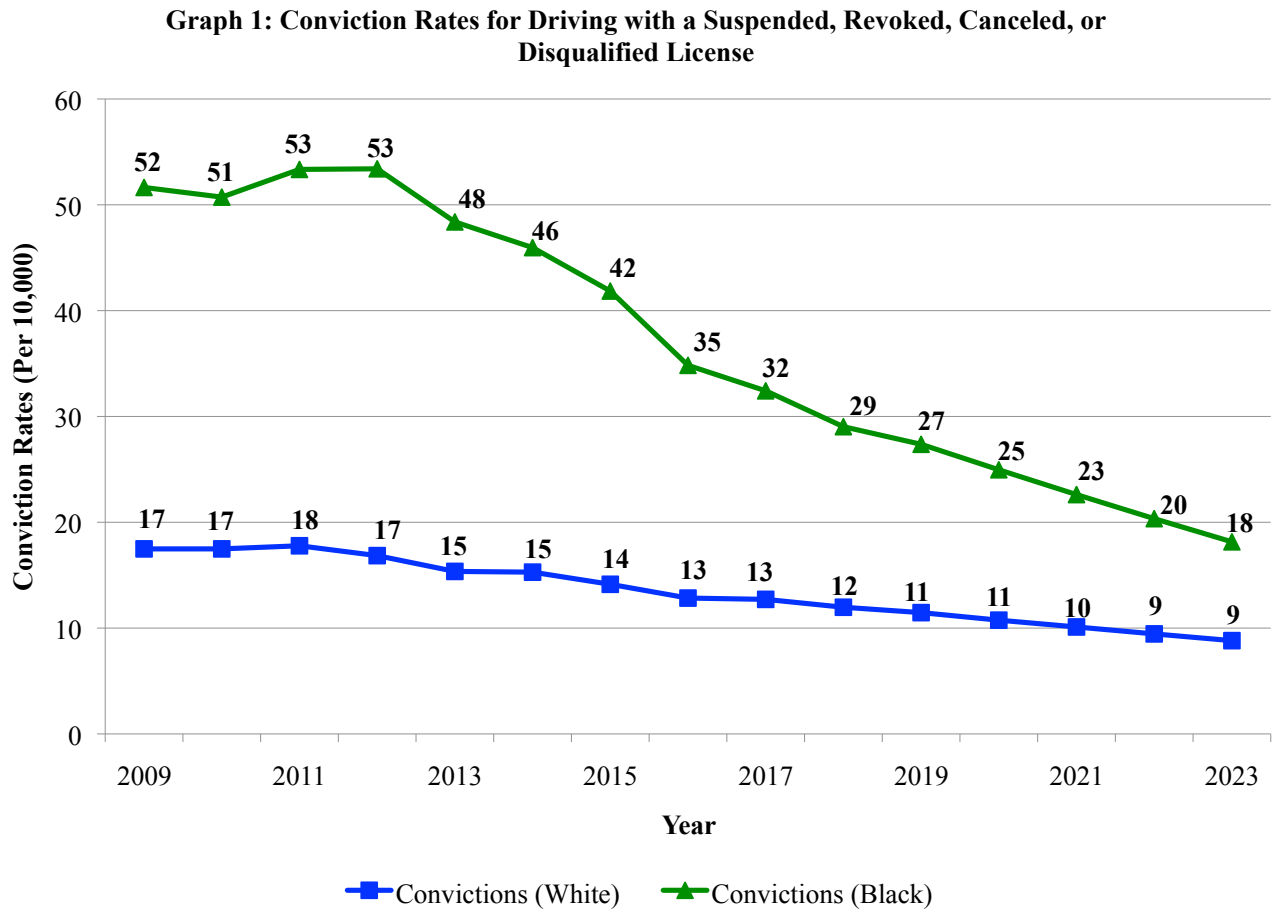
Research studies have also found that Black drivers are more likely to have their licenses suspended and to be arrested for driving without a license than are other racial or ethnic groups. For example, in Washington, D.C., where approximately 47% of residents are Black, over 80% of those arrested in a single year for driving without a license were Black (Banks, 2018). In California, Black drivers are more likely than White drivers to have their licenses suspended (Bingham, et al. 2016; Edelman, 2017). Similarly, a 2015 study showed that in Virginia, Blacks represented nearly 50% of the drivers who had their licenses revoked for failure to pay fines, despite constituting only 22% of the state population (Banks, 2018).

Data and Methods for Racial/Ethnic Impact Forecast

Data from the OSCA were used to prepare this racial/ethnic impact statement. Rates of convictions and imprisonment sentences for the offense of driving with a suspended, revoked, canceled, or disqualified license, under s. 322.34, F.S., were calculated, and projections were generated for 2019-2023 to assess racial disparities.

Results

Black drivers in Florida were convicted for driving with a suspended, revoked, or otherwise invalid license at higher rates than were White drivers. As shown in Graph 1, convictions for this offense among both Black and White drivers have been declining since 2009. In 2018, 29 per 10,000 Black Florida residents and 12 per 10,000 White Florida residents were convicted of the offense. Over the next five years, conviction rates are projected to continue declining, however, disparities will likely remain.



From 2014-2018, a similar percent of Black and White drivers were imprisoned for the offense of driving with a suspended, revoked, canceled, or disqualified license. Table 1 shows the number of total convictions, imprisonment sentences, and the percent of individuals convicted who were sentenced to prison.

Table 1: Total Convictions and Imprisonment Sentences for the Offense of Driving with a Suspended, Revoked, Canceled, or Disqualified License, by Race

Year	White Offenders			Black Offenders		
	Total Convicted	Total Imprisoned	Percent Imprisoned	Total Convicted	Total Imprisoned	Percent Imprisoned
2014	23,633	12,840	54	15,447	8,397	54
2015	22,150	12,276	55	14,407	7,732	54
2016	20,405	11,735	58	12,284	6,882	56
2017	20,520	11,821	58	11,671	6,461	55
2018	19,641	11,129	57	10,726	5,741	54
Total	106,349	59,801	56	64,535	35,213	55

Racial/Ethnic Impact Statement for the Bill

SB1504 creates a new statute, s. 322.3401, F.S., which provides for the retroactive application of s. 322.34, that was amended on October 1, 2019, to persons who committed the offense of driving with a suspended, revoked, canceled, or disqualified license prior to last year's amendment to the statute. The bill would allow for the resentencing of eligible persons who are serving terms of imprisonment for the offense. Prior research has found that Black drivers are more likely to have their licenses suspended and to be stopped, ticketed, and arrested for driving without a valid license than are other racial and ethnic groups. There is disparity in the conviction rates for driving with a suspended, revoked, canceled, or disqualified license, with Black drivers more likely to be convicted than White drivers. However, the percent of those sentenced to terms of imprisonment were similar across Black and White drivers.

References

- Banks, M. (2018). The "Driver's License Revocation Fairness Amendment Act of 2017" (22-0618): Hearing Before the Committee on Transportation and the Environment, Council of the District of Columbia.
- Bingham, S., Castaldi, M., et al. (2016). Stopped, fined, and arrested: Racial bias in policing and traffic courts in California. [PDF file]. Retrieved from: <https://ebclc.org/backontheroad/reports/>
- Edelman, P. (2017). *Not a crime to be poor: The criminalization of poverty in America*. New York, NY: The New Press.
- National Conference of State Legislatures. (2016). Driving while revoked, suspended or otherwise unlicensed: Penalties by state. Retrieved from <https://www.ncsl.org/research/transportation/driving-while-revoked-suspended-or-other-wise-unli.aspx>
- National Conference of State Legislatures. (2017). Penalties for revoked driver's license | Habitual traffic offenders (HTO). Retrieved from <https://www.ncsl.org/research/transportation/penalties-for-revoked-driver-s-license-habitual-traffic-offenders.aspx>
- Pierson, E., Simoiu, C., Overgoor, J., Corbett-Davies, S., Jenson, D., Shoemaker, A., Ramachandran, V., et al. (2019). A large-scale analysis of racial disparities in police stops across the United States. Stanford Computational Policy Lab: Stanford, CA.
- Regoeczi, C. W. and Kent, S. (2014). Race, poverty, and the traffic ticket cycle: Exploring the situational context of the application of police discretion. *Policing: An International Journal of Police Strategies & Management*, 37(1): 190-205.
- Romano, E., Tippetts, S., & Voas, R. (2005). Fatal red light crashes: The role of race and ethnicity. *Accident Analysis and Prevention*, 37(3): 453-460.
- Vaughn, M. G., Define, R. S., DeLisi, M., Perron, B. E., Beaver, K. M., Fu, Q., & Howard, M.O. (2011). Sociodemographic, behavioral, and substance use correlates of reckless driving in the United States: Findings from a national sample. *Journal of Psychiatric Research*, 45(3): 347-353.
- Voas, R. B., Tippetts, A. S., & Grosz, M. (2013). Administrative reinstatement interlock programs: Florida, A 10-year study. *Alcoholism: Clinical and Experimental Research*, 37(7): 1243-1251.

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Racial/Ethnic Impact Statement
SB1504

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SB 1504 – Sentencing

This bill creates s. 322.3041, F.S., retroactively applying a prior change to statute for offenders currently incarcerated under the previous statutory language and creating a process whereby they are resentenced under current statute. On October 1, 2019, s. 322.34, F.S. was amended, adding a person “who does not have a driver license or driving privilege but is under suspension or revocation equivalent status” to those eligible for penalties for driving with a license that is suspended, revoked, canceled, or disqualified. Additionally, it reduced the number of those eligible for the unranked, 3rd degree felony for a third or subsequent conviction by noting that it only applies “if the current violation of this section or the most recent prior violation of the section are related to driving while license canceled, suspended, revoked, or suspension or revocation equivalent status resulting from a violation of:

1. Driving under the influence;
2. Refusal to submit to a urine, breath-alcohol, or blood alcohol test;
3. A traffic offense causing death or serious bodily injury; or
4. Fleeing or eluding.”

Prior to this change, anyone charged with a third or subsequent offense would be eligible for this felony. At the time this change in language only affected offenders sentenced after that date. This bill would retroactively apply this change in statute to all offenders currently incarcerated under that felony, establishing that those determined to not be felony offenders under this new language must be resentenced, and “be treated as if he or she had been convicted of a misdemeanor violation. “

Per DOC, on June 30, 2019, there were 390 people incarcerated under s. 322.34, F.S. However, is not known how many of these would be eligible for resentencing given the criteria above. Furthermore, an unknown number of these offenders were charged under the second Level 1, 3rd degree felony in s. 322.34, F.S. regarding habitual traffic offenders, though there is likely significant overlap with those not eligible for resentencing under the recently changed language.

A 2008 OPPAGA report stated that 44.5% of those incarcerated had a prior suspension related to driving under the influence or DUI/vehicular manslaughter/homicide. Though without a more detailed breakdown, it cannot be determined whether these were also during the most recent prior offense or current offense, nor can it be determined what proportion of the remaining 55.5% were also related to the above criteria. However, the group of potentially eligible inmates is large enough that this section of the bill could have a significant impact on the prison population.

EDR PROPOSED ESTIMATE: Negative Significant

This bill also creates s. 943.0587, F.S., creating a process whereby a person can petition a court to expunge a criminal history record for a conviction under s. 322.34,

F.S. prior to the change in language on October 1, 2019. In explaining this process, the bill states that a petitioner's sworn statement must be that he or she "satisfies the eligibility requirements for expunction...and...is eligible for expunction to the best of his or her knowledge." An **unranked, 3rd degree felony (Level 1 by default)** is created for "a person who knowingly provides false information on such sworn statement."

Language exists for expunction of criminal history records under s. 943.0585, F.S. with a Level 1, 3rd degree felony applied to a sworn statement in a similar way. Per DOC, in FY 18-19, there were no new commitments to prison under this felony.

EDR PROPOSED ESTIMATE: Positive Insignificant

EDR PROPOSED ESTIMATE FOR ENTIRE BILL: Negative Significant

Requested by: Senate



2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Corrections

<u>BILL INFORMATION</u>	
BILL NUMBER:	SB 1504
BILL TITLE:	Sentencing
BILL SPONSOR:	Senator Brandes
EFFECTIVE DATE:	October 1, 2020

<u>COMMITTEES OF REFERENCE</u>
1) Criminal Justice
2) Appropriations Subcommittee on Criminal and Civil Justice
3) Appropriations
4)
5)

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

<u>CURRENT COMMITTEE</u>

<u>SIMILAR BILLS</u>	
BILL NUMBER:	
SPONSOR:	

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	
SPONSOR:	

Is this bill part of an agency package?
No

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	January 31, 2020
LEAD AGENCY ANALYST:	Michelle Palmer
ADDITIONAL ANALYST(S):	Mary Le, Sibyle Walker
LEGAL ANALYST:	Beverly Brewster, Dan Burke, Taylor Anderson
FISCAL ANALYST:	Sharon McNeal

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

This bill creates s. 322.3401, F.S., providing for the retroactive application 2019-167, Laws of Florida for s. 322.34, F.S., and requiring resentencing for persons who committed offenses of Driving While License Suspended or Revoked (DWLSR), canceled or disqualified prior to October 1, 2019.

The bill creates s. 943.0587, F.S., allowing for persons to petition the court to expunge a conviction under s. 322.34, F.S., as it existed prior to October 1, 2019 if certain criteria are met.

2. SUBSTANTIVE BILL ANALYSIS

1. **PRESENT SITUATION:**

Prior to October 1, 2019, the criminal penalties for knowingly driving while license or driving privilege was canceled, suspended or revoked under s. 322.34(2), F.S., were as follows:

- A first offense was a second-degree misdemeanor punishable by a term of incarceration not to exceeding 60 days.
- A second offense was a first-degree misdemeanor punishable to a term of incarceration not exceeding 1 year.
- A third or subsequent offense was a third-degree felony, punishable by a term of incarceration not exceeding 5 years.

Effective October 1, 2019, the criminal penalties under this section were expanded to include persons who do not have a driver license or driving privilege but is under suspension or revocation equivalent status. The criminal penalties under this section were also amended as follows:

- A first offense remains a second-degree misdemeanor.
- A second or subsequent offense is a first-degree misdemeanor and requiring that a person convicted of a third or subsequent offense must serve a minimum of 10 days in jail.
- A third or subsequent offense is a third-degree felony, if the current violation or most recent prior violation is related to driving while license canceled, suspended, revoked, or suspension or revocation equivalent status resulting from:
 - Driving under the influence;
 - Refusal to submit to a urine, breath-alcohol, or blood alcohol test;
 - A traffic offense causing death or serious bodily injury; or
 - Fleeing or eluding.

S. 943.0578, F.S., authorizes a person to petition for the expunction of a criminal history record if that person has obtained, and submitted to the department, on a form provided by the department, a written, certified statement from the appropriate state attorney or statewide prosecutor which states whether an information, indictment, or other charging document was not filed or was dismissed by the state attorney, or dismissed by the court, because it was found that the person acted in lawful self-defense pursuant to chapter 776, F.S.

S. 943.0582 (3), F.S., requires the Florida Department of Law Enforcement (FDLE) to expunge the nonjudicial arrest record of a minor who has successfully completed a diversion program if that minor:

- (a) Submits an application for diversion expunction, on a form prescribed by the department, signed by the minor's parent or legal guardian, or by the minor if he or she has reached the age of majority at the time of applying.
- (b) Submits to the department, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that he or she has successfully completed that county's diversion program, that his or her participation in the program was based on an arrest for a misdemeanor, and that he or she has not otherwise been charged by the state attorney with, or found to have committed, any criminal offense or comparable ordinance violation.
- (c) Has never been, before filing the application for expunction, charged by the state attorney with, or found to have committed, any criminal offense or comparable ordinance violation.

S. 943.0581, F.S., allows for administrative expunction of any nonjudicial record of an arrest of a minor or an adult made contrary to law or by mistake.

S. 943.0582, F. S., allows for the expunction of a nonjudicial record of the arrest of a minor who has successfully completed a diversion program for a misdemeanor offense.

S. 943.0583 (3), F.S., authorizes a person who is a victim of human trafficking to petition for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed while the person was a victim of human trafficking.

S. 943.0584, F.S., outlines offenses ineligible for expunction.

Pursuant to s. 943.0585, F.S., any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of s. 943.0585, F.S., The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction.

Pursuant to s. 943.059, F.S., any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with certain requirements set forth in the statute. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing. Pursuant to s. 943.059(4), F.S., a criminal history record of a minor or an adult which is ordered sealed by a court pursuant to this section is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), F.S., Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, to judges in the state courts system for the purpose of assisting them in their case-related decision making responsibilities, or to other certain entities set forth in the statute for their respective licensing, access authorization, and employment purposes.

Upon receipt of an order of expungement, the Florida Department of Corrections (FDC or Department) has processes in place to ensure that the inmate or offender record is updated as appropriate to comply with the order. Over the past year, there have been 870 probation records and no prison records expunged. Since 2014 there have been only 13 prison records expunged.

2. EFFECT OF THE BILL:

The bill creates s. 322.3401, F.S., providing for retroactive application of the 2016-167, Laws of Florida, as it relates to s.322.34, F.S., (DWLSR), which reduced the criminal penalties for a third or subsequent violation unless certain criteria are met.

The bill states that a person who committed DWLSR prior to October 1, 2019, but who were not sentenced until after October 1, 2020, may not be sentenced under the criminal penalties in place under s. 322.34(c) prior to October 1, 2019.

The bill states that any person who committed DWLSR before October 1, 2019, and who was sentenced before October 1, 2020, requiring that the person be resentenced in accordance with changes made s.322.34(c) effective October 1, 2019.

The Department's role in this process will be to notify inmates of their potential eligibility for resentencing. There are currently 2,086 inmates in FDC custody for felony DWLSR. Criminal penalties under the new s. 322.34(c) specify that a third or subsequent offense is a third-degree felony only if either the current or most recent violation for DWLSR results from specified offenses, the department will be limited in how to programmatically identify inmates whose most recent prior DWLSR violation meets this criteria.

There are currently 2,086 inmates in custody for DWLSR who were sentenced under former 322.34 and who would need to be reviewed. This would have a significant, albeit short term, impact on the department as this would require a thorough review of current and prior record would be required to make a final determination as to eligibility for notification. The Bureau of Admission and Release would need the following full time, temporary position (funded for no more than one year) to handle the work load increase required to complete reviews for the 2,086 inmates who would be immediately potentially eligible:

- 1 Correctional Services Assistant Consultant.

In order to be resentenced, the inmate would have to submit an application to the court of original jurisdiction requesting a sentence review hearing be held. Once received, the court is required to conduct a sentence review hearing to determine if the inmate meets the criteria for resentencing. If it is determined the inmate meets the criteria, the court must resentence the inmate in accordance with new s. 322.34, F.S.

As a result of the possible resentencing for those effected inmates, the new sentences may possibly result in supervision admissions and an increase to the supervised offender population. It is unknown how the resentencing will impact the overall inmate's sentence or how many inmates will apply for a resentencing review, the impact of this portion of the bill is indeterminate.

The bill also creates s. 943.0587, F.S., allowing for persons to petition the court to expunge a conviction under former s. 322.34, F.S., if the conviction would not be classified as felony under new s. 322.34, F.S., and the person has never been convicted of a felony other than for felony offenses classified as a felony under former s. 322.34, F.S.

The bill would require that a certificate of eligibility be issued by FDLE prior to petitioning the court and outlines criteria FDLE must consider in issuing a certificate of eligibility. The bill specifies information that must be included with a petition for expunction and provides for criminal penalties relating to providing false information as part of a petition. The bill provides for court authority and outlines steps to be taken in processing of such a petition.

The bill outlines those situations in which a person's record is expunged under s. 943.0587, F.S., may not deny or fail to acknowledge arrests and convictions covered by the expunged record.

Over the past 20 years, there have been approximately 27,000 individuals incarcerated or supervised for DWLSR offenses who appear to have no felony convictions for offenses excluding DWLSR and who may be eligible to petition for record expungement.

While this section of the bill has the potential to increase work load for records staff, because it is unknown how many individuals will petition to have records expunged pursuant to s. 943.0587, F.S., the impact of this section of the bill is indeterminate.

The bill has an effective date of October 1, 2019.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y ☐ N ☒

If yes, explain:	
Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?

Y ☐ N ☒

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y ☐ N ☒

Board:	
Board Purpose:	
Who Appoints:	
Changes:	

Bill Section Number(s):

FISCAL ANALYSIS**1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?**Y ☐ N ☐

Revenues:	Unknown
Expenditures:	Unknown
Does the legislation increase local taxes or fees? If yes, explain.	No
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?Y ☐ N ☐

Revenues:	Indeterminate																																																							
Expenditures:	<p>If this bill is passed, the overall fiscal impact to inmate and community supervision population is indeterminate.</p> <p>However, when inmate population is impacted in small increments statewide, the inmate variable per diem of \$21.70 is the most appropriate to use. This per diem includes costs more directly aligned with individual inmate care such as medical, food, inmate clothing, personal care items, etc. The Department's FY 18-19 average per diem for community supervision was \$5.62.</p> <p>Additionally, it is anticipated that one staff person will be needed in Admission and Release to handle the workload increase required to complete reviews for the 2,086 inmates who would be immediately potentially eligible. Projected staff and OIT programming costs are as follows:</p> <table><thead><tr><th>Class Title</th><th>Class Code</th><th>Salary & Benefits</th><th>FTE #</th><th>Year 1 Annual Costs</th></tr></thead><tbody><tr><td>Correctional Services Asst Consultant</td><td>8055</td><td>53,779</td><td>1</td><td>53,779</td></tr><tr><td colspan="3">Total salaries & benefits</td><td>1</td><td>53,779</td></tr><tr><td colspan="2">Recurring expense - Prof light travel</td><td>\$ 3,378</td><td></td><td>3,378</td></tr><tr><td colspan="2">Non-recurring expense - Prof light travel</td><td>4,429</td><td></td><td>4,429</td></tr><tr><td colspan="3">Total expenses</td><td></td><td>7,807</td></tr><tr><td colspan="2">Human Resource Services</td><td>\$ 329</td><td></td><td>329</td></tr><tr><td colspan="2">Information Technology</td><td></td><td></td><td>3,480</td></tr><tr><td colspan="3">Total</td><td>1</td><td>\$ 65,395</td></tr><tr><td colspan="5">Summary of Costs</td></tr><tr><td colspan="3">Recurring</td><td></td><td>\$ 57,486</td></tr></tbody></table>	Class Title	Class Code	Salary & Benefits	FTE #	Year 1 Annual Costs	Correctional Services Asst Consultant	8055	53,779	1	53,779	Total salaries & benefits			1	53,779	Recurring expense - Prof light travel		\$ 3,378		3,378	Non-recurring expense - Prof light travel		4,429		4,429	Total expenses				7,807	Human Resource Services		\$ 329		329	Information Technology				3,480	Total			1	\$ 65,395	Summary of Costs					Recurring				\$ 57,486
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Total			1	\$ 65,395																																																				
Summary of Costs																																																								
Recurring				\$ 57,486																																																				

	<div>Non-recurring</div> <div>Total</div> <div>7,909</div> <div>\$ 65,395</div>
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?Y ☐ N ☐

Revenues:	Unknown
Expenditures:	Unknown
Other:	

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?Y ☐ N ☐

If yes, explain impact.	
Bill Section Number:	

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y ☒ N ☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	Based on the analysis received there may be minimal technology impact based on a possible request for expungement of cases. Cost Estimate: Estimated Hours 40 Estimated Cost Per Hour: \$87.00 Estimated Total Cost: \$3480
--	---

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y ☐ N ☒

If yes, describe the anticipated impact including any fiscal impact.	
--	--

ADDITIONAL COMMENTS

N/A.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	N/A.
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THE FLORIDA SENATE
APPEARANCE RECORD

2 4 20

Meeting Date

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

1504

Bill Number (if applicable)

Topic SENTENCING

Amendment Barcode (if applicable)

Name Dan Hendrickson

Job Title president Tallahassee Veterans Legal Collaborative

Address PO Box 1201

Street

Tallahassee

City

FL

State

32302

Zip

Phone 850/570-1967

Email danbhendrickson@comcast.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing TALLAHASSEE VETERANS LEGAL COLLABORATIVE

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)

2/4/20
Meeting Date

1504

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title Florida State Director

Address 605 Middlebrooks Circle

Phone 954-557-0016

Street

Tallahassee

FL

32312

City

State

Zip

Email cmurphy@rightoncrime.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Right on Crime

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/4/20

Meeting Date

1504

Bill Number (if applicable)

Topic Driving with License Suspended Offenses

Amendment Barcode (if applicable)

Name Carlos Martinez

Job Title Public Defender, 11th Judicial Circuit

Address 1320 Nw 14th St

Phone 305-545-1900

Street

Miami

FL

33125

City

State

Zip

Email cmartinez@pdmiami.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-4-20

Meeting Date

1504

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title Fla. Director

Address PO Box 142933
Street

Phone 352.682.2542

Gainesville FL 32614
City State Zip

Email gnewburn@famm.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FAMM

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/4/2020

Meeting Date

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

1504

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Jorge Chamero

Job Title Attorney

Address 108 South Monroe Street

Phone (850) 681-0024

Street Tallahassee, FL 32301

Email jorge@flapartners.com

City Tallahassee

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FACDL

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

Committee Agenda Request

To: Senator Keith Perry
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 13, 2019

I respectfully request that **Senate Bill #1504**, relating to **Sentencing**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

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

Senator Jeff Brandes
Florida Senate, District 24

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 1506

INTRODUCER: Criminal Justice Committee and Senators Brandes and Bracy

SUBJECT: Public Records/Expunction of Specified Convictions

DATE: February 5, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Fav/CS
2.			GO	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1506, which is linked to SB 1504, amends s. 943.0587, F.S., created by the linked bill, providing an exemption from public records requirements for an expunged criminal history record related to certain driving while license suspended, revoked, canceled, or disqualified (DWLSR) offenses that were classified as a felony prior to changes made in CS/HB 7125 (2019).

Specifically, the bill provides that a criminal history record ordered expunged related to certain DWLSR offenses pursuant to s. 943.0587, F.S., which is retained by the FDLE is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. Similar to the court-ordered expunction process, a criminal justice agency is authorized pursuant to the bill to retain a notation indicating compliance with an order to expunge.

The bill also provides that information relating to the existence of an expunged criminal history record pursuant to s. 943.0587, F.S., is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution, except that the FDLE must disclose the existence of a criminal history record ordered expunged to specified enumerated entities for their respective licensing, access authorization, and employment purposes and to criminal justice agencies for their respective criminal justice purposes.

The bill provides that both of these exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and stand repealed on October 2, 2025, unless reviewed and saved from such repeal through reenactment by the Legislature.

The bill also provides a statement of public necessity as required by the Florida Constitution.

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by the FDLE related to the expunction of such records may be covered by the \$75 processing fee for obtaining a certificate of eligibility for expunction of such records.

The bill is effective on the same date that SB 1504 or similar legislation takes effect if such legislation is enacted in the same legislative session or an extension thereof and becomes a law.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business 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.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” 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.”

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

General exemptions from the public records requirements are contained in the Public Records Act.¹⁰ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹¹

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹² Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹³

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁴ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁵ public records or open meetings exemptions, with specified exceptions.¹⁶ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁷

⁶ 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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹¹ *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹² *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹³ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁴ Section 119.15, F.S.

¹⁵ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁶ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁷ Section 119.15(3), F.S.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁸ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;¹⁹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²⁰ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²¹

The Act also requires specified questions to be considered during the review process.²² In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²³ If the exemption is continued without substantive changes or if the exemption is continued and 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 provided for by law.²⁴

Driver Licenses

Florida law requires a person to hold a driver license²⁵ or be exempted from licensure to operate a motor vehicle on the state's roadways.²⁶ Exemptions to the licensure requirement include nonresidents who possess a valid driver license issued by their home states, federal government, employees operating a government vehicle for official business, and people operating a road

¹⁸ Section 119.15(6)(b), F.S.

¹⁹ Section 119.15(6)(b)1., F.S.

²⁰ Section 119.15(6)(b)2., F.S.

²¹ Section 119.15(6)(b)3., F.S.

²² Section 119.15(6)(a), F.S. The specified questions are:

- 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?

²³ See generally s. 119.15, F.S.

²⁴ Section 119.15(7), F.S.

²⁵ "Driver license" is a certificate that, subject to all other requirements of law, authorizes an individual to drive a motor vehicle and denotes an operator's license as defined in 49 U.S.C. s. 30301. Section 322.01(17), F.S.

²⁶ Section 322.03(1), F.S.

machine, tractor, or golf cart.²⁷ The Department of Highway Safety and Motor Vehicles (DHSMV) can suspend or revoke a driver license or driving privilege for both driving-related and non-driving related reasons. Suspension means the temporary withdrawal of the privilege to drive²⁸ and revocation means a termination of the privilege to drive.²⁹

Section 322.34, F.S. (2018)

Prior to October 1, 2019, a person committed the offense of driving while license suspended, revoked, canceled, or disqualified (DWLSR) if his or her driver license or driving privilege had been canceled, suspended, or revoked and he or she, knowing of such cancellation, suspension, revocation, or suspension,³⁰ drove any motor vehicle. The penalties for DWLSR ranged from a moving traffic violation to a third degree felony.³¹

Under the former provisions, a person could be charged with a third-degree felony³² for the offense of DWLSR if:

- He or she knew of the suspension or revocation and had at least two prior convictions for DWLSR;
- He or she qualified as a habitual traffic offender;³³ or
- His or her license had been permanently revoked.³⁴

Section 322.34, F.S. (2019) and CS/HB 7125 (2019)

The 2019 Legislature passed and the Governor signed into law CS/HB 7125, which, in part, amended the provisions related to DWLSR.³⁵ Subsequent to the effective date of CS/HB 7125 (2019), the offense of DWLSR is classified as a:

- Misdemeanor of the second degree, upon a first conviction.³⁶
- Misdemeanor of the first degree, upon a second or subsequent conviction, unless the suspension is related to an enumerated offense discussed below.³⁷
- A felony of the third degree, upon a third or subsequent conviction if the current violation of DWLSR or the most recent prior violation of DWLSR is resulting from a violation of:
 - DUI;

²⁷ Section 322.04, F.S.

²⁸ Section 322.01(40), F.S.

²⁹ Section 322.01(36), F.S.

³⁰ The element of knowledge is satisfied in several ways, including: if the person has been previously cited as provided in s. 322.34(1), F.S., the person admits to knowledge of the cancellation, suspension, or revocation, or the person received notice of such status. There is a rebuttable presumption that the knowledge requirement is satisfied if a judgment or order appears in the DHSMV's records for any case except for one involving a suspension by the department for failure to pay a traffic fine or for a financial responsibility violation. *See* s. 322.34(2), F.S.

³¹ *See* s. 322.34(2), F.S.

³² A third degree felony is punishable by up to 5 years' incarceration and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

³³ *See* s. 322.264, F.S.

³⁴ *See* ss. 322.34 and 322.341, F.S. (2018).

³⁵ Chapter 2019-167, L.O.F.

³⁶ Section 322.34(2)(a), F.S. A second degree misdemeanor is punishable by up to 60 days in jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

³⁷ Additionally, a person convicted under this paragraph for a third or subsequent conviction must serve a minimum of ten days in jail. Section 322.34(2)(b), F.S. A first degree misdemeanor is punishable by up to one year in jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

- Refusal to submit to a urine, breath-alcohol, or blood alcohol test;
- A traffic offense causing death or serious bodily injury; or
- Fleeing or eluding.³⁸

Florida's Statutory Savings Clause

The 2019 Legislature also passed and the Governor signed into law CS/SB 1656 (2019), which created s. 775.022, F.S., a general savings statute for criminal statutes.³⁹ Typically, a general savings statute prevents the repeal of a criminal statute from abating pending criminal prosecutions, unless the repealing act expressly provides for abatement. “Abatement” means no further prosecution for the criminal violation.

In part, s. 775.022, F.S., did not preclude the Legislature from expressly providing for a more extensive retroactive application either to legislation in the future or legislation that was enacted prior to the effective date of the general savings statute. This is because the general savings statute specifically provides for a legislative exception to the default position of prospectivity.

Expunction of Criminal History Records

Florida law makes adult criminal history records accessible to the public unless the record has been sealed or expunged.⁴⁰ Criminal history records related to certain offenses are barred from being expunged through the court-order process.⁴¹ Section 943.0585, F.S., sets forth procedures for expunging criminal history records through court-order. When a criminal history record is expunged, criminal justice agencies other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record.⁴² Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order. The FDLE is required to retain expunged records.⁴³

Records that have been expunged are confidential and exempt from the public records law.⁴⁴ As a result, persons who have had their criminal history records expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain

³⁸ The penalties amended in CS/HB 7125 (2019) do not apply to all persons who commit the offense of DWLSR. Section 322.34(5)-(7) and (10), F.S., provide different penalties for certain offenders who violate these provisions.

³⁹ See ch. 2019-63, L.O.F.

⁴⁰ Florida Department of Law Enforcement, *Seal and Expunge Process*, available at <http://www.fdle.state.fl.us/Seal-and-Expunge-Process/Seal-and-Expunge-Home.aspx> (last visited January 21, 2020). See also s. 943.053, F.S.

⁴¹ See s. 943.0584, F.S., for a complete list of offenses that are ineligible for court-ordered expunction.

⁴² Section 943.0585(6)(a), F.S. Section 943.045(16), F.S., defines “expunction of a criminal history record” to mean the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order, except that criminal history records in the custody of the FDLE must be retained in all cases for purposes of evaluating subsequent requests by the subject of the record for sealing or expunction, or for purposes of recreating the record in the event an order to expunge is vacated by a court of competent jurisdiction.

⁴³ Section 943.0585(6)(a), F.S.

⁴⁴ Section 943.0585(6)(d), F.S.

types of employment,⁴⁵ petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.⁴⁶

Provisions made in SB 1504

SB 1504, which is tied to this bill, creates s. 322.3401, F.S., expressly providing for the retroactive application of the changes made by CS/HB 7125 (2019) to s. 322.34, F.S., related to the offense of DWLSR. SB 1504 also provides procedures for the resentencing of eligible persons.

SB 1504 defines two terms for purposes of s. 322.3401, F.S., including the term:

- “Former s. 322.34”, which means a reference to s. 322.34, F.S., as it existed at any time before its amendment by ch. 2019-167, L.O.F.
- “New s. 322.34”, which means a reference to s. 322.34, F.S., as it exists after the amendments made by ch. 2019-167, L.O.F., became effective.

SB 1504 requires a person who committed the offense of DWLSR:

- Before October 1, 2019, but who was not sentenced under former s. 322.34, F.S., before October 1, 2020, to be sentenced for the degree of offense as provided for in the new s. 322.34, F.S.
- Before October 1, 2019, who was sentenced before October 1, 2019 to a term of imprisonment pursuant to former s. 322.34, F.S., and who is serving such term of imprisonment on or after October 1, 2020, to be resentenced to the degree of offense that is consistent with the degree provided for in the new s. 322.34, F.S.

In addition to the retroactive application of sentencing provisions of the new s. 322.34, F.S., the bill provides that a person who has been convicted of a felony under former s. 322.34, F.S., and whose offense would not be classified as a felony under the new s. 322.34, F.S., must:

- Be treated as if he or she had been convicted of a misdemeanor violation for purposes of any right, privilege, benefit, remedy, or collateral consequence that the person might be entitled to but for such felony conviction.
- Have all fines, fees, and costs related to such felony conviction waived.

⁴⁵ These include candidates for employment with a criminal justice agency; applicants for admission to the Florida Bar; those seeking a sensitive position involving direct contact with children, the developmentally disabled, or the elderly with the Department of Children and Family Services, Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice; persons seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; or a Florida seaport.

⁴⁶ Section 943.0585(6)(a), F.S.

Expunction Related to DWLSR Offenses

SB 1504 also creates s. 943.0587, F.S., authorizing a person to petition a court to expunge a criminal history record for a conviction under former s. 322.34, F.S., under certain circumstances, including if the person:

- Received a withholding of adjudication or adjudication of guilt for a violation of DWLSR under former s. 322.34, F.S., and whose conviction would not be classified as a felony under the new s. 322.34, F.S.; and
- Only has felony convictions for the offense of DWLSR pursuant to the former s. 322.34, F.S.

Unlike other expunctions, an expunction granted in accordance with s. 943.0587, F.S., does not prevent the person who receives such relief from petitioning for the expunction or sealing of a later criminal history record as provided for in ss. 943.0583, 943.0585, and 943.059, F.S., if the person is otherwise eligible under those sections.

SB 1504 provides that if relief is granted by the court, the following actions must be taken:

- The clerk of the court must certify copies of the order to the appropriate state attorney or the statewide prosecutor and the arresting agency.
- The arresting agency is required to forward the order to any other agency to which the arresting agency disseminated the criminal history record information to which the order pertains.
- The FDLE must forward the order to expunge to the Federal Bureau of Investigation.
- The clerk of the court must certify a copy of the order to any other agency which the records of the court reflect has received the criminal history record from the court.

Further, SB 1504 provides that the effect of the expunction order is identical to the effect of court-ordered expunction orders that have been issued pursuant to s. 943.0585, F.S. Specifically, the bill provides:

- The person who is the subject of a criminal history record that is expunged may lawfully deny or fail to acknowledge the arrests and convictions covered by the expunged record, except when the subject of the record:
 - Is a candidate for employment with a criminal justice agency;
 - Is a defendant in a criminal prosecution;
 - Concurrently or subsequently petitions for relief under this section, s. 943.0583, F.S., s. 943.059, F.S., or s. 943.0585, F.S.;
 - Is a candidate for admission to The Florida Bar;
 - Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation of the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;
 - Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities;
 - Is seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services; or

- Is seeking to be appointed as a guardian pursuant to s. 744.3125, F.S.
- Except as mentioned above, a person who has been granted an expunction may not be held to commit perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge an expunged criminal history record.

III. Effect of Proposed Changes:

The bill, which is linked to SB 1504, amends s. 943.0587, F.S., created by the linked bill, providing an exemption from public records requirements for an expunged criminal history record related to certain DWLSR offenses that were classified as a felony prior to changes made in CS/HB 7125 (2019).

Specifically, the bill provides that any criminal history record of a person which is ordered expunged by a court of competent jurisdiction must be physically destroyed or obliterated by any criminal justice agency having custody of such record, except that any criminal history record in the custody of the FDLE must be retained in all cases.

Further, the bill provides that a criminal history record ordered expunged which is retained by the FDLE is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. Similar to the court-ordered expunction process, a criminal justice agency is authorized pursuant to the bill to retain a notation indicating compliance with an order to expunge.

The bill also provides that information relating to the existence of an expunged criminal history record pursuant to s. 943.0587, F.S., is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution, except that the FDLE must disclose the existence of a criminal history record ordered expunged to specified entities mentioned above for their respective licensing, access authorization, and employment purposes and to criminal justice agencies for their respective criminal justice purposes.

The bill provides that both of these exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and stand repealed on October 2, 2025, unless reviewed and saved from such repeal through reenactment by the Legislature.

The bill also provides a statement of public necessity as required by the Florida Constitution, which notes:

The Legislature finds that it is a public necessity that the expunged criminal history record of a person who has been convicted of a felony offense of driving while license suspended, revoked, canceled, or disqualified which is no longer classified as a felony be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature further finds that any information relating to the existence of an expunged criminal history record resulting from a felony offense of driving while license suspended, revoked, canceled, or disqualified which is no longer classified as a felony be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The presence of a criminal history record in a person's past can jeopardize his or her ability to obtain education, employment, and other opportunities. The presence of such a criminal history record in these individuals' past creates an unnecessary barrier to becoming productive, contributing, self-sustaining members of society and can jeopardize individuals' ability to achieve a safe livelihood. The Legislature therefore finds that it is in the best interest of the public that such individuals are given the opportunity to become contributing members of society.

The bill is effective on the same date that SB 1504 or similar legislation takes effect if such legislation is enacted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, s. 24(c), of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill enacts a new exemption for criminal history records related to offenses of DWLSR that are expunged pursuant to the newly created s. 943.0587, F.S. Therefore, a two-thirds vote of the members present and voting for final passage of the bill is required.

Public Necessity Statement

Article I, s. 24(c), of the Florida Constitution requires a bill that creates or expands an exemption to the public records requirements to state with specificity the public necessity

justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c), of the Florida Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to ensure criminal history records related to a felony offense of DWLSR which is no longer classified as a felony that has been expunged does not jeopardize a person's ability to obtain education, employment, and other opportunities. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

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 943.0587 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.)

CS by Criminal Justice on February 4, 2020:

The committee substitute:

- Includes the tied bill number in the effective date clauses; and
- Makes technical changes to the public necessity statement.

B. Amendments:

None.

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



103962

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraphs (c) and (d) are added to subsection
(8) of section 943.0587, Florida Statutes, as created by SB 1504
Regular Session, to read:

943.0587 Driving while license suspended, revoked,
canceled, or disqualified expunction.—

(8) EFFECT OF EXPUNCTION ORDER.—



103962

11 (c) Any criminal history record of a person which is
12 ordered expunged by a court of competent jurisdiction pursuant
13 to this section must be physically destroyed or obliterated by
14 any criminal justice agency having custody of such record,
15 except that any criminal history record in the custody of the
16 department must be retained in all cases. A criminal history
17 record ordered expunged which is retained by the department is
18 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
19 of the State Constitution and not available to any person or
20 entity except upon order of a court of competent jurisdiction. A
21 criminal justice agency may retain a notation indicating
22 compliance with an order to expunge. This paragraph is subject
23 to the Open Government Sunset Review Act in accordance with s.
24 119.15 and shall stand repealed on October 2, 2025, unless
25 reviewed and saved from such repeal through reenactment by the
26 Legislature.

27 (d) Information relating to the existence of an expunged
28 criminal history record which is provided in accordance with
29 paragraph (c) is confidential and exempt from s. 119.07(1) and
30 s. 24(a), Art. I of the State Constitution, except that the
31 department shall disclose the existence of a criminal history
32 record ordered expunged to the entities set forth in
33 subparagraph (a)1. for their respective licensing, access
34 authorization, and employment purposes and to criminal justice
35 agencies for their respective criminal justice purposes. It is
36 unlawful for any employee of an entity set forth in
37 subparagraphs (a)1. and 4.-8. to disclose information relating
38 to the existence of an expunged criminal history record of a
39 person seeking employment, access authorization, or licensure



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with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from such repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the expunged criminal history record of a person who has been convicted of a felony offense of driving while license suspended, revoked, canceled, or disqualified which is no longer classified as a felony be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature further finds that any information relating to the existence of an expunged criminal history record resulting from a felony offense of driving while license suspended, revoked, canceled, or disqualified which is no longer classified as a felony be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The presence of a criminal history record in a person's past can jeopardize his or her ability to obtain education, employment, and other opportunities. The presence of such a criminal history record in these individuals' past creates an unnecessary barrier to becoming productive, contributing, self-sustaining members of society and can jeopardize individuals' ability to achieve a safe livelihood. The Legislature therefore finds that it is in the best interest of the public that such individuals are given the opportunity to become contributing members of society.



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Section 3. This act shall take effect on the same date as SB 1504 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to public records; amending s.
943.0587, F.S.; providing a public records exemption
to include the expunction of specified convictions of
certain persons convicted of driving while license
suspended, revoked, canceled, or disqualified;
providing for legislative review and repeal of the
exemption; providing a statement of public necessity;
providing a contingent effective date.

By Senator Brandes

24-02086-20

20201506__

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 943.0587, F.S.; providing a public records exemption
 4 to include the expunction of specified convictions of
 5 certain persons convicted of driving while license
 6 suspended, revoked, canceled, or disqualified;
 7 providing for legislative review and repeal of the
 8 exemption; providing a statement of public necessity;
 9 providing a contingent effective date.
 10
 11 Be It Enacted by the Legislature of the State of Florida:
 12
 13 Section 1. Paragraphs (c) and (d) are added to subsection
 14 (8) of section 943.0587, Florida Statutes, as created by SB ____
 15 Regular Session, to read:
 16 943.0587 Driving while license suspended, revoked,
 17 canceled, or disqualified expunction.—
 18 (8) EFFECT OF EXPUNCTION ORDER.—
 19 (c) Any criminal history record of a person which is
 20 ordered expunged by a court of competent jurisdiction pursuant
 21 to this section must be physically destroyed or obliterated by
 22 any criminal justice agency having custody of such record,
 23 except that any criminal history record in the custody of the
 24 department must be retained in all cases. A criminal history
 25 record ordered expunged which is retained by the department is
 26 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 27 of the State Constitution and not available to any person or
 28 entity except upon order of a court of competent jurisdiction. A
 29 criminal justice agency may retain a notation indicating

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

24-02086-20

20201506__

30 compliance with an order to expunge. This paragraph is subject
 31 to the Open Government Sunset Review Act in accordance with s.
 32 119.15 and shall stand repealed on October 2, 2025, unless
 33 reviewed and saved from such repeal through reenactment by the
 34 Legislature.
 35 (d) Information relating to the existence of an expunged
 36 criminal history record which is provided in accordance with
 37 paragraph (c) is confidential and exempt from s. 119.07(1) and
 38 s. 24(a), Art. I of the State Constitution, except that the
 39 department shall disclose the existence of a criminal history
 40 record ordered expunged to the entities set forth in
 41 subparagraph (a)1. for their respective licensing, access
 42 authorization, and employment purposes and to criminal justice
 43 agencies for their respective criminal justice purposes. It is
 44 unlawful for any employee of an entity set forth in subparagraph
 45 (a)1., subparagraph (a)4., subparagraph (a)5., subparagraph
 46 (a)6., subparagraph (a)7., or subparagraph (a)8. to disclose
 47 information relating to the existence of an expunged criminal
 48 history record of a person seeking employment, access
 49 authorization, or licensure with such entity or contractor,
 50 except to the person to whom the criminal history record relates
 51 or to persons having direct responsibility for employment,
 52 access authorization, or licensure decisions. This paragraph is
 53 subject to the Open Government Sunset Review Act in accordance
 54 with s. 119.15 and shall stand repealed on October 2, 2025,
 55 unless reviewed and saved from such repeal through reenactment
 56 by the Legislature.
 57 Section 2. The Legislature finds that it is a public
 58 necessity that the criminal history records of a person who has

Page 2 of 3

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

24-02086-20

20201506__

59 been convicted of a felony offense of driving while license
60 suspended, revoked, canceled, or disqualified which is no longer
61 classified as a felony be made confidential and exempt from s.
62 119.07(1), Florida Statutes, and s. 24(a), Article I of the
63 State Constitution. The Legislature further finds that any
64 information relating to the existence of an expunged criminal
65 history record resulting from a felony offense of driving while
66 license suspended, revoked, canceled, or disqualified which is
67 no longer classified as a felony be made confidential and exempt
68 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
69 the State Constitution. The presence of a criminal history
70 record in a person's past can jeopardize his or her ability to
71 obtain education, employment, and other opportunities. The
72 presence of such a criminal history record in these individuals'
73 past creates an unnecessary barrier to becoming productive,
74 contributing, self-sustaining members of society and can
75 jeopardize individuals' ability to achieve a safe livelihood.
76 The Legislature therefore finds that it is in the best interest
77 of the public that such individuals are given the opportunity to
78 become contributing members of society.

79 Section 3. This act shall take effect on the same date as
80 SB __ or similar legislation takes effect, if such legislation
81 is adopted in the same legislative session or an extension
82 thereof and becomes a law.

THE FLORIDA SENATE
APPEARANCE RECORD

2/4/20

Meeting Date

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

1506

Bill Number (if applicable)

Topic Driving with License Suspended Arrest Records

Amendment Barcode (if applicable)

Name Carlos Martinez

Job Title Public Defender, 11th Judicial Circuit

Address 1320 Nw 14th St

Phone 305-545-1900

Street

Miami

FL

33125

City

State

Zip

Email cmartinez@pdmiami.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Keith Perry
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 13, 2019

I respectfully request that **Senate Bill #1506**, relating to **Public Records/Expunction of Specified Convictions**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

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

Senator Jeff Brandes
Florida Senate, District 24

The Florida Senate
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 1716

INTRODUCER: Criminal Justice Committee and Senator Brandes and others

SUBJECT: Sentencing

DATE: February 5, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1716 reduces the mandatory minimum penalties imposed upon a prison releasee reoffender (a category of repeat offenders) under s. 775.082(9), F.S. These changes are also applied retroactively. The bill provides a process for resentencing. Further, the bill removes a provision of law that prohibits a prison releasee reoffender from any form of early release.

The Legislature's Office of Economic and Demographic Research preliminarily estimates that the bill will have a "negative significant" prison bed impact (a decrease of more than 25 prison beds).

The bill takes effect July 1, 2020.

II. Present Situation:

Prison Releasee Reoffender (s. 775.082(9), F.S.)

Section 775.082(9), F.S., provides that a judge must sentence a person as a "prison releasee reoffender" if the defendant has committed or attempted to commit any of the following enumerated offenses within 3 years after being released from a Florida state or private correctional facility, a county detention facility following incarceration for an offense for which the sentence pronounced was a prison sentence, or a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any

foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year:

- Treason;
- Murder;
- Manslaughter;
- Sexual battery;
- Carjacking;
- Home-invasion robbery;
- Robbery;
- Arson;
- Kidnapping;
- Aggravated assault with deadly weapon;
- Aggravated battery;
- Aggravated stalking;
- Aircraft piracy;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Any felony that involves the use or threat of physical force or violence against an individual;
- Armed burglary;
- Burglary of a dwelling or an occupied structure;
- Any violation of s. 790.07, F.S. (felons in possession of firearms);
- Any violation of s. 800.04, F.S. (lewd or lascivious act in the presence of a child);
- Any violation of s. 827.03, F.S. (abuse, aggravated abuse and neglect of a child);
- Any violation of s. 827.071, F.S. (sexual performance by a child); or
- Any violation of s. 847.013(5), F.S. (prohibited computer transmissions constituting lewd exhibition).¹

A judge must also sentence a defendant as a “prison releasee reoffender” if the defendant committed or attempted to commit any of the previously-described offenses while the defendant was serving a prison sentence or on escape status from a Florida state or private correctional facility or while the defendant was on escape status from a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.²

If the state attorney determines that a defendant is a prison releasee reoffender, the state attorney may seek to have the court sentence the defendant as a prison releasee reoffender. Upon proof from the state attorney that establishes by a preponderance of the evidence that a defendant is a prison releasee reoffender, such defendant is not eligible for sentencing under the sentencing guidelines and must be sentenced as follows:

- For a felony punishable by life,³ by a term of imprisonment for life;

¹ Section 775.082(9)(a)1., F.S.

² Section 775.082(9)(a)2., F.S.

³ For example, a capital felony is generally punishable by death or life imprisonment, a life felony is generally punishable by life imprisonment or by a term of imprisonment not exceeding 40 years, and a first degree felony may be punishable by a term of years not exceeding life imprisonment when specifically provided by statute. Section 775.082, F.S.

- For a first degree felony,⁴ by a term of imprisonment of 30 years;
- For a second degree felony⁵, by a term of imprisonment of 15 years; and
- For a third degree felony,⁶ by a term of imprisonment of 5 years.⁷

A person sentenced as a prison releasee reoffender can be released only by expiration of sentence and is not be eligible for parole, control release, or any form of early release. A prison releasee reoffender must also serve 100 percent of the court-imposed sentence.⁸

The prison releasee reoffender provisions provide legislative intent that prison releasee reoffenders “be punished to the fullest extent of the law” unless the prosecuting attorney does not have sufficient evidence to prove the highest charge available, the testimony of material witness cannot be obtained, the victim provides a written statement that he or she does not want the offender to receive a mandatory sentence, or other extenuating circumstances exist which preclude the just prosecution of the offender.⁹

For every case in which the offender meets the prison releasee reoffender criteria and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney.¹⁰

Constitutional and Statutory Savings Clauses

Until recently, Article X, Section 9 of the State Constitution (Florida’s constitutional savings clause) expressly prohibited any repeal or amendment of a criminal statute that affected prosecution or punishment for any crime previously committed, and therefore, the Florida Legislature was “powerless to lessen penalties for past transgressions; to do so would require constitutional revision.”¹¹

In 2018, Florida voters adopted the following amendment to Article X, Section 9 of the State Constitution:

~~Repeal or amendment~~ of a criminal statute shall not affect prosecution ~~or punishment~~ for any crime ~~previously~~ committed before such repeal.

Revised Article X, Section 9 of the State Constitution only prohibits applying the repeal of a criminal statute to any crime committed before such repeal if this retroactive application “affects prosecution.” The revised constitutional savings clause does not expressly prohibit retroactive

⁴ The maximum term of imprisonment for a first degree felony is generally 30 years imprisonment. Section 775.082, F.S.

⁵ The maximum term of imprisonment for a second degree felony is 15 years imprisonment. Section 775.082, F.S.

⁶ The maximum term of imprisonment for a third degree felony is 5 years imprisonment. Section 775.082, F.S.

⁷ Section 775.082(9)(a)3., F.S.

⁸ Section 775.082(9)(b), F.S. Section 775.082(9), F.S., does not prevent a court from imposing a greater sentence of incarceration as authorized by law, pursuant to s. 775.084, F.S., or any other provision of law. Section 775.082(9)(c), F.S.

⁹ Section 775.082(9)(d)1., F.S.

¹⁰ Section 775.082(9)(d)2., F.S.

¹¹ Comment, *Today’s Law and Yesterday’s Crime: Retroactive Application of Ameliorative Criminal Legislation*, 121 U. Pa. L. Rev. 120, 129 (1972).

application of a repeal that does not affect prosecution, a repeal that affects punishment, or an amendment of a criminal statute that affects prosecution or punishment.

The elimination of the expressed prohibition on certain retroactive applications is not a directive to the Legislature to retroactively apply what was formerly prohibited. As the Florida Supreme Court recently stated: “... [T]here will no longer be any provision in the Florida Constitution that would prohibit the Legislature from applying an amended criminal statute retroactively to pending prosecutions or sentences. However, nothing in our constitution does or will require the Legislature to do so, and the repeal of the prohibition will not require that they do so.”¹²

In 2019, the Legislature created s. 775.022, F.S., a general savings statute for criminal statutes. The statute defines a “criminal statute” as a statute, whether substantive or procedural, dealing in any way with a crime or its punishment, defining a crime or a defense to a crime, or providing for the punishment of a crime.¹³

The statute specifies legislative intent to preclude:

- Application of the common law doctrine of abatement to a reenactment or an amendment of a criminal statute; and
- Construction of a reenactment or amendment as a repeal or an implied repeal¹⁴ of a criminal statute for purposes of Article X, Section 9 of the State Constitution (Florida’s constitutional savings clause).¹⁵

The statute also states that, except as expressly provided in an act of the Legislature or as provided in two specified exceptions, the reenactment or amendment of a criminal statute operates prospectively and does not affect or abate any of the following:

- The prior operation of the statute or a prosecution or enforcement under the criminal statute;
- A violation of the criminal statute based on any act or omission occurring before the effective date of the act; and
- A prior penalty, prior forfeiture, or prior punishment incurred or imposed under the statute.¹⁶

The first exception is a retroactive amelioration exception that provides that if a penalty, forfeiture, or punishment for a violation of a criminal statute is reduced by a reenactment or an amendment of a criminal statute, the penalty, forfeiture, or punishment, if not already imposed, must be imposed according to the statute as amended.¹⁷ This means the penalty, forfeiture, or punishment reduction must be imposed retroactively *if the sentence has not been imposed*, including the situation in which the sentence is imposed after the effective date of the amendment. However, nothing in the general savings statute precludes the Legislature from providing for a more extensive retroactive application either to legislation in the future or legislation that was enacted prior to the effective date of the general savings statute. This is

¹² *Jimenez v. Jones*, 261 So.3d 502, 504 (Fla. 2018).

¹³ Section 775.022(2), F.S.

¹⁴ The Florida Supreme Court previously indicated that the “standard [is] that implied repeals are disfavored and should only be found in cases where there is a ‘positive repugnancy’ between the two statutes or ‘clear legislative intent’ indicating that the Legislature intended the repeal[.]” *Flo-Sun, Inc. v. Kirk*, 783 So.2d 1029, 1036 (Fla. 2001).

¹⁵ Section 775.022(1), F.S.

¹⁶ Section 775.022(3), F.S.

¹⁷ Section 775.022(4), F.S.

because the general savings statute specifically provides for a legislative exception to the default position of prospectivity. The Legislature only has to “expressly provide” for this retroactive application.¹⁸

The second exception relates to defenses and provides that the general savings statute does not limit the retroactive effect of any defense to a criminal statute enacted or amended by the Legislature to any criminal case that has not yet reached final judgment.¹⁹

III. Effect of Proposed Changes:

The bill amends s. 775.082(9), F.S., to reduce mandatory penalties applicable to a prison releasee reoffender. A prison releasee reoffender must be sentenced as follows:

- For a felony punishable by life, to a term of 25 years (current law requires life imprisonment);
- For first degree felony, to a term of imprisonment of 20 years (current law requires 30 years);
- For a second degree felony, to a term of imprisonment of 10 years (current law requires 15 years); and
- For a third degree felony, to a term of imprisonment of 3 years (current law requires 5 years).

The bill provides for retroactive application of the previously-described penalty changes to:

- A person who qualified as a prison releasee reoffender before July 1, 2020 (referred to in the bill as “former 775.082(9)”), and who was not sentenced as a prison releasee reoffender before July 1, 2020; and
- A person who qualified as a prison releasee reoffender before July 1, 2020, who was sentenced as such before July 1, 2020, to a mandatory minimum term of imprisonment pursuant to former s. 775.082(9), F.S., and who is serving such mandatory minimum term of imprisonment on or after July 1, 2020.

A person who qualified as a prison releasee reoffender before July 1, 2020, and who was not sentenced as a prison releasee reoffender before July 1, 2020, must be sentenced as provided in the bill (see previous description of changes to penalties).

A person who qualified as a prison releasee reoffender before July 1, 2020, who was sentenced as such before July 1, 2020, to a mandatory minimum term of imprisonment pursuant to former s. 775.082(9), F.S., and who is serving such mandatory minimum term of imprisonment on or after July 1, 2020, must be resentenced in the following manner:

- The Department of Corrections must notify this person of his or her eligibility to request a sentence review hearing.
- The person seeking sentence review may submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. The sentencing court retains original jurisdiction for the duration of the sentence for this purpose.
- A person who is eligible for this sentence review hearing is entitled to representation by legal counsel. If the person is indigent and unable to employ counsel, the court must appoint

¹⁸ Section 775.022(3), F.S.

¹⁹ Section 775.022(5), F.S.

counsel under s. 27.52, F.S. Determination of indigence and costs of representation is as provided in ss. 27.52 and 938.29, F.S.

- Upon receiving an application from an eligible person, the court of original jurisdiction must hold a sentence review hearing to determine if the eligible person meets the criteria for resentencing. If the court determines at the sentence review hearing that the eligible person meets such criteria, the court must resentence the person as provided in the bill (see previous description of changes to penalties); however, the new sentence may not exceed the person's original sentence with credit for time served. If the court determines that such person does not meet the criteria for resentencing, the court must provide written reasons why such person does not meet such criteria.
- A person resented as previously described is eligible to receive any gain-time pursuant to s. 944.275, F.S., he or she was previously ineligible to receive under former s. 775.082(9), F.S.

Because the bill expressly provides for retroactive application of the changes the bill makes, the bill has provided a legislative exception to the default position of prospectivity.

The bill modifies s. 775.082(9)(a)3., F.S., which currently provides that “upon proof from the state attorney that establishes by a preponderance of the evidence that a defendant is a prison releasee reoffender as defined in this section, such defendant is not eligible for sentencing under the sentencing guidelines and must be sentenced” under the penalties specified in s. 775.082(9), F.S. The bill removes reference to the “preponderance of evidence” standard of proof and ineligibility for sentencing under the sentencing guidelines. Neither of these changes appear to be substantive. Whether stated in the statute or not “preponderance of the evidence” would likely be the standard of proof because s. 775.082(9), F.S., does not increase the penalty beyond the statutory maximum.²⁰ Further, it does not need to be in the statute that a prison releasee reoffender is ineligible to be sentenced under the sentencing guidelines because s. 775.082(9), F.S., specifies that a prison releasee reoffender must be sentenced under that subsection.

The bill also removes language from s. 775.082(9), F.S., that:

- Indicates legislative intent that offenders previously released from prison or a county detention facility following incarceration for an offense for which the sentence pronounced was a prison sentence who meet the prison releasee reoffender criteria be punished to the fullest extent of the law.
- Requires a state attorney to explain in writing why he or she seeks prison releasee reoffender sanctions for an offender who meets prison releasee reoffender criteria.
- Prohibits a prison releasee reoffender from any form of early release.

The bill takes effect July 1, 2020.

²⁰ “In [*Apprendi v. New Jersey*, 530 U.S. 466 (2000)], the United States Supreme Court held that other than the fact of a prior conviction, any fact that increases the punishment for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. *Apprendi* is inapplicable to the Prison Releasee Reoffender Act, because the Act merely limits the court’s discretion in sentencing. It does not increase the penalty beyond the statutory maximum.” *Stabile v. State*, 790 So.2d 1235, 238 (Fla. 5th DCA 2001) (citations omitted), approved, 838 So.2d 557 (Fla. 2003).

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "negative significant" prison bed impact (a decrease of more than 25 prison beds.)²¹

The EDR provides the following information relevant to its preliminary estimate:

Per [Department of Corrections], in FY 18-19, there were 510 potentially eligible releasee reoffenders admitted to prison. Currently, there are 7,396 potentially eligible releasee reoffenders incarcerated with varying mandatory sentences:

²¹ The EDR's preliminary estimate is on file with the Senate Committee on Criminal Justice.

1,126 with 5 years, 3,579 with 15 years, 799 with 30 years, 1,750 with Life, and 142 listed as “Other” (sentence lengths that do not conform to the mandatory minimums). It should be noted that this is strictly releasee reoffender sentence length, rather than the full length of their prison sentences.

With the retroactive application of gain-time and lowered mandatory sentence lengths, the large number of offenders in the 5 years and 15 years groups with varying lengths of time spent in prison would likely be enough to have a significant impact on the prison population. However, without enough information on gain-time application and determination of eligibility, the bed impact cannot be quantified.²²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 775.082 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 February 4, 2020:

The committee substitute:

- Corrects incorrect date references relevant to resentencing provisions of the bill.
- Removes a provision of law that prohibits prison releasee reoffenders from eligibility for any form of early release.

B. Amendments:

None.

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

²² *Id.*



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 86 - 111
and insert:

~~(b) A person sentenced under paragraph (a) shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release. Any person sentenced under paragraph (a) must serve 100 percent of the court-imposed sentence.~~

(b)(c) ~~Nothing in~~ This subsection does not ~~shall~~ prevent a



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court from imposing a greater sentence of incarceration as authorized by law, pursuant to s. 775.084 or any other ~~provision~~ ~~of~~ law.

(c)(d)1. It is the intent of the Legislature to retroactively apply the amendments to this subsection which are effective on July 1, 2020.

2. As used in this paragraph, the term "former s. 775.082(9)" means s. 775.082(9) as it existed before the amendment of this subsection, which took effect on July 1, 2020.

3. A person who qualified as a prison releasee reoffender before July 1, 2020, and who was not sentenced as a prison releasee reoffender before July 1, 2020, may not be sentenced as such under former s. 775.082(9). Such person, if sentenced as a prison releasee reoffender, must be sentenced as provided in paragraph (a).

4. A person who qualified as a prison releasee reoffender before July 1, 2020, who was sentenced as such before July 1, 2020, to a mandatory minimum term of imprisonment pursuant to former s. 775.082(9), and who is serving such mandatory minimum term of imprisonment on or after July 1, 2020, must be

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

And the title is amended as follows:

Delete lines 4 - 6

and insert:

prison releasee reoffenders upon proof from a state attorney which establishes that a defendant is a prison releasee reoffender; deleting a provision that prohibits a prison releasee reoffender from



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40 eligibility for any form of early release and that
41 requires a prison releasee reoffender to serve 100
42 percent of the court-imposed sentence; providing
43 legislative

By Senator Brandes

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1 A bill to be entitled
 2 An act relating to sentencing; amending s. 775.082,
 3 F.S.; revising the required sentencing structure for
 4 prison release reoffenders upon proof from a state
 5 attorney which establishes that a defendant is a
 6 prison release reoffender; providing legislative
 7 intent; defining a term for the purpose of
 8 establishing applicability of a specified provision;
 9 applying the revised sentencing structure to certain
 10 persons under certain circumstances; providing
 11 resentencing requirements; deleting a provision
 12 relating to legislative intent; deleting a provision
 13 that requires a state attorney to explain a sentencing
 14 deviation in writing under certain circumstances;
 15 providing an effective date.
 16
 17 Be It Enacted by the Legislature of the State of Florida:
 18
 19 Section 1. Subsection (9) of section 775.082, Florida
 20 Statutes, is amended to read:
 21 775.082 Penalties; applicability of sentencing structures;
 22 mandatory minimum sentences for certain reoffenders previously
 23 released from prison.—
 24 (9) (a) 1. "Prison releasee reoffender" means any defendant
 25 who commits, or attempts to commit:
 26 a. Treason;
 27 b. Murder;
 28 c. Manslaughter;
 29 d. Sexual battery;

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

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30 e. Carjacking;
 31 f. Home-invasion robbery;
 32 g. Robbery;
 33 h. Arson;
 34 i. Kidnapping;
 35 j. Aggravated assault with a deadly weapon;
 36 k. Aggravated battery;
 37 l. Aggravated stalking;
 38 m. Aircraft piracy;
 39 n. Unlawful throwing, placing, or discharging of a
 40 destructive device or bomb;
 41 o. Any felony that involves the use or threat of physical
 42 force or violence against an individual;
 43 p. Armed burglary;
 44 q. Burglary of a dwelling or burglary of an occupied
 45 structure; or
 46 r. Any felony violation of s. 790.07, s. 800.04, s. 827.03,
 47 s. 827.071, or s. 847.0135(5);
 48
 49 within 3 years after being released from a state correctional
 50 facility operated by the Department of Corrections or a private
 51 vendor, a county detention facility following incarceration for
 52 an offense for which the sentence pronounced was a prison
 53 sentence, or a correctional institution of another state, the
 54 District of Columbia, the United States, any possession or
 55 territory of the United States, or any foreign jurisdiction,
 56 following incarceration for an offense for which the sentence is
 57 punishable by more than 1 year in this state.
 58 2. "Prison releasee reoffender" also means any defendant

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who commits or attempts to commit any offense listed in sub-
subparagraphs ~~(a)~~1.a.-r. while the defendant was serving a
prison sentence or on escape status from a state correctional
facility operated by the Department of Corrections or a private
vendor or while the defendant was on escape status from a
correctional institution of another state, the District of
Columbia, the United States, any possession or territory of the
United States, or any foreign jurisdiction, following
incarceration for an offense for which the sentence is
punishable by more than 1 year in this state.

3. If the state attorney determines that a defendant is a
prison releasee reoffender as defined in subparagraph 1., the
state attorney may seek to have the court sentence the defendant
as a prison releasee reoffender. Upon proof from the state
attorney which that establishes by a preponderance of the
evidence that a defendant is a prison releasee reoffender as
defined in this section, such defendant ~~is not eligible for~~
~~sentence under the sentencing guidelines~~ and must be sentenced
as follows:

a. For a felony punishable by life, to by a term of 25
years imprisonment for life;

b. For a felony of the first degree, to by a term of
imprisonment of 20 30 years;

c. For a felony of the second degree, to by a term of
imprisonment of 10 15 years; and

d. For a felony of the third degree, to by a term of
imprisonment of 3 5 years.

(b) A person sentenced under paragraph (a) shall be
released only by expiration of sentence and shall not be

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eligible for parole, control release, or any form of early
release. Any person sentenced under paragraph (a) must serve 100
percent of the court-imposed sentence.

(c) ~~Nothing in~~ This subsection does not shall prevent a
court from imposing a greater sentence of incarceration as
authorized by law, pursuant to s. 775.084 or any other ~~provision~~
~~of law~~.

(d)1. It is the intent of the Legislature to retroactively
apply the amendments to this subsection which are effective on
July 1, 2020.

2. As used in this paragraph, the term "former s.
775.082(9)" means s. 775.082(9) as it existed before the
amendment of this subsection, which took effect on July 1, 2020.

3. A person who qualified as a prison release reoffender
before July 1, 2010, and who was not sentenced as a prison
release reoffender before July 1, 2020, may not be sentenced as
such under former s. 775.082(9). Such person, if sentenced as a
prison release reoffender, must be sentenced as provided in
paragraph (a).

4. A person who qualified as a prison release reoffender
before July 1, 2010, who was sentenced as such before July 1,
2020, to a mandatory minimum term of imprisonment pursuant to
former s. 775.082(9), and who is serving such mandatory minimum
term of imprisonment on or after July 1, 2010, must be
resentenced in accordance with subparagraph 5. to a sentence as
provided in paragraph (a) and sub-subparagraph 5.d.

5. Resentencing must occur in the following manner:

a. The Department of Corrections shall notify a person
described in subparagraph 4. of his or her eligibility to

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request a sentence review hearing.

b. The person seeking sentence review may submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. The sentencing court retains original jurisdiction for the duration of the sentence for this purpose.

c. A person who is eligible for a sentence review hearing under this paragraph is entitled to representation by legal counsel. If the person is indigent and unable to employ counsel, the court must appoint counsel under s. 27.52. Determination of indigence and costs of representation is as provided in ss. 27.52 and 938.29.

d. Upon receiving an application from an eligible person, the court of original jurisdiction shall hold a sentence review hearing to determine if the eligible person meets the criteria for resentencing under subparagraph 4. If the court determines at the sentence review hearing that the eligible person meets such criteria, the court must resentence the person as provided in paragraph (a); however, the new sentence may not exceed the person's original sentence with credit for time served. If the court determines that such person does not meet the criteria for resentencing under subparagraph 4., the court must provide written reasons why such person does not meet such criteria.

6. A person resentenced pursuant to this subsection is eligible to receive any gain-time pursuant to s. 944.275 which he or she was previously ineligible to receive under former s. 775.082(9). ~~It is the intent of the Legislature that offenders previously released from prison or a county detention facility following incarceration for an offense for which the sentence~~

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~~pronounced was a prison sentence who meet the criteria in paragraph (a) be punished to the fullest extent of the law and as provided in this subsection, unless the state attorney determines that extenuating circumstances exist which preclude the just prosecution of the offender, including whether the victim recommends that the offender not be sentenced as provided in this subsection.~~

~~2. For every case in which the offender meets the criteria in paragraph (a) and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney.~~

Section 2. This act shall take effect July 1, 2020.

Racial/Ethnic Impact Statement

SB1716

Prepared by
Florida State University
College of Criminology & Criminal Justice

For
The Florida Senate Criminal Justice Committee



SB1716

Executive Summary

SB1716 amends s. 775.082(9), F.S. that defines a “prison releasee reoffender” (PRR) and the penalties for such an offender. The proposed amendment would revise the required sentencing structure for PRRs. The intent of the bill is to reduce the mandatory sentences for PRRs and apply the changes retroactively, to those sentenced before July 1, 2010. Research has not examined whether there are racial/ethnic differences among the offenders sentenced in accordance with Florida’s PRR Act. However, the PRR Act is similar to other mandatory sentencing policies such as three-strikes and habitual offender laws. Prior research on mandatory minimum penalties has found that Black offenders are more likely than any other race to be convicted and sentenced to prison for an offense carrying a mandatory minimum penalty. Using data from the Florida Department of Corrections (FDC) it was found that there is racial/ethnic disparity in the rate of qualifying offenders who were sentenced as PRRs that varied by felony type. Black offenders were more likely to be sentenced as PRRs for life and first degree felonies and White offenders were more likely to be sentenced as PRRs for second degree felonies.

Bill Summary

SB1716 amends s. 775.082(9), F.S., which defines a PRR and the penalties for such an offender. PRRs are those offenders, designated by the state attorney, who have been convicted of committing certain crimes within three years of release from state prison for a sentence that was more than 1 year. If the PRR designation is sought by the state attorney, a mandatory sentence is imposed and the offender is not eligible for gain time and must serve 100% of their sentence. SB1716 proposes to reduce the mandatory sentences for PRRs and applies these changes retroactively to those who qualified as a PRR prior to July 1, 2010. The bill also allows PRRs to be eligible for gain-time pursuant to s. 944.275, F.S.

The bill would revise the PRR sentencing structure as follows:

- For a felony punishable by life, the mandatory sentence would be changed from life imprisonment to a term of 25 years;
- For a felony of the first degree, the mandatory sentence would be changed from 30 years to 20 years;
- For a felony of the second degree, the mandatory sentence would be changed from 15 years to 10 years;
- For a felony of the third degree, the mandatory sentence would be changed from 5 years to 3 years.

Comparable Legislation and Prior Research

The PRR Act is unique to Florida. However, habitual offender and three-strikes laws are similar in that they provide mandatory sentences for offenders with multiple prior felony convictions. A list of select states that have habitual offender laws include: Alabama (s. 13A-5-9), Michigan (SB 1109, 2012), Delaware (SB 163, 2015), Hawaii (HB 1681, 2020), and Nebraska (LB 959, 2020). Most of these statutes define penalties for subsequent felony offenses, and distinguish penalties depending on the number of prior felony offenses. Hawaii and Nebraska have each proposed amendments to their habitual offender laws during the 2020 legislative session. Hawaii House Bill 1681 proposes to enhance sentencing penalties for habitual violent offenders. The bill proposes that these offenders be sentenced to both a mandatory minimum term of imprisonment of at least 30 years and a mandatory indeterminate life sentence. Nebraska’s Legislative Bill 959 proposes to limit the habitual classification to include only violent felonies.

Prior research has not examined potential racial/ethnic differences among offenders sentenced to prison under Florida's PRR Act. Research estimating the impact of PRR shortly after its implementation suggested that the Act resulted in large increases to the prison population, especially among offenders who otherwise would not have been sentenced to prison if they had not been designated as a PRR (Cuason, 1998; Griset, 2002). Although studies examining the racial/ethnic impact of PRR are not available, research has been conducted on the racial/ethnic impact of various other mandatory minimum sentencing policies. A 2011 study on Florida's habitual offender sentencing policy found that Black offenders were 22% more likely to be designated as a habitual offender and Hispanic offenders were 20% more likely to be designated as habitual offenders than White offenders (Caravelis, Chiricos, & Bales, 2011). The study found a larger disparity in habitual offender sentencing for property and drug offenses compared to violent offenses (Caravelis, et al., 2011).

In a 2008 study of California's three-strikes law, it was found that Black offenders were more likely than White offenders to receive a third-strike sentence, even after controlling for offense type, criminal history, and parole status (Chen, 2008). Notably, disparity in three-strikes sentences among Hispanic offenders was not found. Furthermore, the disparity in sentencing between Black and White offenders was more pronounced for property or drug offenses than violent offenses (Chen, 2008).

In a 2017 study on mandatory minimum penalties in the federal criminal justice system, it was found that Black offenders were more likely than any other race to have been convicted and sentenced to prison for an offense carrying a mandatory minimum penalty (U.S. Sentencing Commission, 2017). In 2016, 62.7% of Black offenders in prison were convicted of an offense carrying a mandatory minimum penalty, however, this percentage has been declining since 2010. The percentage of Hispanic offenders and offenders of other races convicted of an offense carrying a mandatory minimum penalty has also decreased since 2010. Conversely, the percentage of White offenders in prison convicted of an offense carrying a mandatory minimum penalty has been slowly increasing since 2004.

A recent study of federal sentencing outcomes found that criminal history was an important component in sentencing decisions and length (Franklin & Henry, 2020). Specifically, the authors found that Black and Hispanic offenders with fewer prior criminal convictions received harsher sentences than White offenders, however, White offenders with more serious criminal histories received harsher sentences.

Data and Methods for Racial/Ethnic Impact Forecast

Data from the FDC were used to prepare this racial/ethnic impact statement. Individuals who were released from FDC custody between 1994 and 2010, committed one of the offenses listed in s. 775.082(9)(a)1., F.S. were readmitted to FDC custody within three years of release, between June 1997 and June 2010, and are currently in FDC custody were included in the analyses. Based on eligibility criteria set forth in the bill, two offender category groups were created. The first group consisted of offenders who qualified as a PRR but were not sentenced under s. 775.082(9)(a)1., F.S. The second group consisted of offenders who qualified as a PRR and were sentenced under s. 775.082(9)(a)1., F.S. Racial disparities among the two groups were assessed. Under the proposed legislation, offenders not sentenced as PRR can request a hearing for possible changes to their sentence lengths, however, we will be unable to assess any potential racial disparity in those granted sentencing changes until after the legislation has been enacted and hearings take place.

It is important to note that many PRR offenders who were sentenced prior to 2010, as required by the amendment proposed in SB1716, are no longer under the custody of the FDC and have already completed their terms of imprisonment; this is especially true for third degree felony cases who tend to have shorter sentences, on average. Therefore, rates were not calculated for third degree felony offenders.

Results

As of June 21, 2019, there were 2,776 offenders in Florida's prisons who were readmitted between 1997 and 2010 and qualified for sentencing as a PRR. Of those, there were 1,681 offenders who were sentenced as PRRs and 1,095 offenders who qualified to be sentenced as PRRs but were not. The rates shown in Tables 1 and 2 are based on the total number of qualifying individuals who were admitted to prison between 1997 to 2010, by race and ethnicity. As shown in Table 1, Black offenders were more likely than White and Hispanic offenders to be sentenced as PRRs.

Table 1. Qualifying Prisoner Release Offenders (PRR) Admitted to Prison 1997 to 2010

Race/ Ethnicity	Qualifying Offenders Admitted	Sentenced as PRRs	Rate Sentenced as PRRs	Not Sentenced as PRRs	Rate Not Sentenced as PRRs
White	868	520	0.60	348	0.40
Black	1,721	1,057	0.61	664	0.39
Hispanic	187	104	0.56	83	0.44
Total	2,776	1,681	0.61	1,095	0.39

Table 2 provides the numbers and rates of offenders sentenced as PRRs and those who qualified but were not sentenced as PRRs, by felony type. For life and first degree felonies, Black offenders were more likely to be sentenced as PRRs, followed by White and Hispanic offenders. For second degree felonies, White offenders were more likely to be sentenced as PRRs and Black offenders had the lowest rate of PRR sentences.

**Table 2. Prisoner Release Offenders (PRRs) Currently in Prison
who were Sentenced from 1997 – 2010**

PRRs Who Were Sentenced to a Life/First Life Felony, by Race/Ethnicity					
	Committed a Life/First Life Felony	Not Sentenced as PRR		Sentenced as PRR	
Race/Ethnicity	Total	Frequency	Rate	Frequency	Rate
White	191	93	0.49	98	0.51
Black	588	254	0.43	334	0.57
Hispanic	44	23	0.52	21	0.48
PRRs Who Were Sentenced to a First Degree Felony, by Race/Ethnicity					
	Committed a First Degree Felony	Not Sentenced as PRR		Sentenced as PRR	
Race/Ethnicity	Total	Frequency	Rate	Frequency	Rate
White	171	94	0.55	77	0.45
Black	392	145	0.37	247	0.63
Hispanic	54	31	0.57	23	0.43
PRRs Who Were Sentenced to a Second Degree Felony, by Race/Ethnicity					
	Committed a Second Degree Felony	Not Sentenced as PRR		Sentenced as PRR	
Race/Ethnicity	Total	Frequency	Rate	Frequency	Rate
White	441	106	0.24	335	0.76
Black	643	198	0.31	445	0.69
Hispanic	77	20	0.26	57	0.74

Racial/Ethnic Impact Statement for the Bill

SB1716 amends s. 775.082(9), F.S. that defines a PRR and the penalties for such offenders. The proposed amendment would revise the required sentencing structure for offenders that had been designated as PRRs. Prior research has found that Black offenders are more likely to be sentenced to prison for an offense carrying a mandatory minimum penalty than are other racial/ethnic groups. Using data from the FDC, it was found that there is racial/ethnic disparity in the rate of qualifying offenders sentenced as PRRs that varied by felony type. Black offenders were more likely to be sentenced as PRRs for life and first degree felonies and White offenders were more likely to be sentenced as PRRs for second degree felonies.

References

- Caravelis, C., Chiricos, T., and Bales, W. (2011). Static and dynamic indicators of minority threat in sentencing outcomes: A multi-level analysis. *Journal of Quantitative Criminology*, 27: 405-425.
- Chen, E. Y. (2008). The liberation hypothesis and ethnic disparities in the application of California's three strikes law. *Journal of Ethnicity in Criminal Justice*, 6(2): 83-102.
- Cuason, D. M. (1998). Another three strikes law: An in depth look at Florida's prisoner release reoffender punishment act. *St. Thomas Law Review*, 10(3): 627-652.
- Franklin, T. W. and Henry, T. K. S. (2020). Racial disparities in federal sentencing outcomes: Clarifying the role of criminal history. *Crime & Delinquency*, 66(1): 3-32.
- Griset, P. L. (2002). New sentencing laws follow old patterns: A Florida case study. *Journal of Criminal Justice*, 30: 287-301.
- United States Sentencing Commission. (2017). *An Overview of Mandatory Minimum Penalties in the Federal Criminal Justice System*. Washington, DC.

Contributors

Racial/Ethnic Impact Statement

SB1716

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FLORIDA STATE UNIVERSITY
 COLLEGE OF CRIMINOLOGY & CRIMINAL JUSTICE

Racial/Ethnic Impact Statement

SB1716

Prepared by
Florida State University
College of Criminology & Criminal Justice

For
The Florida Senate Criminal Justice Committee



SB1716

Executive Summary

SB1716 amends s. 775.082(9), F.S. that defines a “prison releasee reoffender” (PRR) and the penalties for such offenders. The proposed amendment would revise the required sentencing structure for PRRs. The intent of the bill is to reduce the mandatory sentences for PRRs and apply the changes retroactively, to those sentenced before July 1, 2020. Research has not examined whether there are racial/ethnic differences among the offenders sentenced in accordance with Florida’s PRR Act. However, the PRR Act is similar to other mandatory sentencing policies such as three-strikes and habitual offender laws. Prior research on mandatory minimum penalties has found that Black offenders are more likely than any other race to be convicted and sentenced to prison for an offense carrying a mandatory minimum penalty. Using data from the Florida Department of Corrections (FDC), it was found that there is racial/ethnic disparity in the rate of qualifying offenders sentenced as PRRs. Black offenders were more likely to be sentenced as PRRs for all felony types than were Hispanic and White offenders.

Bill Summary

SB1716 amends s. 775.082(9), F.S., which defines a PRR and the penalties for such offenders. PRRs are those offenders, designated by the state attorney, who have been convicted of committing certain crimes within three years of release from state prison for a sentence that was more than 1 year. If the PRR designation is sought by the state attorney, a mandatory sentence is imposed and the offender is not eligible for gain time and must serve 100% of their sentence. SB1716 proposes to reduce the mandatory sentences for PRRs and applies these changes retroactively to those who qualified as a PRR prior to July 1, 2020. The bill also allows PRRs to be eligible for gain-time pursuant to s. 944.275, F.S.

The bill would revise the PRR sentencing structure as follows:

- For a felony punishable by life, the mandatory sentence would be changed from life imprisonment to a term of 25 years;
- For a felony of the first degree, the mandatory sentence would be changed from 30 years to 20 years;
- For a felony of the second degree, the mandatory sentence would be changed from 15 years to 10 years;
- For a felony of the third degree, the mandatory sentence would be changed from 5 years to 3 years.

Comparable Legislation and Prior Research

The PRR Act is unique to Florida. However, habitual offender and three-strikes laws are similar in that they provide mandatory sentences for offenders with multiple prior felony convictions. A list of select states that have habitual offender laws include: Alabama (s. 13A-5-9), Michigan (SB 1109, 2012), Delaware (SB 163, 2015), Hawaii (HB 1681, 2020), and Nebraska (LB 959, 2020). Most of these statutes define penalties for subsequent felony offenses, and distinguish penalties depending on the number of prior felony offenses. Hawaii and Nebraska have each proposed amendments to their habitual offender laws during the 2020 legislative session. Hawaii House Bill 1681 proposes to enhance sentencing penalties for habitual violent offenders. The bill proposes that these offenders be sentenced to both a mandatory minimum term of imprisonment of at least 30 years and a mandatory indeterminate life sentence. Nebraska’s Legislative Bill 959 proposes to limit the habitual classification to include only violent felonies.

Prior research has not examined potential racial/ethnic differences among offenders sentenced to prison under Florida's PRR Act. Research estimating the impact of PRR shortly after its implementation suggested that the Act resulted in large increases to the prison population, especially among offenders who otherwise would not have been sentenced to prison if they had not been designated as a PRR (Cuason, 1998; Griset, 2002). Although studies examining the racial/ethnic impact of PRR are not available, research has been conducted on the racial/ethnic impact of various other mandatory minimum sentencing policies. A 2011 study on Florida's habitual offender sentencing policy found that Black offenders were 22% more likely to be designated as a habitual offender and Hispanic offenders were 20%, more likely to be designated as habitual offenders than White offenders (Caravelis, Chiricos, & Bales, 2011). The study found a larger disparity in habitual offender sentencing for property and drug offenses compared to violent offenses (Caravelis, et al., 2011).

In a 2008 study of California's three-strikes law, it was found that Black offenders were more likely than White offenders to receive a third-strike sentence, even after controlling for offense type, criminal history, and parole status (Chen, 2008). Notably, disparity in three-strikes sentences among Hispanic offenders was not found. Furthermore, the disparity in sentencing between Black and White offenders was more pronounced for property or drug offenses than violent offenses (Chen, 2008, p. 98).

In a 2017 study on mandatory minimum penalties in the federal criminal justice system, it was found that Black offenders were more likely than any other race to have been convicted and sentenced to prison for an offense carrying a mandatory minimum penalty (U.S. Sentencing Commission, 2017). In 2016, 62.7% of Black offenders in prison were convicted of an offense carrying a mandatory minimum penalty, however, this percentage has been declining since 2010. The percentage of Hispanic offenders and offenders of other races convicted of an offense carrying a mandatory minimum penalty has also decreased since 2010. Conversely, the percentage of White offenders in prison convicted of an offense carrying a mandatory minimum penalty has been slowly increasing since 2004.

A recent study of federal sentencing outcomes found that criminal history was an important component in sentencing decisions and length (Franklin & Henry, 2020). Specifically, the authors found that Black and Hispanic offenders with fewer prior criminal convictions received harsher sentences than White offenders, however, White offenders with more serious criminal histories received harsher sentences.

Data and Methods for Racial/Ethnic Impact Forecast

Data from the FDC were used to prepare this racial/ethnic impact statement. Individuals who were released from FDC custody between 1994 and 2019, committed one of the offenses listed in s. 775.082(9)(a)1., F.S. were readmitted to FDC custody within three years of release, between June 1997 and June 2019, and are currently in FDC custody were included in the analyses.

Based on eligibility criteria set forth in the bill, two offender category groups were created. The first group consisted of offenders who qualified as a PRR but were not sentenced under s. 775.082(9)(a)1., F.S. The second group consisted of offenders who qualified as a PRR and were sentenced under s. 775.082(9)(a)1., F.S. Racial disparities among the two groups were assessed. It is important to note that under the proposed legislation, offenders not sentenced as PRR can request a hearing for possible changes to their sentence lengths, however, we will be unable to assess any potential racial disparity in those granted sentencing changes until after the legislation has been enacted and hearings take place.

Results

As of June 21, 2019, there were 9,465 offenders in Florida's prisons who were readmitted between 1997 and 2019 and qualified for sentencing as a PRR. Of those, 3,757 offenders were sentenced as PRRs and 5,708 offenders who qualified to be sentenced as PRRs but were not. The rates shown in Tables 1 and 2 are based on the total number of qualifying offenders who were admitted to prison between 1997 to 2019, by race and ethnicity. As shown in Table 1, Black offenders were more likely than White and Hispanic offenders to be sentenced as PRRs.

Table 1. Qualifying Prisoner Release Offenders (PRR) Admitted to Prison 1997 to 2019

Race/ Ethnicity	Qualifying Offenders Admitted	Sentenced as PRRs	Rate Sentenced as PRRs	Not Sentenced as PRRs	Rate Not Sentenced as PRRs
White	3,480	1,292	0.37	2,188	0.63
Black	5,091	2,188	0.43	2,903	0.57
Hispanic	894	277	0.31	617	0.69
Total	9,465	3,757	0.40	5,708	0.60

Table 2 provides the numbers and rates of offenders sentenced as PRRs and those who qualified but were not sentenced as PRRs, by felony type. Black offenders were more likely to be sentenced as PRRs than were Hispanic and White offenders for all felony types: life/first degree, first degree, second degree, and third degree.

**Table 2. Prisoner Release Offenders (PRRs) Currently in Prison
who were Sentenced from 1997 - 2019**

PRRs Who Were Sentenced to a Life/First Life Felony, By Race/Ethnicity					
	Committed a Life/First Life Felony	Not Sentenced as PRR		Sentenced as PRR	
Race/Ethnicity	Total	Frequency	Rate	Frequency	Rate
White	585	388	0.66	197	0.34
Black	1,518	923	0.61	595	0.39
Hispanic	205	151	0.74	54	0.26
PRRs Who Were Sentenced to a First Degree Felony, By Race/Ethnicity					
	Committed a First Degree Felony	Not Sentenced as PRR		Sentenced as PRR	
Race/Ethnicity	Total	Frequency	Rate	Frequency	Rate
White	534	385	0.72	149	0.28
Black	993	589	0.59	404	0.41
Hispanic	190	148	0.78	42	0.22
PRRs Who Were Sentenced to a Second Degree Felony, By Race/Ethnicity					
	Committed a Second Degree Felony	Not Sentenced as PRR		Sentenced as PRR	
Race/Ethnicity	Total	Frequency	Rate	Frequency	Rate
White	1,625	871	0.54	754	0.46
Black	1,847	900	0.49	947	0.51
Hispanic	356	212	0.60	144	0.40
PRRs Who Were Sentenced to a Third Degree Felony, By Race/Ethnicity					
	Committed a Third Degree Felony	Not Sentenced as PRR		Sentenced as PRR	
Race/Ethnicity	Total	Frequency	Rate	Frequency	Rate
White	624	452	0.72	172	0.28
Black	554	363	0.66	191	0.34
Hispanic	121	87	0.72	34	0.28

Racial/Ethnic Impact Statement for the Bill

SB1716 amends s. 775.082(9), F.S. that defines a PRR and the penalties for such offenders. The proposed amendment would revise the required sentencing structure for offenders that had been designated as PRRs. Prior research has found that Black offenders are more likely to be sentenced to prison for an offense carrying a mandatory minimum penalty than are other racial/ethnic groups. Using data from the FDC, it was found that there is racial/ethnic disparity in the rate of qualifying offenders sentenced as PRRs. Black offenders were more likely to be sentenced as PRRs for all felony types than were Hispanic and White offenders.

References

- Caravelis, C., Chiricos, T., and Bales, W. (2011). Static and dynamic indicators of minority threat in sentencing outcomes: A multi-level analysis. *Journal of Quantitative Criminology*, 27: 405-425.
- Chen, E. Y. (2008). The liberation hypothesis and ethnic disparities in the application of California's three strikes law. *Journal of Ethnicity in Criminal Justice*, 6(2): 83-102.
- Cuason, D. M. (1998). Another three strikes law: An in depth look at Florida's prisoner release reoffender punishment act. *St. Thomas Law Review*, 10(3): 627-652.
- Franklin, T. W. and Henry, T. K. S. (2020). Racial disparities in federal sentencing outcomes: Clarifying the role of criminal history. *Crime & Delinquency*, 66(1): 3-32.
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Racial/Ethnic Impact Statement SB1716

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SB 1716 – Sentencing

This bill amends s. 775.082, F.S., removing “preponderance of evidence” for how a state attorney establishes that a defendant is a prison release reoffender, as well as deleting that the defendant “is not eligible for sentencing under the sentencing guidelines.” Furthermore, it adjusts how the prison release reoffenders must be sentenced to the following:

- for a felony punishable by life, to a term of 25 years (currently Life)
- for a felony of the 1st degree, to a term of 20 years (currently 30 years)
- for a felony of the 2nd degree, to a term of 10 years (currently 15 years)
- for a felony of the 3rd degree, to a term of 3 years (currently 5 years)

This would also apply retroactively to those offenders currently incarcerated and those not sentenced before the effective date. A process for resentencing currently incarcerated offenders is explained in detail, with the note that if DOC and the court of original jurisdiction determine eligibility, they must be resentenced under the new statutory language. Additionally, all prison release reoffenders would now be eligible for gain-time, with those currently incarcerated receiving any gain-time not accrued prior to passage of the law. This law would go into effect on July 1, 2020.

Per DOC, in FY 18-19, there were 510 potentially eligible release reoffenders admitted to prison. Currently, there are 7,396 potentially eligible release reoffenders incarcerated with varying mandatory sentences: 1,126 with 5 years, 3,579 with 15 years, 799 with 30 years, 1,750 with Life, and 142 listed as “Other” (sentence lengths that do not conform to the mandatory minimums). It should be noted that this is strictly release reoffender sentence length, rather than the full length of their prison sentences.

With the retroactive application of gain-time and lowered mandatory sentence lengths, the large number of offenders in the 5 years and 15 years groups with varying lengths of time spent in prison would likely be enough to have a significant impact on the prison population. However, without enough information on gain-time application and determination of eligibility, the bed impact cannot be quantified.

EDR PROPOSED ESTIMATE: Negative Significant

Requested by: Senate

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-4-20
Meeting Date

1716
Bill Number (if applicable)

Topic SENTENCING

Amendment Barcode (if applicable)

Name SAL NUZZO

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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.

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/4/2020

Meeting Date

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

1716

Bill Number (if applicable)

Topic

Sentencing

Amendment Barcode (if applicable)

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Speaking:

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For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

FAEDL

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)

2-4-20

Meeting Date

1716

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

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☒

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☐

Against

☐

Information

Waive Speaking:

☐

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☐

Against

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

Representing

FAMM

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2/4/20
Meeting Date

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

1716
97410
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Right on Crime

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2 4 20

Meeting Date

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

1716

Bill Number (if applicable)

Topic SENTENCING

Amendment Barcode (if applicable)

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Representing TALLAHASSEE VETERANS LEGAL COLLABORATIVE

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

2/4/20

Meeting Date

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

1716

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

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Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

2/4/20

Meeting Date

1716

Bill Number (if applicable)

Topic Resentencing

Amendment Barcode (if applicable)

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Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

2/4/2020

Meeting Date

1716

Bill Number (if applicable)

Topic Bill 1716

Amendment Barcode (if applicable)

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

Representing Myself

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)

2-4-20

Meeting Date

SB 1716

Bill Number (if applicable)

Topic CRIMINAL JUSTICE - SENTENCING

Amendment Barcode (if applicable)

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Keith Perry
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 21, 2019

I respectfully request that **Senate Bill #1716**, relating to **Sentencing**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

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

Senator Jeff Brandes
Florida Senate, District 24

The Florida Senate
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 1880

INTRODUCER: Senator Perry

SUBJECT: Restitution for Juvenile Offenses

DATE: January 27, 2020

REVISED: 02/03/20

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wagoner	Jones	CJ	Pre-meeting
2.			JU	
3.			AP	

I. Summary:

SB 1880 adopts a uniform set of conditions of restitution when a child is found to have committed a delinquent act, regardless of whether the child is adjudicated delinquent or adjudication is withheld.

The bill requires the court to order the child and the child's parent or guardian who has current custody of and parental responsibility for the child to pay restitution when the court has determined that restitution is appropriate. The bill authorizes the court to:

- Set up a payment plan if the child and the parent or legal guardian are unable to pay the restitution in one lump-sum payment; and
- Absolve the parent or guardian of any liability for restitution if, after a hearing, the court finds that the current offense is the child's first referral and the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts; or the victim entitled to restitution is the child's parent or legal guardian.

The bill clarifies that the following entities are not considered a guardian responsible for restitution for the delinquent acts of a child: the Department of Children and Families, a foster parent, the community-based care lead agency supervising placement of the child, or a residential child-caring agency or family foster home.

The bill's fiscal impact is indeterminate. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2020.

II. Present Situation:

Juvenile Cases in which the Court enters an Adjudication of Delinquency

A court may order children who are adjudicated delinquent of a crime into a probation program or a postcommitment probation program.¹ If the court orders probation for the child, the probation program must include a penalty component such as restitution in money or in kind, community service, a curfew, revocation or suspension of the child's driver license, or other appropriate punishment that is non-residential.² Additionally, the probation program must include a rehabilitative component such as participation in substance abuse treatment or in a school or educational program.³ The probation program may also include an alternative consequence component to address instances in which a child is noncompliant with technical conditions of his or her probation.⁴

Restitution

Section 985.437, F.S., authorizes a court with jurisdiction over a child who has been adjudicated delinquent to order the child to pay restitution to the victim for any damage⁵ or loss caused by the child's offense⁶ in a reasonable amount or manner. The court may order the child to make restitution in money, through a promissory note cosigned by the child's parent or guardian⁷, or in kind.⁸ When restitution is ordered by the court, the amount of restitution may not exceed an amount the child or the child's parent or guardian could reasonably be expected to pay or make.⁹ However, the child's parent or guardian may be absolved of any such liability for restitution if the court finds, after a hearing, that the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts.¹⁰ Additionally, s. 985.513, F.S., provides that the court may order the parent or guardian of a child adjudicated delinquent to make restitution in money or in kind for any damage or loss caused by the child's offense.

¹ Section 985.435(1), F.S.

² Section 985.435(2), F.S.

³ Section 985.435(3), F.S.

⁴ Section 985.435(4), F.S.

⁵ "Any damage" has been interpreted by Florida courts to include damage for pain and suffering. *C.W. v. State*, 655 So.2d 87 (Fla. 1995).

⁶ The damage or loss must be directly or indirectly related to the child's offense or criminal episode. *L.R.L. v. State*, 9 So.3d 714 (Fla. 2d DCA 2009).

⁷ Section 985.437, F.S., does not specifically exempt the Department of Children and Families, a foster parent, or any other entity considered a guardian of a dependent child from the restitution requirements of this section.

⁸ Section 985.437(2), F.S. A parent or guardian cannot be ordered to pay restitution for offenses committed by their minor child without the court providing the parent meaningful notice, an opportunity to be heard, and a determination of the parent or guardian's ability to pay. See *S.B.L. v. State*, 737 So. 2d 1131, 1132-33 (Fla. 1st DCA 1999) (holding that the trial court violated the mother's due process right by ordering her to pay restitution without affording her meaningful opportunity to be heard at the restitution hearing); *A.T. v. State*, 706 So. 2d 109, 109 (Fla. 2d DCA 1998) (trial court erred by ordering the juvenile and her mother to pay restitution without making a determination of either's ability to do so); *C.D.D. v. State*, 684 So. 2d 866, 867 (Fla. 2d DCA 1996) (holding that the trial court was required to consider the juvenile's and mother's ability to pay before imposing a restitution order).

⁹ Section 985.437(2), F.S.

¹⁰ Section 985.437(4), F.S.

To enter an order of restitution, a court must first conduct a restitution hearing addressing the child's ability to pay and the amount of restitution to which the victim is entitled.¹¹ A restitution hearing is not required if the child previously entered into an agreement to pay¹² or has waived his or her right to attend a restitution hearing.¹³

The clerk of the circuit court receives and dispenses restitution payment.¹⁴ If restitution is not made, the clerk must notify the court.¹⁵ The court may retain jurisdiction over a child and the child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied.¹⁶ If a child or parent fails to pay court-ordered restitution, a civil lien may be placed upon the real property of the child or parent.¹⁷ The court may transfer a restitution order to a collection court or a private collection agent to collect unpaid restitution.¹⁸

Juvenile Cases in which the Court enters a Withheld of Adjudication

Section 985.35, F.S., provides that if the court finds that the child has committed a delinquent act, it may enter an order stating the facts upon which its finding is based but withholding adjudication of delinquency. Upon withholding adjudication of delinquency, the court may place the child in a probation program.¹⁹ The court may impose, as a condition of the program, a penalty component, including restitution in money or in kind, or a rehabilitative component.²⁰ Such components are identical to those available for adjudications of delinquency, however, the imposition of program conditions are not mandatory when the court withholds adjudication.²¹

III. Effect of Proposed Changes:

The bill adopts a uniform set of conditions of restitution when a child is found to have committed a delinquent act, regardless of whether the child is adjudicated delinquent or adjudication is withheld.

The bill requires the court to order the child *and* the child's parent or guardian *who has current custody of and parental responsibility for the child* to pay restitution when the court has determined that restitution is appropriate.

¹¹ *J.G. v. State*, 978 So.2d 270 (Fla. 4th DCA 2008). If a court intends to establish an amount of restitution based solely on evidence adduced at a hearing of a charge of delinquency, the juvenile must be given notice.

¹² *T.P.H. v. State*, 739 So.2d 1180 (Fla. 4th DCA 1999).

¹³ *T.L. v. State*, 967 So.2d 421 (Fla. 1st DCA 2007).

¹⁴ Section 985.437(3), F.S.

¹⁵ *Id.*

¹⁶ Section 985.0301(5)(d), F.S.

¹⁷ Section 985.0301(5)(d), F.S., provides that the terms of restitution orders in juvenile criminal cases are subject to s. 775.089(5), F.S. That section provides that a restitution order may be enforced in the same manner as a judgment in a civil action.

¹⁸ Section 985.045(5), F.S.

¹⁹ Section 985.35(4), F.S.

²⁰ *Id.*

²¹ *Id.*

The bill provides that a court may establish a payment plan that reflects ability to pay the restitution amount when the child and the child's parent or guardian are unable to make restitution in kind or to pay the restitution in one lump-sum payment.

Currently, a child's parent or guardian who the court finds has made diligent and good faith efforts to prevent the child's delinquency is absolved from liability for restitution. Under the bill, this ground for avoiding liability is limited to circumstances in which the child is making his or her first referral to the delinquency system. Additionally, the bill provides that a parent or guardian is not liable for damages or losses if a parent or guardian is the victim of the child's offense.

The bill provides that the following entities are not considered a guardian responsible for restitution for the delinquent acts of a child: the Department of Children and Families, a foster parent, the community-based care lead agency supervising placement of the child, or a residential child-caring agency²² or family foster home.²³

The bill amends s. 985.35, F.S., to conform to the changes made in the act.

The bill amends s. 985.513, F.S., to remove duplicative provisions.

The bill is effective July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

²² "Residential child-caring agency" means any person, corporation, or agency, public or private, other than the child's parent or legal guardian, that provides staffed 24-hour care for children in facilities maintained for that purpose, regardless of whether operated for profit or whether a fee is charged. Such agencies do not include hospitals, boarding schools, summer or recreation camps, nursing homes, or facilities operated by a governmental agency for the training, treatment, or secure care of delinquent youth. Section 409.175, F.S.

²³ "Family foster home" means a residence licensed by the Department of Children and Families in which children who are unattended by a parent or legal guardian are provided 24-hour care. Section 409.175, F.S.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may provide greater potential for victims to receive all or a portion of restitution. Parents ordered to pay restitution on behalf of a child may avoid a civil lien if they cannot pay restitution in a lump-sum as the bill authorizes payment plans.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) reports that the fiscal impact of the bill is indeterminate. The bill expands on the types of cases that qualify for court-ordered restitution by including when adjudication is withheld, resulting in a likely increase in the number of post-judgment and compliance hearings. Additionally, the bill limits those parents and guardians that may seek to be absolved from liability for restitution by showing diligent and good faith efforts to prevent the child from further delinquent acts by requiring an additional finding that it is the child's first referral to the delinquency system. This would significantly reduce the number of parents and guardians eligible to seek to be absolved from liability for restitution. Further, the OSCA reports that the establishment of payment plans will likely result in fewer court hearings for parties failing to pay full amounts of restitution.²⁴

The OSCA further reports that the length of hearings will increase due to the following procedural changes under the bill:

- Judges will be required to inform a child's parent or guardian of the consequences of failing to pay restitution.
- Courts will be required to further ascertain the child's parent or guardian's ability to pay restitution.
- Judges will have to address evidentiary issues and hear testimony to determine whether the parties' have current custody and parental responsibility of the child in cases where the parents are separated, divorced, or if the child is living with a relative.²⁵

VI. Technical Deficiencies:

None.

²⁴ Office of the State Courts Administrator, *2020 Judicial Impact Statement for SB 1880*, (January 27, 2020) (on file with the Senate Criminal Justice Committee).

²⁵ *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 985.35, 985.437, and 985.513.

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

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

None.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/04/2020	.	
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The Committee on Criminal Justice (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 985.437, Florida Statutes, is amended to
read:

985.437 Restitution.—

(1) Regardless of whether adjudication is imposed or
withheld, the court that has jurisdiction over a ~~an adjudicated~~
~~delinquent~~ child may, by an order stating the facts upon which a



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determination of a sanction and rehabilitative program was made at the disposition hearing, order the child and the child's parent or guardian to make restitution in the manner provided in this section. This order shall be part of the child's probation program to be implemented by the department or, in the case of a committed child, as part of the community-based sanctions ordered by the court at the disposition hearing or before the child's release from commitment.

(2) If the court orders restitution, the court shall may order the child and the child's parent or guardian, as provided under s. 985.513, to make restitution in money, through a promissory note signed by the child and cosigned by the child's parent or guardian, or in kind for any damage or loss caused by the child's offense in a reasonable amount or manner to be determined by the court. When restitution is ordered by the court, the amount of restitution may not exceed an amount the child and the child's parent or guardian could reasonably be expected to pay or make. If the child and the child's parent or guardian are unable to make restitution in kind or pay the restitution in one lump sum, the court may establish a payment plan based on the child's and the child's parent or guardian's ability to pay the restitution amount.

(3) The clerk of the circuit court shall be the receiving and dispensing agent. In such case, the court shall order the child and ~~or~~ the child's parent or guardian to pay to the office of the clerk of the circuit court an amount not to exceed the actual cost incurred by the clerk as a result of receiving and dispensing restitution payments. The clerk shall notify the court if restitution is not made or if a restitution payment



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plan is not followed, and the court shall take any further action that is necessary against the child and ~~or~~ the child's parent or guardian.

~~(4) A finding by the court, after a hearing, that the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts absolves the parent or guardian of liability for restitution under this section.~~

~~(5)~~ The court may retain jurisdiction over a child and the child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied or until the court orders otherwise, as provided in s. 985.0301.

Section 2. Section 985.513, Florida Statutes, is amended to read:

985.513 Powers of the court over parent or guardian at disposition.—

(1) The court that has jurisdiction over an adjudicated delinquent child may, by an order stating the facts upon which a determination of a sanction and rehabilitative program was made at the disposition hearing, ~~÷~~

~~(a)~~ order the child's parent or guardian, together with the child, to render community service in a public service program or to participate in a community work project. In addition to the sanctions imposed on the child, the court may order the child's parent or guardian to perform community service if the court finds that the child's parent or guardian did not make a diligent and good faith effort to prevent the child from engaging in delinquent acts.

(2) Regardless of whether adjudication is imposed or



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withheld, if the court orders restitution under s. 985.437, the court shall order the child and the child's parent or guardian to make restitution in money, through a promissory note signed by the child and cosigned by the child's parent or guardian, or in kind for any damage or loss caused by the child's offense.

~~(b) Order the parent or guardian to make restitution in money or in kind for any damage or loss caused by the child's offense. The court may also require the child's parent or legal guardian to be responsible for any restitution ordered against the child, as provided under s. 985.437.~~ The court shall determine a reasonable amount or manner of restitution, and payment shall be made to the clerk of the circuit court as provided in s. 985.437. The court may retain jurisdiction, as provided under s. 985.0301, over the child and the child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied or the court orders otherwise.

(a) The child's parent or guardian may be absolved of liability for restitution ordered under this chapter if:

1. After a hearing, the court finds that it is the child's first referral to the delinquency system and that the child's parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts;

2. The victim entitled to restitution is the child's parent or guardian; or

3. The parent or guardian did not, at any time relevant to the proceedings under this chapter, have custody of or parental responsibility for the child.

(b) For purposes of this section, the Department of



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Children and Families, a foster parent with whom the child is placed, the community-based care lead agency supervising the placement of the child pursuant to a contract with the Department of Children and Families, or a facility licensed or registered under s. 409.175 or s. 409.176 is not considered a parent guardian responsible for restitution for the delinquent acts of a child who is found to be dependent as defined in s. 39.01.

~~(3)~~⁽²⁾ Notwithstanding whether adjudication is imposed or withheld, the court may order the natural parents or legal custodian or guardian of a child who is found to have committed a delinquent act to participate in family counseling and other professional counseling activities deemed necessary for the rehabilitation of the child or to enhance their ability to provide the child with adequate support, guidance, and supervision. The court may also order that the parent, custodian, or guardian support the child and participate with the child in fulfilling a court-imposed sanction. In addition, the court may use its contempt powers to enforce a court-imposed sanction.

Section 3. This act shall take effect October 1, 2020.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to restitution for juvenile offenses;
amending s. 985.437, F.S.; providing a uniform set of



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conditions of restitution for juvenile offenses,
regardless of whether adjudication is imposed or
withheld; requiring a child's parent or guardian, in
addition to the child, to make restitution for damage
or loss caused by the child's offense; authorizing the
court to establish a payment plan in certain
circumstances; requiring notification to the court if
a payment plan is not followed; removing duplicative
provisions; amending s. 985.513, F.S.; providing a
uniform set of conditions for jurisdiction over a
child's parent or guardian concerning restitution,
regardless of whether adjudication is imposed or
withheld; authorizing the child's parent or guardian
to be absolved of liability for restitution in certain
circumstances; authorizing the court to order
restitution to be paid only by the parents or
guardians who have concurrent custody and parental
responsibility; providing that the Department of
Children and Families, foster parents, and specified
facilities are agencies are not considered parents or
guardians for purposes of restitution; providing an
effective date.



156254

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/03/2020	.	
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The Committee on Criminal Justice (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete lines 95 - 122

and insert:

Section 3. Section 985.513, Florida Statutes, is amended to read:

985.513 Powers of the court over parent or guardian at disposition.—

(1) The court that has jurisdiction over an adjudicated delinquent child may, by an order stating the facts upon which a



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determination of a sanction and rehabilitative program was made at the disposition hearing, ~~÷~~

~~(a)~~ order the child's parent or guardian, together with the child, to render community service in a public service program or to participate in a community work project. In addition to the sanctions imposed on the child, the court may order the child's parent or guardian to perform community service if the court finds that the child's parent or guardian did not make a diligent and good faith effort to prevent the child from engaging in delinquent acts.

~~(b) Order the parent or guardian to make restitution in money or in kind for any damage or loss caused by the child's offense. The court may also require the child's parent or legal guardian to be responsible for any restitution ordered against the child, as provided under s. 985.437. The court shall determine a reasonable amount or manner of restitution, and payment shall be made to the clerk of the circuit court as provided in s. 985.437.~~

(2) Notwithstanding whether adjudication is imposed or withheld, the court may retain jurisdiction, as provided under s. 985.0301, over the child and the child's parent or legal guardian whom the court has ordered to make restitution in kind or pay restitution until the restitution order is satisfied or the court orders otherwise.

(3) ~~(2)~~ Notwithstanding whether adjudication is imposed or withheld, the court may order the natural parents or legal custodian or guardian of a child who is found to have committed a delinquent act to participate in family counseling and other professional counseling activities deemed necessary for the



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rehabilitation of the child or to enhance their ability to provide the child with adequate support, guidance, and supervision. The court may also order that the parent, custodian, or guardian support the child and participate with the child in fulfilling a court-imposed sanction. In addition, the court may use its contempt powers to enforce a court-imposed sanction.

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

And the title is amended as follows:

Delete lines 3 - 18

and insert:

amending s. 985.437, F.S.; providing a uniform set of conditions of restitution for juvenile offenses, regardless of whether adjudication is imposed or withheld; requiring a child's parent or guardian, in addition to the child, to make restitution for damage or loss caused by the child's offense; authorizing the court to establish a payment plan in certain circumstances; authorizing the child's parent or guardian to be absolved of liability for restitution in certain circumstances; authorizing the court to order restitution to be paid only by the parents or guardians who have current custody and parental responsibility; providing that the Department of Children and Families, foster parents, and specified facilities and agencies are not guardians for purposes of restitution; amending s. 985.35, F.S.; conforming provisions to changes made by the act; amending s.



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69 985.513, F.S.; removing duplicative provisions;
70 conforming provisions to changes made by the act;
71 providing an effective date.

By Senator Perry

8-00302-20

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A bill to be entitled

An act relating to restitution for juvenile offenses; amending s. 985.35, F.S.; conforming provisions to changes made by the act; amending s. 985.437, F.S.; requiring a child's parent or guardian, in addition to the child, to make restitution for damage or loss caused by the child's offense; authorizing the court to establish a payment plan in certain circumstances; authorizing the child's parent or guardian to be absolved of liability for restitution in certain circumstances; authorizing the court to order restitution to be paid only by the parents or guardians who have current custody and parental responsibility; providing that the Department of Children and Families, foster parents, and specified facilities and agencies are not guardians for purposes of restitution; amending s. 985.513, F.S.; removing duplicative provisions; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) of section 985.35, Florida Statutes, is amended to read:

985.35 Adjudicatory hearings; withheld adjudications; orders of adjudication.—

(4) If the court finds that the child named in the petition has committed a delinquent act or violation of law, it may, in its discretion, enter an order stating the facts upon which its finding is based but withholding adjudication of delinquency.

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

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(a) Upon withholding adjudication of delinquency, the court may place the child in a probation program under the supervision of the department or under the supervision of any other person or agency specifically authorized and appointed by the court. The court may, as a condition of the program, impose as a penalty component restitution in money or in kind to be made by the child and the child's parent or guardian as provided in s. 985.437, community service, a curfew, urine monitoring, revocation or suspension of the driver license of the child, or other nonresidential punishment appropriate to the offense, and may impose as a rehabilitative component a requirement of participation in substance abuse treatment, or school or other educational program attendance.

Section 2. Present subsection (5) of section 985.437, Florida Statutes, is renumbered as subsection (7), a new subsection (5) and subsection (6) are added to that section, and subsections (1), (2), and (4) of that section are amended, to read:

985.437 Restitution.—

(1) Regardless of whether adjudication is imposed or withheld, the court that has jurisdiction over ~~a an adjudicated delinquent~~ child may, by an order stating the facts upon which a determination of a sanction and rehabilitative program was made at the disposition hearing, order the child and the child's parent or guardian to make restitution in the manner provided in this section. This order shall be part of the child's probation program to be implemented by the department or, in the case of a committed child, as part of the community-based sanctions ordered by the court at the disposition hearing or before the

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

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child's release from commitment.

(2) If the court orders restitution, the court shall may
 order the child and the child's parent or guardian to make
 restitution in money, through a promissory note ~~assigned by the~~
~~child's parent or guardian~~, or in kind for any damage or loss
 caused by the child's offense in a reasonable amount or manner
 to be determined by the court. When restitution is ordered by
 the court, the amount of restitution may not exceed an amount
 the child and the child's parent or guardian could reasonably be
 expected to pay or make. If the child and the child's parent or
guardian are unable to make restitution in kind or to pay the
restitution in one lump-sum payment, the court may establish a
payment plan that reflects their ability to pay the restitution
amount.

(4) The child's parent or guardian may be absolved of
liability for restitution under this section if:

(a) After a hearing, the court finds that it is the child's
first referral to the delinquency system and ~~A finding by the~~
~~court, after a hearing,~~ that the child's parent or guardian has
 made diligent and good faith efforts to prevent the child from
 engaging in delinquent acts; or

(b) The victim entitled to restitution as a result of
damage or loss caused by the child's offense is that child's
~~absolves the parent or guardian of liability for restitution~~
~~under this section.~~

(5) The court may order restitution to be made in kind or
paid only by the parents or guardians who have current custody
of and parental responsibility for the child.

(6) For purposes of this section, the Department of

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Children and Families, a foster parent with whom the child is
placed, the community-based care lead agency supervising the
placement of the child pursuant to a contract with the
Department of Children and Families, or a facility licensed or
registered under s. 409.175 or s. 409.176 is not considered a
guardian responsible for restitution for the delinquent acts of
a child who is found to be dependent as defined in s. 39.01(15).

Section 3. Subsection (1) of section 985.513, Florida
 Statutes, is amended to read:

985.513 Powers of the court over parent or guardian at
 disposition.—

(1) The court that has jurisdiction over an adjudicated
 delinquent child may, by an order stating the facts upon which a
 determination of a sanction and rehabilitative program was made
 at the disposition hearing, +

~~(a)~~ order the child's parent or guardian, together with the
 child, to render community service in a public service program
 or to participate in a community work project. In addition to
 the sanctions imposed on the child, the court may order the
 child's parent or guardian to perform community service if the
 court finds that the child's parent or guardian did not make a
 diligent and good faith effort to prevent the child from
 engaging in delinquent acts.

~~(b) Order the parent or guardian to make restitution in~~
~~money or in kind for any damage or loss caused by the child's~~
~~offense. The court may also require the child's parent or legal~~
~~guardian to be responsible for any restitution ordered against~~
~~the child, as provided under s. 985.437. The court shall~~
~~determine a reasonable amount or manner of restitution, and~~

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117 ~~payment shall be made to the clerk of the circuit court as~~
118 ~~provided in s. 985.437.~~ The court may retain jurisdiction, as
119 provided under s. 985.0301, over the child and the child's
120 parent or legal guardian whom the court has ordered to make
121 restitution in kind or pay restitution until the restitution
122 order is satisfied or the court orders otherwise.

123 Section 4. This act shall take effect July 1, 2020.

OFFICE OF THE STATE COURTS ADMINISTRATOR
2020 JUDICIAL IMPACT STATEMENT

BILL NUMBER: SB 1880

DATE: January 27, 2020

SPONSOR(S): Senator Perry

STATUTE(S) AFFECTED: ss. 985.35, 985.437, and 985.513, F.S.

COMPANION BILL(S): HB 1225

AGENCY CONTACT: Sean M. Burnfin

TELEPHONE: (850) 922-0358

ASSIGNED OSCA STAFF: Jonathan Corey/EWM

I. SUMMARY: The bill amends s. 985.437, F.S., by adding that a child's parent or guardian, in addition to the child, be ordered to pay restitution for damage or loss caused by the child's offense if restitution is ordered. The bill removes discretionary determinations as to who will be responsible for restitution by adding that "if the court orders restitution" the court "shall" order the child "and the child's parent or guardian." The bill removes language limiting the court's authority to order restitution to minors "adjudicated delinquent," replacing it with language that expands the court's authority to impose restitution over the child and the child's parent or guardian "regardless of whether adjudication is imposed or withheld." The bill also adds new language that allows the court to assess the ability of the child and the child's parent or guardian to pay restitution in one lump-sum. If it is determined they cannot pay the lump-sum, the bill allows for the court to establish a payment plan. The bill also adds a second requirement to the section that would allow for the child's parent or guardian to be absolved of liability for restitution by now requiring that it must be the child's first referral to the delinquency system, in addition to the court having to find the parent or guardian has made a good-faith effort to prevent the child from engaging in delinquent acts. The bill also requires that the court can only order restitution for parents or guardians who have both concurrent custody and parental responsibility over the child, while also exempting the Department of Children and Families (DCF), a foster parent, or a DCF contract facility from being held liable for restitution. Finally, ss. 985.35 and 985.153, F.S., are both amended to conform to the provisions of s. 985.437, F.S.

II. EFFECT OF PROPOSED CHANGES: The proposed changes have the following effects:

Currently, if the court orders restitution the child is the only party liable, but the court *may* order the parent or guardian to cosign a promissory note. This bill would obligate the parent(s) or guardian(s) to sign the promissory note as additional drawers as opposed to cosigners. Additionally, the bill defines parent or guardian as the person(s) who have

both concurrent custody and parental responsibility over the child. This will require the court to make additional findings as to the parents'/guardians' percentage of custody and parental responsibility in cases where the parents are separated, divorced, or if the child is living with a relative. (See Section III for further discussion.)

Second, currently s. 985.437, F.S., permits the court that has jurisdiction over *an adjudicated delinquent* to order restitution. The bill deletes the language of "an adjudicated delinquent" and replaces it with "regardless of whether adjudication is imposed or withheld." This change allows the sanction of restitution to be applied to a broader range of minors. Specifically, whereas restitution could only be ordered in cases where a minor was adjudicated delinquent, under the bill the state attorney can recommend, and the court order, restitution in cases where adjudication is withheld.

Third, the bill would limit the number of parent(s) or guardian(s) (i.e., number of cases) who would be eligible to seek being absolved from liability by creating a second requirement that the court must determine. Currently, if a parent or guardian seeks to be absolved from liability from a promissory note that they cosigned, a hearing is held to determine that the parent(s) or guardian(s) has made a diligent and good faith effort to prevent the child from further delinquent acts. The bill would require the court to make the additional finding that it is the child's *first* referral to the delinquency system. This likely would significantly reduce the number of guardians and parents that would be eligible to seek being absolved from liability for restitution.

Fourth, the addition that the court may establish a payment plan based on the inability of the parties to pay the lump-sum amount will likely result in compliance in restitution payments and fewer court hearings for parties failing to pay full amounts.

- III. **ANTICIPATED JUDICIAL OR COURT WORKLOAD IMPACT:** Judges would need to become familiar with the new law and inform parents and guardians of the consequences of being held liable for the failure to pay the entire restitution amount. This will result in an increase in the length of hearings. Additionally, parents and guardians who meet the concurrent custody and parental responsibility requirement will likely have to testify as to their ability to pay the restitution amount or fill out financial affidavits. The court will have to consider and decide on their ability to pay, which will also increase the length of hearings. Moreover, in cases where the concurrent custody and parental responsibility is not straight forward, judges will have to address evidentiary issues and hear testimony to determine whether the parties' have current custody and parental responsibility as per the statute. In practice, in cases where the parents/guardians are involved in family litigation or have a dependency case, the nature of these types of disputes will likely result in arguments to the court on which party should be considered the one with concurrent custody and parental responsibility.

Because the bill expands on the type of cases that would qualify for court ordered restitution (i.e., adjudications withheld and adjudicated delinquent), there would likely be an increase in the number of post-judgment/compliance hearings related to the imposition of restitution.

The addition that the court may establish a payment plan based on the inability of the parties to pay the lump-sum amount will likely result in compliance in restitution payments and fewer court hearings for parties failing to pay full amounts.

- IV. **IMPACT TO COURT RULES/JURY INSTRUCTIONS:** The Florida Rules of Juvenile Procedure may need to be reviewed to ensure they accommodate the new statutory procedures.

V. **ESTIMATED FISCAL IMPACTS ON THE JUDICIARY:**

A. Revenues: None.

- B. Expenditures:** The fiscal impact of this legislation cannot be accurately determined due to the unavailability of data needed to establish the changes in judicial workload resulting from an increase in the frequency and length of hearings or the potential decrease in hearings, as discussed in Section II and Section III, above.

Trial court judicial workload is measured using a case weighting system that calculates the amount of time that it takes for a judge to dispose of a case. Passage of this bill may impact the case weighting system. The number of case filings using the case weighting system is used to determine the needs for additional judicial resources each year. Any judicial workload changes in the future as a result of this bill will be reflected in the Supreme Court's annual opinion regarding certification of the need for additional judges.

CourtSmart Tag Report

Room: LL 37

Case No.:

Type:

Caption: Senate Criminal Justice Committee

Judge:

Started: 2/4/2020 9:01:58 AM

Ends: 2/4/2020 10:55:41 AM

Length: 01:53:44

9:01:56 AM Meeting called to order by Chair Perry
9:01:59 AM Roll call by AA Sue Arnold
9:02:06 AM Quorum present
9:02:10 AM Comments from Chair Perry
9:02:15 AM Introduction of Tab 1 by Chair Perry
9:02:37 AM Swearing-in of Eric Pinkard, Capital Collateral Regional Counsel - Middle Region
9:02:46 AM Comments from Mr. Pinkard
9:03:05 AM Motion made by Senator Bracy to confirm Mr. Pinkard
9:03:15 AM Roll call by AA
9:03:18 AM Confirmation is recommended favorably
9:03:25 AM Introduction of Tab 3 by Chair Perry
9:03:35 AM Explanation of SB 842, Injured Police Canines by Senator Wright
9:05:05 AM Question from Senator Pizzo
9:05:11 AM Response from Senator Wright
9:05:21 AM Kate MacFall, Humane Society of the United States waives in support
9:05:28 AM Gary Bradford, Florida PBA, Inc. waives in support
9:05:38 AM Closure by Senator Wright
9:05:43 AM Roll call by AA
9:05:49 AM SB 842 reported favorably
9:05:56 AM Introduction of Tab 7 by Chair Perry
9:06:15 AM Explanation of SB 1396, Driving Under the Influence by Senator Simmons
9:10:53 AM Question from Senator Pizzo
9:10:59 AM Response from Senator Simmons
9:11:50 AM Follow-up question from Senator Pizzo
9:12:05 AM Response from Senator Simmons
9:12:28 AM Introduction of Late-filed Amendment Barcode No. 125024 by Chair Perry
9:12:47 AM Explanation of Late-filed Amendment by Senator Simmons
9:13:03 AM Closure waived
9:13:06 AM Amendment adopted
9:13:12 AM Doug Mannheimer, Alcohol Countermeasure Systems waives in support
9:13:22 AM Carlos Martinez, Florida Public Defender Association waives in support
9:13:28 AM Chelsea Murphy, Right on Crime waives in support
9:13:33 AM Dan Hendrickson, Tallahassee Veterans Legal Collaborative waives in support
9:13:44 AM Closure by Senator Simmons
9:13:49 AM Roll call by AA
9:14:15 AM CS/SB 1396 reported favorably
9:14:31 AM Introduction of Tab 5 by Chair Perry
9:15:30 AM Explanation of SB 1018, Exposure of Sexual Organs by Senator Stewart
9:16:07 AM Introduction of Delete-All Amendment Barcode No. 591108 by Chair Perry
9:16:22 AM Explanation of Amendment by Senator Stewart
9:17:37 AM Carlos Martinez, Florida Public Defender Association waives in support
9:17:48 AM Closure waived
9:17:51 AM Amendment adopted
9:17:57 AM Phil Archer, Florida Prosecuting Attorneys Association waives in support
9:18:11 AM Matt Butler, Orange County Sheriff's Office waives in support
9:18:16 AM Ramon Maury, AANR-Florida waives in support
9:18:33 AM Closure waived
9:18:36 AM Roll call by AA
9:18:40 AM CS/SB 1018 reported favorably
9:18:53 AM Introduction of Tab 9 by Chair Perry
9:19:07 AM Explanation of SB 1504, Sentencing by Senator Brandes
9:19:33 AM Introduction of Amendment Barcode No. 625222 by Chair Perry

9:19:38 AM Explanation of Amendment by Senator Brandes
9:20:10 AM Closure waived
9:20:15 AM Amendment adopted
9:20:19 AM Greg Newburn, FAMM waives in support
9:20:25 AM Carlos Martinez, Florida Public Defender Association waives in support
9:20:28 AM Chelsea Murphy, Right on Crime waives in support
9:20:32 AM Dan Hendrickson, Florida Public Defender Association waives in support
9:20:42 AM Closure by Senator Brandes
9:20:47 AM Roll call by AA
9:21:13 AM CS/SB 1504 reported favorably
9:21:27 AM Introduction of Tab 10 by Chair Perry
9:21:34 AM Introduction of Amendment Barcode No. 103962 by Chair Perry
9:21:45 AM Explanation of Amendment by Senator Brandes
9:22:18 AM Closure waived
9:22:20 AM Amendment adopted
9:22:24 AM Carolos Martinez, Florida Public Defender Association waives in support
9:22:32 AM Closure waived
9:22:37 AM CS/SB 1506 reported favorably
9:22:46 AM Introduction of Tab 6 by Chair Perry
9:22:53 AM Explanation of SB 1308, Criminal Justice by Senator Brandes
9:24:36 AM Introduction of Amendment Barcode No. 556568 by Chair Perry
9:24:46 AM Explanation of Amendment by Senator Brandes
9:25:26 AM Closure waived
9:25:29 AM Amendment adopted
9:25:37 AM Sal Nuzzo, The James Madison Institute waives in support
9:25:39 AM Greg Newburn, FAMM waives in support
9:25:44 AM Speaker Lesea Wilson in support
9:29:08 AM Carlos Martinez, Florida Public Defender Association waives in support
9:29:22 AM Grace Newcomb waives in support
9:29:34 AM Angeline Newcomb waives in support
9:29:37 AM Dan Hendrickson, Tallahassee Veterans Legal Collaborative waives in support
9:29:41 AM Chelsea Murphy, Right on Crime waives in support
9:30:31 AM Speaker Angie Hartfield, The Incarcerated in support
9:34:32 AM Speaker Brenda Mills
9:43:33 AM Senator Brandes in closure
9:43:46 AM Comments from Senator Pizzo
9:44:34 AM Roll call by AA
9:44:44 AM CS/SB 1308 reported favorably
9:44:58 AM Introduction of Tab 2, CS/SB 728, Threats by Chair Perry
9:45:07 AM Senator Brandes moves to reconsider Substitute Amendment Barcode No. 430974
9:45:53 AM Explanation of Substitute Amendment 430974 by Senator Stargel
9:46:23 AM Comments from Chair Perry regarding Amend. to the Substitute Amendment Barcode No. 852884
9:46:45 AM Continued explanation on Amendment by Senator Stargel
9:47:15 AM Carlos Martinez, Florida Public Defender Association waives in support of Amendment
9:47:32 AM Closure waived on Amendment to Substitute Amendment
9:47:42 AM Amendment to the substitute adopted
9:47:54 AM Closure waived
9:47:59 AM Substitute Amendment as amended adopted
9:48:04 AM Matt Dunagan, Florida Sheriffs Association waives in support
9:48:08 AM Phil Archer, Florida Prosecuting Attorneys Association waives in support
9:48:12 AM Captain Matt Butler, Orange County Sheriff's Office waives in support
9:48:16 AM Gary Hester, Florida Police Chiefs Association waives in support
9:48:22 AM Senator Bracy in debate
9:48:36 AM Senator Bracy in debate
9:48:39 AM Response from Senator Stargel
9:48:50 AM Senator Pizzo in debate
9:50:37 AM Senator Brandes in debate
9:51:24 AM Senator Stargel in closure
9:51:41 AM Roll call by AA
9:52:28 AM CS/CS/SB 728 reported favorably
9:52:45 AM Comments from Senator Pizzo
9:53:13 AM Comments from Chair Perry

9:54:00 AM Chair turned over to Senator Brandes
9:54:08 AM Introduction of Tab 8 by Chair Brandes
9:54:16 AM Explanation of SB 1416, Assaults on Specified Persons by Senator Perry
9:54:59 AM Introduction of Amendment Barcode No. 111654
9:55:13 AM Explanation of Amendment
9:55:18 AM Introduction of Amendment to the Amendment Barcode No. 921370 Chair Brandes
9:55:28 AM Explanation of amendment to the amendment by Senator Perry
9:55:31 AM Amend to the Amend adopted
9:55:43 AM Amendment as Amended adopted
9:55:56 AM Question from Senator Pizzo
9:56:01 AM Response from Senator Perry
9:56:38 AM Follow-up question from Senator Pizzo
9:56:46 AM Response from Senator Perry
9:57:08 AM Question from Senator Bracy
9:58:40 AM Response from Senator Perry
9:59:45 AM Speaker Colin Mulloy, Hillsborough Area Regional Transit
10:00:01 AM David Stover waives in support
10:00:04 AM Joseph Shaffer waives in support
10:00:09 AM Speaker Amy Datz, Environmental Caucus of Florida in support
10:01:19 AM Savannah Stoats waives in support
10:01:24 AM Peter Chambers waives in support
10:01:30 AM Graham Hadley waives in support
10:01:34 AM Chevy George waives in support
10:01:37 AM Matthew Nelson waives in support
10:01:41 AM Brett Farrell waives in support
10:01:47 AM Kayla Miller-Koehlmoos waives in support
10:01:54 AM James Ingle waives in support
10:01:58 AM Robert Howell waives in support
10:02:02 AM Raymond Caldwell waives in support
10:02:05 AM William Ross waives in support
10:02:08 AM Lisa Bacot waives in support
10:02:17 AM O.D. Elliott waives in support
10:02:23 AM Frank Ramirez waives in support
10:02:27 AM Billie Nutter waives in support
10:02:32 AM Kevin Byrne waives in support
10:02:36 AM Matt Dunagan waives in support
10:02:42 AM Marcia Rodriguez waives in support
10:02:59 AM Frank Marinacci waives in support
10:03:08 AM Dwight Mattingly waives in support
10:07:30 AM Iran Acevedo waives in support
10:07:33 AM Mike Budd waives in support
10:07:37 AM Speaker Michael Lowery, Escambia County in support
10:11:06 AM Question from Senator Bracy
10:11:13 AM Response from Mr. Lowery
10:12:19 AM Speaker Christopher Rivers, Bus Operator, Broward County in support
10:13:13 AM Speaker Kagenia Ballantine, Bus Operator in support
10:15:53 AM Speaker Willie Carter, Driver in support
10:18:31 AM Eugenie Luzincourt waives in support
10:18:36 AM Sharon Maras waives in support
10:18:41 AM Gene Carroll waives in support
10:18:45 AM Maurice Johnson waives in support
10:18:48 AM Linda Lewis waives in support
10:19:01 AM Senator Pizzo in debate
10:22:31 AM Senator Bracy in debate
10:22:51 AM Chair Brandes in debate
10:24:21 AM Senator Perry in closure
10:25:59 AM Roll call by AA
10:27:00 AM CS/SB 1416 reported favorably
10:27:15 AM Introduction of Tab 12, SB 1880, Restitution for Juvenile Offenses by Chair Brandes
10:27:24 AM Introduction of Delete-All Amendment Barcode No. 461968 by Chair Brandes
10:27:36 AM Explanation of Amendment by Senator Perry
10:27:55 AM Explanation of Bill by Senator Perry

10:28:08 AM Question from Senator Pizzo
10:28:14 AM Response from Senator Perry
10:29:00 AM Amendment adopted
10:29:14 AM Question from Senator Bracy
10:29:17 AM Response from Senator Perry
10:29:56 AM Question from Senator Pizzo
10:30:10 AM Response from Senator Perry
10:31:37 AM Follow-up question from Senator Pizzo
10:31:47 AM Response from Senator Perry
10:32:29 AM Chair Brandes in debate
10:33:46 AM Senator Pizzo in debate
10:34:32 AM Senator Perry in closure
10:34:53 AM Senator Perry moves to TP bill
10:35:54 AM Bill TP'd per Chair Brandes
10:36:02 AM Introduction of Tab 4 by Chair Brandes
10:36:17 AM Explanation of CS/SB 952, Senior Management Service Class by Senator Perry
10:36:36 AM Candice Brower, Offices of Criminal Conflict & Civil Regional Counsel waives in support
10:36:43 AM Closure waived
10:36:46 AM Roll call by AA
10:36:49 AM CS/SB 952 reported favorably
10:37:03 AM Chair returned to Senator Perry
10:37:08 AM Senator Flores would like to be shown as voting in the affirmative on Confirmation Hearing, SB 842, 1396, 1018, 1504, 1506, 1308
10:37:19 AM Motion approved
10:37:24 AM Senator Pizzo would like to be shown as voting in the affirmative on SB 1018, 1504,1506
10:37:39 AM Introduction of Tab 11 by Chair Perry
10:37:46 AM Explanation of SB 1716, Sentencing by Senator Brandes
10:37:58 AM Introduction of Amendment Barcode No. 952626 by Chair Perry
10:38:01 AM Explanation of Amendment by Senator Brandes
10:38:21 AM Amendment adopted
10:38:26 AM Speaker Brenda Spitzbarth in support
10:41:51 AM Speaker Audrey Jennings Hudgins in support
10:45:04 AM Carlos Martinez, Florida Public Defender Association waives in support
10:45:10 AM Dan Hendrickson, Tallahassee Veterans Legal Collaborative waives in support
10:45:16 AM Chelsea Murphy, Right on Crime waives in support
10:45:19 AM Speaker Greg Newburn, FAMM in support
10:48:29 AM Jorge Chamizo, FACDL waives in support
10:48:39 AM Sal Nuzzo, The James Madison Institute waives in support
10:49:07 AM Speaker Buddy Jacobs, Florida Prosecuting Attorneys Association
10:50:56 AM Question from Senator Pizzo
10:51:44 AM Response from Mr. Jacobs
10:53:06 AM Comments from Chair Perry
10:53:19 AM Comments from Mr. Jacobs
10:53:38 AM Senator Brandes in closure
10:54:00 AM Roll call by AA
10:54:59 AM CS/SB 1716 reported favorably
10:55:16 AM Senator Bracy moves to make technical and conforming changes to the Committee Substitutes
10:55:24 AM Senator Pizzo moves to adjourn, meeting adjourned