

<b>Tab 1 SB 762 by Baxley; (Identical to H 00683) Public Records/Criminal Conflict and Civil Regional Counsel Offices</b>							
842356	A	S	RCS	CJ, Baxley	Delete L.34 - 77:	03/23	03:00 PM
<b>Tab 2 CS/SB 764 by MS, Burgess; (Similar to H 07023) Veterans Treatment Courts</b>							
240822	A	S	RCS	CJ, Burgess	Delete L.57 - 147:	03/23	03:00 PM
727420	AA	S	RCS	CJ, Brandes	Delete L.27 - 31:	03/23	03:00 PM
917972	AA	S	RCS	CJ, Brandes	Delete L.42:	03/23	03:00 PM
<b>Tab 3 SB 1344 by Burgess; (Identical to H 01041) Protection of Elderly Persons and Disabled Adults</b>							
948234	A	S	RCS	CJ, Burgess	Delete L.102 - 313:	03/23	03:00 PM
<b>Tab 4 SB 1476 by Brodeur; (Identical to H 06095) Controlled Substances</b>							
<b>Tab 5 SB 1508 by Book; (Identical to H 01229) Public Records</b>							
658030	D	S	RCS	CJ, Book	Delete everything after	03/23	03:00 PM
<b>Tab 6 SB 1530 by Book; (Similar to H 01189) Victims of Sexual Offenses</b>							
905096	D	S	RS	CJ, Book	Delete everything after	03/23	03:00 PM
730446	SD	S	RCS	CJ, Book	Delete everything after	03/23	03:00 PM
<b>Tab 7 SB 1802 by Pizzo; (Identical to H 00583) Interception of Wire, Oral, or Electronic Communications Made in Violation of Protective Orders</b>							
508250	A	S	RCS	CJ, Pizzo	Delete L.23:	03/23	03:00 PM
<b>Tab 8 SB 1826 by Diaz; (Compare to CS/H 00523) Human Trafficking</b>							
557034	A	S	RCS	CJ, Diaz	Delete L.107 - 145:	03/23	03:00 PM
<b>Tab 9 SB 1868 by Bean; (Similar to CS/H 00363) Privileged Communications Made to Crime Stoppers Organizations</b>							
264456	A	S	RCS	CJ, Bean	Delete L.39 - 75:	03/23	03:00 PM
<b>Tab 10 SB 1934 by Book (CO-INTRODUCERS) Taddeo; (Compare to H 01579) Health Care Practitioner Discipline</b>							
<b>Tab 11 SB 1972 by Pizzo; (Identical to H 00841) Expunction and Sealing of Judicial Records</b>							
<b>Tab 12 SB 1974 by Pizzo; (Similar to H 00843) Public Records/Domestic Violence Injunction</b>							
564538	A	S	RCS	CJ, Pizzo	Delete L.47:	03/23	03:00 PM

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

**CRIMINAL JUSTICE**  
**Senator Pizzo, Chair**  
**Senator Brandes, Vice Chair**

**MEETING DATE:** Tuesday, March 23, 2021  
**TIME:** 12:30—3:00 p.m.  
**PLACE:** *Toni Jennings Committee Room*, 110 Senate Building

**MEMBERS:** Senator Pizzo, Chair; Senator Brandes, Vice Chair; Senators Baxley, Boyd, Gainer, Perry, Powell, and Taddeo

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A1 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W PENSACOLA STREET, TALLAHASSEE, FL 32301			
1	<b>SB 762</b> Baxley (Identical H 683)	Public Records/Criminal Conflict and Civil Regional Counsel Offices; Authorizing the issuance of confidential registration certificates and license plates or decals under a fictitious name to criminal conflict and civil regional counsel offices to conduct specified law enforcement activities; expanding a public records exemption to include all records pertaining to a registration application submitted by any regional counsel office; providing for future legislative review and repeal; providing a statement of public necessity, etc.  CJ      03/23/2021 Fav/CS GO RC	Fav/CS Yeas 8 Nays 0
2	<b>CS/SB 764</b> Military and Veterans Affairs, Space, and Domestic Security / Burgess (Similar H 7023)	Veterans Treatment Courts; Authorizing certain courts to create and administer veterans treatment courts for specified purposes; providing standards for admission to a veterans treatment court program; specifying eligibility requirements for participation in the program; revising eligibility for certain pretrial programs to include certain individuals eligible to participate in a veterans treatment court program; specifying applicability of the act to participants in certain court programs in existence as of a specified date, etc.  MS      03/16/2021 Fav/CS CJ      03/23/2021 Fav/CS AP	Fav/CS Yeas 8 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Tuesday, March 23, 2021, 12:30—3:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	<b>SB 1344</b> Burgess (Identical H 1041)	Protection of Elderly Persons and Disabled Adults; Adding offenses concerning elderly persons and disabled adults to the authority of the Office of Statewide Prosecution; providing that a person who has been convicted of abuse, neglect, or exploitation of an elderly person or a disabled adult is not qualified to act as a personal representative; providing for forfeiture of specified benefits of persons who have been convicted of certain offenses involving elderly persons or disabled adults; specifying additional conduct that constitutes exploitation of an elderly person or a disabled adult, etc.  CF 03/09/2021 Favorable CJ 03/23/2021 Fav/CS RC	Fav/CS Yeas 8 Nays 0
4	<b>SB 1476</b> Brodeur (Identical H 6095)	Controlled Substances; Removing from Schedule V certain drug products in finished dosage formulation which have been approved by the United States Food and Drug Administration, etc.  CJ 03/23/2021 Favorable HP RC	Favorable Yeas 8 Nays 0
5	<b>SB 1508</b> Book (Identical H 1229)	Public Records; Citing this act as "Serena's Law"; specifying that a public records exemption for criminal intelligence information and criminal investigative information does not apply to the identity of certain persons charged with, or found guilty of, specified crimes; requiring county recorders and clerks of court to post identifying information for offenders in cases where protective injunctions were entered for the protection of minors; requiring county recorders or clerks of court to post such notices on the website; authorizing certain persons to petition for compliance in the circuit court, etc.  CJ 03/23/2021 Fav/CS JU AP	Fav/CS Yeas 8 Nays 0

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**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Tuesday, March 23, 2021, 12:30—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	<b>SB 1530</b> Book (Similar H 1189)	Victims of Sexual Offenses; Authorizing the Attorney General to review the evidence in alleged cases of sexual battery or cyberstalking upon the written request of specified persons; requiring counties to establish sexual assault response teams; requiring the Criminal Justice Standards and Training Commission, in consultation with the Florida Council Against Sexual Violence, to establish minimum standards for basic and advanced career development training programs for law enforcement officers that include a culturally responsive trauma-informed response to sexual assault, etc.  CJ 03/23/2021 Fav/CS ACJ AP	Fav/CS Yeas 8 Nays 0
7	<b>SB 1802</b> Pizzo (Identical H 583)	Interception of Wire, Oral, or Electronic Communications Made in Violation of Protective Orders; Providing an exception to prohibitions on interception and recording of communications when the communication is received in violation of a specified injunction or order; limiting the use of the intercepted communication to evidencing a violation of the specified injunction or order, etc.  JU 03/15/2021 Favorable CJ 03/23/2021 Fav/CS RC	Fav/CS Yeas 8 Nays 0
8	<b>SB 1826</b> Diaz (Compare CS/H 523)	Human Trafficking; Providing the circumstances under which certain communications are confidential; creating a human trafficking victim advocate-victim privilege; providing training requirements for human trafficking victim advocates and trained volunteers; prohibiting a person from engaging in specified criminal acts relating to human trafficking with another person believed to be a child younger than 18 years of age, etc.  CF 03/16/2021 Favorable CJ 03/23/2021 Fav/CS RC	Fav/CS Yeas 8 Nays 0



**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Tuesday, March 23, 2021, 12:30—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	<b>SB 1868</b> Bean (Similar CS/H 363)	Privileged Communications Made to Crime Stoppers Organizations; Providing that the recipient of an illegally disclosed privileged communication also commits an offense; providing an exemption for employees, board members, or volunteers of a crime stoppers organization in certain circumstances; providing immunity from civil liability for certain actions by specified persons concerning privileged communications, etc.  CJ 03/23/2021 Fav/CS JU RC	Fav/CS Yeas 8 Nays 0
10	<b>SB 1934</b> Book (Compare H 1579)	Health Care Practitioner Discipline; Subjecting health care practitioners to disciplinary action for specified offenses; requiring the Department of Health to issue emergency orders to suspend certain physicians' licenses if they are arrested for committing or attempting, soliciting, or conspiring to commit acts that would constitute violations of specified criminal offenses involving a child; requiring the Office of Program Policy Analysis and Government Accountability (OPPAGA) to analyze certain laws and rules and their application; requiring all state agencies, upon OPPAGA's request, to assist OPPAGA and provide requested information and data, etc.  HP 03/17/2021 Favorable CJ 03/23/2021 Favorable RC	Favorable Yeas 8 Nays 0
11	<b>SB 1972</b> Pizzo (Identical H 841, Compare H 843, Linked S 1974)	Expunction and Sealing of Judicial Records; Providing for sealing of a petition for a domestic violence injunction and related documents if the petition was withdrawn or dismissed, or if there was a ruling in favor of the respondent; exempting expunctions sought for cases dismissed or nolle prosequi or that resulted in an acquittal from the limit on the number of expunctions that may be sought; expanding an exception to an eligibility requirement for expunction of a criminal history record to allow expunction for an offense committed when the person was a minor, etc.  JU 03/15/2021 Favorable CJ 03/23/2021 Favorable RC	Favorable Yeas 8 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Tuesday, March 23, 2021, 12:30—3:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	<b>SB 1974</b> Pizzo (Similar H 843, Compare H 841, Linked S 1972)	Public Records/Domestic Violence Injunction; Providing that all pleadings and documents related to a petition domestic violence injunction that have been ordered to be sealed are confidential and exempt from public records requirements; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc.  JU 03/15/2021 Favorable CJ 03/23/2021 Fav/CS RC	Fav/CS Yeas 8 Nays 0

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Other Related Meeting Documents

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

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

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

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**BILL:** CS/SB 762

**INTRODUCER:** Criminal Justice Committee and Senator Baxley

**SUBJECT:** Public Records/Criminal Conflict and Civil Regional Counsel Offices

**DATE:** March 23, 2021      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	<b>Fav/CS</b>
2.			GO	
3.			RC	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 762 authorizes the Criminal Conflict and Civil Regional Counsel (CCCRC) to register a vehicle or vessel under a fictitious name with the Department of Highway Safety and Motor Vehicles (DHSMV) and receive a license plate or decal based on such fictitious name as the state public defender's offices currently do.

The bill provides that all records relating to the application of a confidential registration certificate and registration license plate or decal submitted to the DHSMV by an office of the CCCRC, and any other records necessary to carry out the purpose of s. 320.025, F.S., be made exempt from s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution.

The bill provides a statement of public necessity. The bill appears to be no more broad than necessary to accomplish its purpose.

The bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature. The bill requires a two-thirds vote of the members present and voting for final passage.

The bill has no associated Fiscal Impact.

The bill is effective July 1, 2021.

## 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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>4</sup> 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.<sup>5</sup>

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> 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.”<sup>7</sup>

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

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<sup>1</sup> Fla. Const. art. I, s. 24(a).

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

<sup>3</sup> 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).

<sup>4</sup> *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

<sup>5</sup> 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.”

<sup>6</sup> 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.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

custodian of the public record.<sup>8</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>9</sup>

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.<sup>10</sup> The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>11</sup>

General exemptions from the public records requirements are contained in the Public Records Act.<sup>12</sup> Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.<sup>13</sup>

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.<sup>14</sup> Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.<sup>15</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act<sup>16</sup> (the Act) prescribes a legislative review process for newly created or substantially amended<sup>17</sup> public records or open meetings exemptions, with specified exceptions.<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</sup>

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<sup>8</sup> Section 119.07(1)(a), F.S.

<sup>9</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>10</sup> FLA. CONST. art. I, s. 24(c).

<sup>11</sup> *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

<sup>12</sup> *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).

<sup>13</sup> *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).

<sup>14</sup> *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

<sup>15</sup> *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>16</sup> Section 119.15, F.S.

<sup>17</sup> 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.

<sup>18</sup> 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.

<sup>19</sup> Section 119.15(3), F.S.

<sup>20</sup> Section 119.15(6)(b), F.S.

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;<sup>21</sup>
- 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;<sup>22</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>23</sup>

The Act also requires specified questions to be considered during the review process.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup>

### **Confidential Motor Vehicle Registration**

Section 320.025, F.S., authorizes the DHSMV to issue a confidential registration certificate and registration license plate or decal under a fictitious name for a motor vehicle or vessel owned or operated by:

- A law enforcement agency of state, county, municipal, or federal government;
- The Attorney General's Medicaid Fraud Control Unit; or
- Any state public defender's office.<sup>27</sup>

To register a motor vehicle or vessel under a fictitious name, the law enforcement agency, Fraud Control Unit, or public defender's office must file a written application with the DHSMV

<sup>21</sup> Section 119.15(6)(b)1., F.S.

<sup>22</sup> Section 119.15(6)(b)2., F.S.

<sup>23</sup> Section 119.15(6)(b)3., F.S.

<sup>24</sup> 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?

<sup>25</sup> See generally s. 119.15, F.S.

<sup>26</sup> Section 119.15(7), F.S.

<sup>27</sup> Section 320.025(1), F.S.

affirming the license plate or decal will be used for activities that require concealment of the true owner of the vehicle and listing individuals who are authorized to use the vehicle.<sup>28</sup> All records relating to the registration application are exempt from disclosure under the public records provisions in s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution.<sup>29</sup>

### **Criminal Conflict and Civil Regional Counsel**

The CCCRC was created by the Legislature in 2007 to provide legal representation to indigent persons that are constitutionally entitled to court-appointed counsel.<sup>30</sup> The CCCRC primarily provides representation in three types of cases:

- Criminal cases in which the public defender must withdraw due to a conflict of interest;<sup>31</sup>
- Dependency cases;<sup>32</sup> and
- Involuntary civil commitment cases involving a mentally ill person, sexually violent predator, or a person with developmental disabilities.<sup>33</sup>

In representing a defendant in a criminal case, the CCCRC performs similar functions to that of a traditional public defender. To effectively represent a client in a criminal proceeding, both the public defender and the CCCRC employ investigators to investigate cases and conduct interviews with defendants and witnesses.<sup>34</sup> Currently, the CCCRC employs approximately 20 investigators.<sup>35</sup>

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

The bill authorizes the CCCRC to register a vehicle or vessel under a fictitious name with the DHSMV and receive a license plate or decal based on such fictitious name. The bill provides that all records relating to the application of a confidential registration certificate and registration license plate or decal submitted to the DHSMV by an office of the CCCRC, and any other records necessary to carry out the purpose of s. 320.025, F.S., be made exempt from s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution.

The bill provides that the public records exemption is a public necessity because investigations by the CCCRC may be jeopardized if a vehicle is registered in the name of the CCCRC or in the name of an investigator or a person under investigation may use registration information to retaliate against a CCCRC office or its investigators. The bill provides the CCCRC with the same protections and confidentiality enjoyed by a public defender's office, which performs a virtually identical function.

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

<sup>29</sup> Section 320.025(3), F.S.

<sup>30</sup> Chapter 2007-62, L.O.F.

<sup>31</sup> Section 27.511(5), F.S.

<sup>32</sup> Section 27.511(6), F.S.

<sup>33</sup> *Id.*

<sup>34</sup> Section 27.53, F.S.

<sup>35</sup> E-mail correspondence with Legislative Affairs, CCCRC, (February 2, 8, and 9, 2021), on file with the Senate Criminal Justice Committee.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature. The bill requires a two-thirds vote of the members present and voting for final passage.

The bill is effective July 1, 2021.

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

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

None.

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

###### ***Vote Requirement***

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill creates an exemption for the office of the CCCRC to register a vehicle or vessel under a fictitious name with the DHSMV and receive a license plate or decal based on such fictitious name in s. 320.025, F.S., thus, the bill requires a two-thirds vote to be enacted.

###### ***Public Necessity Statement***

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding 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 State 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 protect the safety of the CCCRC investigators by disguising their vehicles' tag and registration. The exemption does not appear to be broader than necessary to accomplish the purpose of the exemption.

##### **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 320.025 of the Florida Statutes.

**IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Criminal Justice on March 23, 2021:**

The committee substitute:

- Corrects how the office of criminal conflict and civil regional counsel (CCCRC) is referred to throughout the bill to provide consistency.
- Corrects a reference in the bill to the CCCRC being akin to a law enforcement agency when, in fact, the CCCRC is comparable to the public defenders.

## B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2021	.	
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The Committee on Criminal Justice (Baxley) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 34 - 77

and insert:

defender's office, or any office of criminal conflict and civil regional counsel which require the activities requiring concealment of publicly leased or owned motor vehicles or vessels and a statement of the position classifications of the individuals who are authorized to use the license plate or decal. The department may modify its records to reflect the



11 fictitious identity of the owner or lessee until such time as  
12 the license plate or decal and registration certificate are  
13 surrendered to it.

14 (3) This section constitutes an exception to other statutes  
15 relating to falsification of public records, false swearing, and  
16 similar matters. All records relating to the registration  
17 application of the Attorney General's Medicaid Fraud Control  
18 Unit, a law enforcement agency, ~~or~~ any state public defender's  
19 office, or any office of criminal conflict and civil regional  
20 counsel, and records necessary to carry out the intended purpose  
21 of this section, are exempt from ~~the provisions of~~ s. 119.07(1),  
22 and s. 24(a), Art. I of the State Constitution as long as the  
23 information is retained by the department. This section does not  
24 prohibit other personations, fabrications, or creations of false  
25 identifications by the Attorney General's Medicaid Fraud Control  
26 Unit, ~~or~~ law enforcement or public defender's officers, or any  
27 office of criminal conflict and civil regional counsel in the  
28 official performance of covert operations.

29 (4) This section is subject to the Open Government Sunset  
30 Review Act in accordance with s. 119.15 and shall stand repealed  
31 on October 2, 2026, unless reviewed and saved from repeal  
32 through reenactment by the Legislature.

33 Section 2. The Legislature finds that it is a public necessity  
34 that all records relating to the application of a confidential  
35 registration certificate and registration license plate or decal  
36 submitted by an office of criminal conflict and civil regional  
37 counsel, and any other records necessary to carry out the  
38 intended purpose of s. 320.025, Florida Statutes, be made exempt  
39 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of



842356

40 the State Constitution. Investigations by an office of criminal  
41 conflict and civil regional counsel may be jeopardized by the  
42 registration of motor vehicles under the office's name or under  
43 the names of the office's investigators in that persons under  
44 investigation may acquire such registration information in order  
45 to seek retaliation against the office or its investigators.  
46 Authorizing offices of criminal conflict and civil regional  
47 counsel to obtain confidential registration certificates and  
48 registration license plates or decals in the same manner as any  
49 state public defender's office

50  
51 ===== T I T L E A M E N D M E N T =====

52 And the title is amended as follows:

53 Delete lines 7 - 10

54 and insert:

55 specified activities; expanding a public records  
56 exemption to include all records pertaining to a  
57 registration application submitted by any office of  
58 criminal conflict and civil regional counsel;  
59 providing for

By Senator Baxley

12-00835-21

2021762\_\_

1 A bill to be entitled  
 2 An act relating to public records; amending s.  
 3 320.025, F.S.; authorizing the issuance of  
 4 confidential registration certificates and license  
 5 plates or decals under a fictitious name to criminal  
 6 conflict and civil regional counsel offices to conduct  
 7 specified law enforcement activities; expanding a  
 8 public records exemption to include all records  
 9 pertaining to a registration application submitted by  
 10 any regional counsel office; providing for  
 11 construction; providing for future legislative review  
 12 and repeal; providing a statement of public necessity;  
 13 providing an effective date.

14  
 15 Be It Enacted by the Legislature of the State of Florida:

16  
 17 Section 1. Subsections (1) and (3) of section 320.025,  
 18 Florida Statutes, are amended, and subsection (4) is added to  
 19 that section, to read:

20 320.025 Registration certificate and license plate or decal  
 21 issued under fictitious name; application.—

22 (1) A confidential registration certificate and  
 23 registration license plate or decal shall be issued under a  
 24 fictitious name only for a motor vehicle or vessel owned or  
 25 operated by a law enforcement agency of state, county,  
 26 municipal, or federal government; ~~the~~ the Attorney General's  
 27 Medicaid Fraud Control Unit; ~~or~~ any state public defender's  
 28 office; or any office of criminal conflict and civil regional  
 29 counsel. The requesting agency shall file a written application

Page 1 of 3

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

12-00835-21

2021762\_\_

30 with the department, on forms furnished by the department, which  
 31 includes a statement that the license plate or decal will be  
 32 used for certain activities by the Attorney General's Medicaid  
 33 Fraud Control Unit, ~~or~~ law enforcement, ~~or~~ any state public  
 34 defender's office, or a regional counsel which require the  
 35 ~~activities requiring~~ concealment of publicly leased or owned  
 36 motor vehicles or vessels and a statement of the position  
 37 classifications of the individuals who are authorized to use the  
 38 license plate or decal. The department may modify its records to  
 39 reflect the fictitious identity of the owner or lessee until  
 40 such time as the license plate or decal and registration  
 41 certificate are surrendered to it.

42 (3) This section constitutes an exception to other statutes  
 43 relating to falsification of public records, false swearing, and  
 44 similar matters. All records relating to the registration  
 45 application of the Attorney General's Medicaid Fraud Control  
 46 Unit, a law enforcement agency, ~~or~~ any state public defender's  
 47 office, or any office of criminal conflict and civil regional  
 48 counsel, and records necessary to carry out the intended purpose  
 49 of this section, are exempt from ~~the provisions of~~ s. 119.07(1) ~~and~~  
 50 s. 24(a), Art. I of the State Constitution as long as the  
 51 information is retained by the department. This section does not  
 52 prohibit other personations, fabrications, or creations of false  
 53 identifications by the Attorney General's Medicaid Fraud Control  
 54 Unit, ~~or~~ law enforcement or public defender's officers, or a  
 55 regional counsel office in the official performance of covert  
 56 operations.

57 (4) This section is subject to the Open Government Sunset  
 58 Review Act in accordance with s. 119.15 and shall stand repealed

Page 2 of 3

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

12-00835-21

2021762\_\_

59 on October 2, 2026, unless reviewed and saved from repeal  
60 through reenactment by the Legislature.

61 Section 2. The Legislature finds that it is a public  
62 necessity that all records relating to the application of a  
63 confidential registration certificate and registration license  
64 plate or decal submitted by an office of criminal conflict and  
65 civil regional counsel, and any other records necessary to carry  
66 out the intended purpose of s. 320.025, Florida Statutes, be  
67 made exempt from s. 119.07(1), Florida Statutes, and s. 24(a),  
68 Article I of the State Constitution. Investigations by an office  
69 of criminal conflict and civil regional counsel may be  
70 jeopardized by the registration of motor vehicles under the  
71 office's name or under the names of the office's investigators  
72 in that persons under investigation may acquire such  
73 registration information in order to seek retaliation against  
74 the office or its investigators. Authorizing offices of criminal  
75 conflict and civil regional counsels to obtain confidential  
76 registration certificates and registration license plates or  
77 decals in the same manner as other law enforcement agencies  
78 would better ensure the safety of the regional counsel offices'  
79 investigators in performing their official duties.

80 Section 3. This act shall take effect July 1, 2021.

## Cellon, Connie

---

**From:** Andrew Kalel <Andrew.Kalel@regionalcounsels.com>  
**Sent:** Tuesday, February 9, 2021 8:30 AM  
**To:** Cellon, Connie  
**Subject:** Re: SB 762 Senator Baxley's Public Records Exemption bill

No, each regional counsel follows the geographical boundaries of each DCA. So, there are 5 DCA's, there are 5 regional counsels (something to consider if they ever added a 6th DCA). Each regional counsel covers many circuits. For example, the regional counsel for the 5th DCA has the 5th, 7th, 9th, and 18th circuits.

Bring a law enforcement officer if not a prerequisite for being an RC investigator. You do not have to be FDLE certified. We just happen to have some who are, or were.

Thanks,

Andrew Kalel  
LAD - Offices of Criminal Conflict  
and Civil Regional Counsel  
(850)999-4655

---

**From:** Cellon, Connie <CELLON.CONNIE@flsenate.gov>  
**Sent:** Tuesday, February 9, 2021 8:25:51 AM  
**To:** Andrew Kalel <Andrew.Kalel@regionalcounsels.com>  
**Subject:** RE: SB 762 Senator Baxley's Public Records Exemption bill

Not a problem...thanks for your response!  
So, is each Judicial Circuit home to Regional Counsel?  
And...is being a law enforcement officer as defined in s. 943.10, F.S., a prerequisite for having an investigator job?  
(wonder if it for P.D. investigators – don't know)

**From:** Andrew Kalel <Andrew.Kalel@regionalcounsels.com>  
**Sent:** Monday, February 8, 2021 5:48 PM  
**To:** Cellon, Connie <CELLON.CONNIE@flsenate.gov>  
**Subject:** RE: SB 762 Senator Baxley's Public Records Exemption bill

Connie. I am sorry I haven't gotten to this. In total in there 20 investigators. So regions have 2, some have more, it is not uniformed.

Your second question is harder to answer. I am not sure if anyone would have encountered that. At this time the Regional Counsels do not own any state cars. I do not see them purchasing any state cars in the *near* future. Currently, employees either use their own vehicles and are reimbursed mileage or rent vehicles. Now, the Regional Counsel investigators that are driving their personal cars are not receiving any sort of protection on their personal registrations, *unless* they are prior law enforcement (we have a few that are prior LEO). Should the Regional Counsels be included in the confidential plate statute, it may be a benefit for Regional Counsels, in the future, to purchase one car per region in order to have a vehicle with a protected registration. As it stands now, we don't even have that *option* because they were left out of the confidential plate statute.

I would not call the Regional Counsels Law Enforcement. We are indeed a defense organization. However, I *think* you are referring to Section 7 of SB 756 where we are including our investigations in the definition of law enforcement for the

purpose of state death benefits. This is only if we were to have an investigator – God forbid – be killed during a work related investigation. We are including ourselves in this statute just as the public defender investigators are.

Next question you send me, I'll be a little more prompt. Thanks for your work on this analysis.

Thanks,

Andrew Kalel  
LAD - Offices of Criminal Conflict  
& Civil Regional Counsel  
(850) 999-4655

**From:** Cellon, Connie <[CELLON.CONNIE@flsenate.gov](mailto:CELLON.CONNIE@flsenate.gov)>  
**Sent:** Tuesday, February 2, 2021 3:37 PM  
**To:** Andrew Kalel <[Andrew.Kalel@regionalcounsels.com](mailto:Andrew.Kalel@regionalcounsels.com)>  
**Subject:** SB 762 Senator Baxley's Public Records Exemption bill

Hey Andrew! You doing alright? Hope so!

This bill landed on my desk and I need some information from you (IN WRITING) that will help the members be convinced the Regional Counsel investigators need this exemption for their cars. Here's what I can think of:

1. You have investigators? What do they do? How many in how many offices?
2. Has anybody had an experience – a bad experience – as a result of having their car traced back to the office because of the tag or registration? If so, please explain.

I need some detail I can include in my analysis of the bill.

ALSO, there's something in the bill about the Regional Counsels being (paraphrasing here) "like other law enforcement agencies"... I never thought of them as law enforcement...lawyers akin to the public defenders and DCF lawyers, yes...law enforcement, no. Can you help me out with my misguided thinking, OR come up with a better line for the bill?

Thanks for all your help. Things are starting to percolate here and I don't want to wait 'til the last minute to get this analysis done!

HAPPY 2021!!!

Connie Cellon  
Senate Criminal Justice  
850-487-5192



YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

03/23/2021

Meeting Date

762

Bill Number (if applicable)

Topic Public Records/Criminal Conflict & Civil Regional Counsel Offices - 2021

Amendment Barcode (if applicable)

Name Andrew Kalel

Job Title Legislative Affairs Director

Address 227 North Bronough Street, Suite 1125

Phone (850)999-4655

Street

Tallahassee

Florida

32301

Email andrew.kalel@regionalcounsels.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Offices of Criminal Conflict & Civil 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  
**APPEARANCE RECORD**

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

3/23/21

Meeting Date

SB ~~762~~ 762

Bill Number (if applicable)

Topic PUBLIC RECORDS / CRIMINAL CONFLICT & REGIONAL COUNSEL

Amendment Barcode (if applicable)

Name CHRISTIAN MINOR

Job Title EXECUTIVE DIRECTOR

Address 1300 N ADAMS ST.

Phone (321) 223-4232

Street

TALLAHASSEE

FL

32303

Email cmminor@fjjwa.org

City

State

Zip

Speaking:  For  Against  Information

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

Representing FLORIDA JUVENILE JUSTICE ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/23/21  
Meeting Date

SB 762  
Bill Number (if applicable)

Topic Public Records/Criminal Conflict + ARCO

Amendment Barcode (if applicable)

Name Laurette Philipsen

Job Title

Address 7240 Westwind Drive

352 533-7202  
Phone

Port Richey FL 34668  
City State Zip

advocatephilipson@gmail.com  
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.**

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Ethics and Elections, *Chair*  
Appropriations Subcommittee on Criminal and Civil Justice  
Community Affairs  
Criminal Justice  
Health Policy  
Judiciary  
Rules

**JOINT COMMITTEE:**  
Joint Legislative Auditing Committee, *Alternating Chair*

**SENATOR DENNIS BAXLEY**  
12th District

February 1, 2021

The Honorable Chair Jason Pizzo  
405 Senate Office Building  
Tallahassee, Florida 32399

Dear Chair Pizzo,

I would like to request that SB 762 Public Records Exemption Criminal Conflict & Civil Regional Counsels be heard in the next Criminal Justice Committee meeting.

This bill Public Records/Criminal Conflict and Civil Regional Counsel Offices authorizes the issuance of confidential registration certificates and license plates or decals under a fictitious name to criminal conflict and civil regional counsel offices to conduct specified law enforcement activities expanding a public records exemption to include all records pertaining to a registration application submitted by any regional counsel office.

Thank you for your favorable consideration.

Onward & Upward,



Senator Dennis K. Baxley  
Senate District 12

DKB/dd

cc: Lauren Jones, Staff Director

**REPLY TO:**

- 206 South Hwy 27/441, Lady Lake, Florida 32159 (352) 750-3133
- 315 SE 25th Avenue, Ocala, Florida 34471 (352) 789-6720
- 320 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

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

**Wilton Simpson**  
President of the Senate

**Aaron Bean**  
President Pro Tempore

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

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

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

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**BILL:** CS/CS/SB 764

**INTRODUCER:** Criminal Justice Committee; Military and Veterans Affairs, Space, and Domestic Security Committee; and Senator Burgess

**SUBJECT:** Veterans Treatment Courts

**DATE:** March 24, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Caldwell</u>	<u>MS</u>	<u>Fav/CS</u>
2.	<u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 764 redesignates the Military Veterans and Servicemembers Program as the Veterans Treatment Court Program. The bill authorizes courts to develop and operate a veterans treatment court. Like existing law, the program is open to a servicemember, veteran, and a current or former defense contractor or military member of a foreign allied country. However, the bill expands participation to include not just a member of the Florida National Guard, but also a National Guard of another state. In addition, unlike the current program which is open to all veterans regardless of discharge status, the bill provides that the court will decide whether to admit a dishonorably discharged veteran to the program, on a case-by-case basis, after a hearing.

The bill encourages the court to develop policies and procedures, including employing a nonadversarial approach; identifying participants early in the process; and engaging in partnerships among other veterans treatment courts, the United States Department of Veterans Affairs, the Florida Department of Veterans' Affairs, public agencies, and community-based organizations.

A Military Veterans and Servicemembers Court in operation as of June 30, 2021, is grandfathered in to continue as a Veterans Treatment Court but must comply with changes made under this bill.

The bill is estimated to have a negative indeterminate prison bed impact (an unquantifiable decrease in prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2021.

## II. Present Situation:

### Problem-Solving Courts

Miami-Dade County established an adult drug court in 1989, the first problem-solving court in the United States.<sup>1</sup> Today, more than 184 problem-solving courts operate statewide.<sup>2</sup> These are drug court (dependency, juvenile, adult, adult misdemeanor, and adult post-adjudicatory prison diversion, and a Marchman Act Drug Court in Hillsborough County), mental health court, DUI court, and veterans court.<sup>3</sup>

### Veterans Courts

#### *Programming*

The first veterans court opened in Buffalo, N.Y. in 2008.<sup>4</sup> Veterans court follows the model of other specialty courts, such as drug court and mental health court whereby the court emphasizes treatment over incarceration.<sup>5</sup> Like other specialty courts, veterans court involves therapeutic intervention under a nonadversarial framework. Successful completion of pretrial court conditions may result in a dismissal of criminal charges.<sup>6</sup> More than 460 courts operate veterans court programs across the country.<sup>7</sup>

In Florida, 31 counties operate a veterans court program.<sup>8</sup> Moreover, veterans court programs operate in 17 of the 20 judicial circuits.<sup>9</sup> Even in those circuits without a designated program,

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<sup>1</sup> Office of the State Courts Administrator, *Florida Problem-Solving Courts Report*, pg. 2 (Jan. 29, 2021) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

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

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

<sup>4</sup> Judge Robert T. Russell, *Veterans Treatment Court: A Proactive Approach*, pg. 364, American University, School of Public Affairs, Justice Programs Office Publications, available at <https://www.american.edu/spa/jpo/initiatives/drug-court/upload/veterans-treatment-court-a-proactive-approach.pdf> (last visited March 18, 2021).

<sup>5</sup> Jack Tsai and Emma Ogden, *A New Court System to Rehabilitate Veterans*, Public Health Post (April 25, 2018), available at <https://www.publichealthpost.org/research/rehabilitating-veterans-in-the-criminal-justice-system/> (last visited March 18, 2021).

<sup>6</sup> Law for Veterans, *Veterans Courts*, available at <https://www.lawforveterans.org/veterans-courts> (last visited March 18, 2021).

<sup>7</sup> Jack Tsai, et. al., *A National Study of Veterans Court Treatment Participants: Who Benefits and Who Recidivates*, Adm. Pol. Ment. Health, (July 21, 2017), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5776060/> (last visited March 18, 2021).

<sup>8</sup> Veterans court programs operate in Alachua, Bay, Brevard, Broward, Clay, Citrus, Collier, Duval, Escambia, Hernando, Hillsborough, Indian River, Lake, Lee, Leon, Manatee, Marion, Miami-Dade, Nassau, Okaloosa, Orange, Osceola, Palm Beach, Pasco, Pinellas, Sarasota, Seminole, St. Johns, St. Lucie, Sumter, and Volusia counties. Office of the State Courts Administrator, *supra* note 1 at 10-14 (Jan. 29, 2021) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

<sup>9</sup> Office of the State Courts Administrator, *2021 Judicial Impact Statement* (Jan. 27, 2021) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

accommodations are provided to defendants who would otherwise qualify to participate in a veterans court program.<sup>10</sup>

### ***Funding***

Veterans courts, like other problem-solving courts in the state, receive funding from a variety of sources both state and federal. For Fiscal Year 2020-2021, approximately 68 of the state's 184 problem-solving courts received funding through state appropriation. Other sources are federal grant funding and state agency monies through agencies targeting substance abuse and mental health treatment, such as the Department of Children and Families. An individual problem-solving court may be funded through a single, or multiple sources of funding.<sup>11</sup>

The federal Veteran Treatment Court Coordination Act of 2019 directs the Department of Justice to formally create a program to provide funding and technical assistance to state, local, and tribal governments with veterans treatment courts.<sup>12</sup> As mandated, the Adult Drug Court and Veterans Treatment Court Discretionary Grant Program within the Department of Justice provides financial and technical assistance to states, state courts, local courts, units of local government, and federally recognized Indian tribal governments to enhance the operations of drug courts or assist or establish veterans treatment courts.<sup>13</sup> The program accepts grant applications on behalf of:

- A state or territory;
- State or local court;
- County;
- A unit of local government; and
- A federally recognized Indian tribal government (as determined by the secretary of the interior).<sup>14</sup>

For statewide support of veterans treatment courts through the federal program, a state agency or the administrative office of the courts is eligible to apply for a grant.<sup>15</sup>

### **Military Veterans and Servicemembers Court Program**

In 2012, the Legislature established the T. Patt Maney Veterans' Treatment Intervention Act.<sup>16</sup> The Act authorizes the chief judge of each judicial circuit to create a Military Veterans and Servicemember Court Program (veterans court). The program is available to eligible veterans,

---

<sup>10</sup> *Id.* The Tenth Judicial Circuit operates a holistic veterans court docket with dedicated staff, an outreach counselor from the Veterans Administration/Department of Veterans Affairs, trained volunteer veteran mentors, and relationships with providers and justice system partners. The Third Judicial Circuit issued an administrative order which details the authority for a qualifying defendant to move to transfer his or her case to a veterans court. The Sixteenth Judicial Circuit reports that it has, case-by-case, provided special services to veterans in conjunction with its adult drug court upon a recommendation from the state attorney.

<sup>11</sup> Office of the State Courts Administrator, *supra* note 1, at 3.

<sup>12</sup> Pub. L. No. 116-153, 134 STAT. 688 (2020).

<sup>13</sup> Bureau of Justice Assistance, Office of Justice Programs, Department of Justice, *Adult Drug Court and Veterans Treatment Court Discretionary Grant Program*, available at <https://bja.ojp.gov/program/adult-drug-court-and-veterans-treatment-court-discretionary-grant-program/overview> (last visited March 18, 2021).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Chapter 2012-159, ss. 16-20, L.O.F.; Section 394.47891, F.S.

servicemembers, current or former United States Department of Defense contractors, and current or former military members of a foreign allied country. The purpose of the program is for a court to tailor sentencing to treatment of an individual's underlying disorder. Participation is voluntary.<sup>17</sup>

### ***Eligibility to Participate in the Program***

When first implemented, the bill provided that to be eligible, a veteran or servicemember must:

- Be convicted of a criminal offense;
- Suffer from a military-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem; and
- If a veteran, have received an honorable discharge from military service.<sup>18</sup>

In 2016, the Legislature expanded the requirement of an honorable discharge to include eligibility for a veteran released under a general discharge.<sup>19</sup> Subsequently, in 2019, the Legislature again expanded the program to provide eligibility for a veteran discharged or released under any condition, including a release under a dishonorable discharge.<sup>20</sup>

### ***Pretrial Intervention Program***

Pretrial intervention programs are also available for veterans. Both misdemeanor and felony cases may be processed in a pretrial intervention program. However, a court may deny admission if the defendant has previously entered a court-ordered veterans treatment program.<sup>21</sup> While enrolled in a pretrial intervention program, the defendant fulfills the terms of a written coordinated strategy developed by the veterans' treatment intervention team.<sup>22</sup> The protocol may require successful completion of outpatient or inpatient treatment, including at a jail-based treatment program. Upon successful completion of the program, the court may dismiss the charges. If the participant is otherwise eligible to do so, he or she may petition the court to have the arrest record expunged.<sup>23</sup> If the court finds that the defendant has not successfully completed the program, the court may return the case to the criminal docket for prosecution.<sup>24</sup>

Certain pending felony charges disqualify a defendant from participation in a pretrial intervention program. Considered more serious felony charges, they include:

- Kidnapping or attempted kidnapping; false imprisonment of a child under the age of 13; or luring or enticing a child;
- Murder or attempted murder; attempted felony murder; or manslaughter;
- Aggravated battery or attempted aggravated battery;
- Sexual battery or attempted sexual battery;

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<sup>17</sup> Section 394.47891, F.S.

<sup>18</sup> Chapter 2012-159, s. 9, L.O.F.

<sup>19</sup> Chapter 2016-127, s. 9, L.O.F.

<sup>20</sup> Chapter 2019-61, s. 1, L.O.F.

<sup>21</sup> Sections 948.08(7)(a) and 948.16(2)(a), F.S.

<sup>22</sup> Sections 948.08(7)(b) and 948.16(2)(b), F.S.

<sup>23</sup> Sections 948.08(6)(d) and 948.16(2)(b), F.S.

<sup>24</sup> Sections 948.08(4) and 948.16(4), F.S.



- Lewd or lascivious battery, molestation, conduct, or exhibition, or attempted lewd or lascivious battery, or lewd or lascivious offense or attempted offense against an elderly or disabled person;
- Robbery or attempted robbery;
- Sexual performance by a child or attempted sexual performance by a child;
- Computer pornography of a minor; transmission of child pornography; or buying or selling of minors; and
- Aggravated assault or stalking.<sup>25</sup>

### ***Transfer of Case for Participation in a Problem-Solving Court***

A veteran who is eligible for participation in a veterans court may, upon request and approval, transfer his or her case to a county other than that in which the charge arose.<sup>26</sup> Both a representative of the original trial court and the receiving court must agree to the transfer. At the time of transfer, a court case may either be in its pretrial or postadjudicatory phase.<sup>27</sup> The receiving jurisdiction disposes of the case.<sup>28</sup>

### ***Participation in a Treatment Program as a Condition of Probation or Community Control***

The court may order as a condition of probation or community control that a veteran or servicemember participate in a treatment program designed to address the individual's mental illness, traumatic brain injury, substance abuse disorder, or psychological problem.<sup>29</sup> The court must give preference to those treatment programs for which the veteran or servicemember is eligible through the United States Department of Veterans Affairs or the Florida Department of Veterans Affairs.<sup>30</sup>

The court may also order a person who commits a violation of probation or community control to successfully complete a military veterans and servicemembers court program if the underlying offense is a nonviolent felony and the person otherwise qualifies.<sup>31</sup>

### ***Problem-Solving Court Reports***

The Office of the State Courts Administrator is required to provide an annual report on problem-solving courts to the President of the Senate and the Speaker of the House of Representatives. Specifically, the report must include:

- Number of participants in each problem-solving court for each fiscal year the court has been operating;
- Types of services provided;
- Each source of funding for each court by fiscal year; and

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<sup>25</sup> Section 948.06(8)(c), F.S.

<sup>26</sup> Section 910.035(5)(a) and (b), F.S.

<sup>27</sup> Section 910.035(5)(d), F.S.

<sup>28</sup> Section 910.035(5)(f), F.S.

<sup>29</sup> Section 948.21(1), F.S.; A treatment program as a condition of probation or community control for a veteran released from service under a dishonorable discharge is only available if the crime was committed on or after October 1, 2019 (s. 948.21(3), F.S.).

<sup>30</sup> Section 948.21(4), F.S.

<sup>31</sup> Section 948.06(2)(k)1., F.S.

- Performance of each court based on outcome measures established by the courts.<sup>32</sup>

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

This bill redesignates as the Veterans Treatment Court Program the existing Military Veterans and Servicemembers Court Program. The program authorizes a court with jurisdiction over criminal cases to create and administer a veterans treatment court and a chief judge to issue administrative orders regarding such court.

Like existing law, a veterans treatment court can accept both pre- and post-adjudication misdemeanor and felony cases. A defendant who wishes to participate must submit an application to the state attorney. The state attorney and the court will then decide if the defendant meets eligibility requirements for the court.

#### **Policies and Procedures of a Veterans Treatment Court**

Each veterans treatment court must seek input from the state attorney, defense counsel, and other interested persons in developing and adopting policies and procedures governing such court. A veterans treatment court must create a record of policies and procedures based on nationally recognized best practices that specifically include:

- Integrating substance abuse, mental health treatment services, and other treatment and rehabilitation services into case processing;
- Employing a nonadversarial approach in which the state attorney and defense counsel promote public safety while protecting due process rights of the defendant;
- Identifying eligible defendants early in the process;
- Frequently testing for alcohol and drug use;
- Providing ongoing judicial interaction with each defendant;
- Monitoring of program goals; and
- Forging partnerships among veterans treatment courts, the United States Department of Veterans Affairs, the Florida Department of Veterans' Affairs, public agencies, and community-based organizations.

The court may also establish policies and procedures for referring a defendant to a health care provider, or assisting with housing, employment, nutrition, mentoring, education, and driver license reinstatement.

#### **Eligibility for Participation in a Veterans Treatment Court**

The state attorney and the court review each application for veterans treatment court. To qualify, a defendant must either be a veteran, defined as a person who has served in the military, or a servicemember, defined as an active or reserve member of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard; a member of the National Guard, either in Florida or of another state; a current or former contractor for the United States Department of Defense; or a current or former military member of a foreign allied country. Whether to include veterans who

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<sup>32</sup> Section 43.51(1), F.S.

are dishonorably discharged from military service is a decision the court makes, on a case-by-case basis, after a hearing.

To further qualify:

- The defendant must have a military- or service-related mental health condition, traumatic brain injury, substance use disorder, or psychological problem;
- The defendant must agree to the terms of a participant agreement by signing the agreement; and
- The defendant's participation in the court is in the interest of justice and of benefit to the defendant and the community.

In determining whether participation furthers justice and is of sufficient benefit, the state attorney, for pretrial diversion, and the court, for all other matters, must consider:

- The nature and circumstances of the offense;
- The recommendation of the state attorney;
- Special characteristics or circumstances of both the defendant and the victim;
- Prior criminal history and whether the defendant previously participated in a veterans treatment or other similar program;
- Whether needs exceed resources available through the court;
- Impact on the community;
- Recommendations of law enforcement;
- Recommendation of the victim;
- Provision for and the likelihood of obtaining restitution during participation in the court;
- Mitigating circumstances; and
- Other reasonably related circumstances.

The program is available to a defendant whose case is at any stage of a criminal proceeding. However, a veteran or a servicemember does not have a right to participate in a veterans treatment court.

### **Condition of Probation or Community Control**

The bill authorizes a veterans treatment court to impose a condition requiring a probationer or community controllee to participate in a treatment program to treat mental illness, traumatic brain injury, a substance abuse disorder, or a psychological problem. This provision applies to a veteran or servicemember who otherwise qualifies and who committed the underlying crime on or after July 1, 2021.

### **Existing Military Veterans and Servicemembers Program and Participants**

By amending s. 394.47891, F.S., the bill substitutes the term "Veterans Treatment Court" for a "Military Veterans and Servicemembers Court." As such, a Military Veterans and Servicemembers Court in operation as of June 30, 2021, is grandfathered in to continue as a Veterans Treatment Court but must comply with changes made under this bill. Similarly, the bill does not affect or alter the rights or responsibilities of any person admitted to and participating in the program.

Cross-references and conforming changes are provided to enable a defendant currently authorized to participate in a military veterans and servicemembers court to participate in a veterans treatment court, and from the current pretrial veterans' treatment intervention program to a veterans treatment court program. Therefore, cross-references and conforming changes to ss. 43.51, 910.035, 948.06, 948.08, 948.16, and 948.21, F.S., are included in the bill.

The bill takes effect July 1, 2021.

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

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

As this bill authorizes, rather than requires courts to establish veterans treatment courts, the bill does not impose a mandate on local municipalities or counties.

##### **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:**

By reducing the number of veterans who are incarcerated and linking conditions with treatment, the bill may reduce costs for veterans and their families.

**C. Government Sector Impact:****Costs to the Judiciary**

The Office of the State Courts Administrator provides that the fiscal impact of the bill cannot be accurately determined due to an unavailability of data needed to quantifiably establish an impact on judicial workload.<sup>33</sup>

**Prison Beds Cost**

To date, the state has 31 veterans courts. Per the Department of Corrections, in Fiscal Year 2018-2019, there were 142 offenders admitted for veterans' treatment intervention, and in Fiscal Year 2019-2020, 108 offenders were admitted. A fiscal impact from an increase in eligible participants to veterans treatment intervention is not quantifiable at this time.<sup>34</sup> The Criminal Justice Impact Conference considered this bill on March 8, 2021, and determined that the bill is estimated to have a negative indeterminate prison bed impact (an unquantifiable decrease in prison beds).<sup>35</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 394.47891, 43.51, 910.035, 948.06, 948.08, 948.16, and 948.21.

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<sup>33</sup> Office of the State Courts Administrator, *supra* note 9.

<sup>34</sup> Office of Economic and Demographic Research, *SB 764 -- Veterans Treatment Courts*; (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

<sup>35</sup> Office of Economic and Demographic Research, Criminal Justice Impact Conference, *Agenda* (March 8, 2021), available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/index.cfm> (last visited March 21, 2021).

**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 March 23, 2021:**

The committee substitute:

- Deletes two references to a “participation agreement” which no longer exists in the bill.
- Clarifies that the court, after a hearing, will decide whether to admit a dishonorably discharged veteran to the veterans treatment court program, not the chief judge and the state attorney.
- Includes defense counsel in the group from whom the court will seek input in developing and adopting policies and procedures for the program.

**CS by Military and Veterans Affairs, Space, and Domestic Security on March 16, 2021:**

The committee substitute:

- Expands participation in a veterans treatment court to include a member of a National Guard of another state;
- Requires the underlying condition that qualifies a person to participate in a veterans treatment court to be military- or service- related;
- Removes language providing the process of a participant agreement;
- Makes conforming changes to replace participation in a pretrial veterans’ treatment intervention program with a veterans treatment court program; and
- Clarifies as an underlying condition a substance use disorder, rather than a substance abuse disorder.

- B. **Amendments:**

None.



240822

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2021	.	
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	.	
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The Committee on Criminal Justice (Burgess) recommended the following:

**Senate Amendment**

Delete lines 57 - 147

and insert:

(b) "Servicemember" means:

1. A member of the active or reserve components of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard;

2. A member of the Florida National Guard or a National Guard of another state;



240822

11           3. A current or former contractor for the United States  
12 Department of Defense; or

13           4. A current or former military member of a foreign allied  
14 country.

15           (c) "Veteran" means a person who has served in the  
16 military.

17           (d) "Veterans treatment court" means a specialized docket  
18 administered by a court for veterans and servicemembers as set  
19 forth in this section.

20           (3) AUTHORIZATION.—

21           (a) A court with jurisdiction over criminal cases may  
22 create and administer a veterans treatment court.

23           (b) A veterans treatment court may adjudicate misdemeanors  
24 and felonies.

25           (c) The chief judge may issue administrative orders  
26 concerning the veterans treatment court.

27           (d) The chief judge and state attorney of the circuit that  
28 creates and administers the veterans treatment court have the  
29 exclusive authority to determine whether, on a case-by-case  
30 basis, veterans who have been dishonorably discharged may  
31 participate in the veterans treatment court of that circuit.

32           (4) ADMISSION.—A defendant who meets the eligibility  
33 requirements under subsection (8) may be admitted to a veterans  
34 treatment court at any stage of a criminal proceeding. A  
35 defendant seeking to participate in a veterans treatment court  
36 must submit an application to the state attorney. The state  
37 attorney and court must review each application and determine  
38 whether the defendant meets the eligibility requirements in  
39 subsection (8).





240822

40 (5) RECORD OF POLICIES AND PROCEDURES.—

41 (a) Each veterans treatment court shall seek input from the  
42 state attorney and other interested persons in developing and  
43 adopting policies and procedures to implement subsections (6)  
44 and (7).

45 (b) A veterans treatment court shall create a record of the  
46 policies and procedures adopted to implement subsections (6) and  
47 (7).

48 (6) KEY COMPONENTS OF A VETERANS TREATMENT COURT.—

49 (a) A veterans treatment court shall adopt policies and  
50 procedures to implement the following key components:

51 1. Integrating substance abuse and mental health treatment  
52 services and any other related treatment and rehabilitation  
53 services with justice system case processing;

54 2. Using a nonadversarial approach in which the state  
55 attorney and defense counsel promote public safety while  
56 protecting the due process rights of the defendant;

57 3. Providing for early identification of eligible  
58 defendants;

59 4. Monitoring defendants for abstinence from alcohol and  
60 drugs by frequent testing;

61 5. Providing ongoing judicial interaction with each  
62 defendant;

63 6. Monitoring and evaluating the achievement of each  
64 defendant's program goals; and

65 7. Forging partnerships among the veterans treatment  
66 courts, the United States Department of Veterans Affairs, the  
67 Florida Department of Veterans' Affairs, public agencies, and  
68 community-based organizations to generate local support and



240822

69 enhance the effectiveness of the veterans treatment court.

70 (b) In adopting policies and procedures under this section,  
71 the court shall consult nationally recognized best practices  
72 related to the key components of veterans treatment courts.

73 (7) SUPPLEMENTAL POLICIES AND PROCEDURES OF VETERANS  
74 TREATMENT COURTS.—A veterans treatment court may adopt  
75 supplemental policies and procedures to:

76 (a) Refer a defendant with a medical need to an appropriate  
77 health care provider or refer a defendant for appropriate  
78 assistance, including assistance with housing, employment,  
79 nutrition, mentoring, education, and driver license  
80 reinstatement.

81 (b) Otherwise encourage participation in the veterans  
82 treatment court.

83 (8) ELIGIBILITY.—

84 (a) A defendant may participate in a veterans treatment  
85 court if:

86 1. The defendant has a military- or service-related mental  
87 health condition, traumatic brain injury, substance use  
88 disorder, or psychological problem; and

89 2. The defendant's participation in the veterans treatment



727420

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2021	.	
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The Committee on Criminal Justice (Brandes) recommended the following:

**Senate Amendment to Amendment (240822)**

Delete lines 27 - 31

and insert:

(d) The court, after a hearing, shall determine on a case-by-case basis whether veterans who have been dishonorably discharged may participate in a veterans treatment court.



917972

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2021	.	
	.	
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The Committee on Criminal Justice (Brandes) recommended the following:

**Senate Amendment to Amendment (240822)**

Delete line 42  
and insert:  
state attorney, defense counsel, and other interested persons in  
developing and

By the Committee on Military and Veterans Affairs, Space, and Domestic Security; and Senator Burgess

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1 A bill to be entitled  
 2 An act relating to veterans treatment courts; amending  
 3 s. 394.47891, F.S.; providing legislative intent;  
 4 defining terms; authorizing certain courts to create  
 5 and administer veterans treatment courts for specified  
 6 purposes; providing standards for admission to a  
 7 veterans treatment court program; specifying program  
 8 implementation procedures, components, and policies;  
 9 specifying eligibility requirements for participation  
 10 in the program; providing construction; specifying  
 11 that the act does not create a right to participate in  
 12 the program; deleting provisions relating to the  
 13 Military Veterans and Servicemembers Court Program, to  
 14 conform to changes made by the act; amending ss.  
 15 43.51, 910.035, and 948.06, F.S.; conforming  
 16 provisions to changes made by the act; amending ss.  
 17 948.08 and 948.16, F.S.; revising eligibility for  
 18 certain pretrial programs to include certain  
 19 individuals eligible to participate in a veterans  
 20 treatment court program; amending s. 948.21, F.S.;  
 21 authorizing a court to impose a condition requiring a  
 22 probationer or community controllee eligible to  
 23 participate in a veterans treatment court program to  
 24 participate in certain treatment programs under  
 25 certain circumstances; specifying applicability of the  
 26 act to participants in certain court programs in  
 27 existence as of a specified date; providing an  
 28 effective date.  
 29

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30 Be It Enacted by the Legislature of the State of Florida:  
 31  
 32 Section 1. Section 394.47891, Florida Statutes, is amended  
 33 to read:  
 34 394.47891 ~~Military Veterans treatment and servicemembers~~  
 35 ~~court programs.~~  
 36 (1) LEGISLATIVE INTENT.—It is the intent of the Legislature  
 37 to encourage and support the judicial circuits of the state and  
 38 other such agencies, local governments, interested public or  
 39 private entities, and individuals to create and maintain a  
 40 veterans treatment court in each circuit. The purpose of a  
 41 veterans treatment court program is to address the underlying  
 42 causes of a veteran's involvement with the judicial system  
 43 through the use of specialized dockets, multidisciplinary teams,  
 44 and evidence-based treatment. A veterans treatment court program  
 45 shall use nonadversarial approaches to resolve such issues.  
 46 Veterans treatment courts depend on the leadership of judges or  
 47 magistrates educated in the issues and science of veterans'  
 48 behaviors leading to court involvement, and these courts require  
 49 a rigorous team effort to detect, discern, and assist veterans  
 50 in correcting the behaviors and choices that led to the  
 51 veterans' court involvement. This section creates a detailed  
 52 statewide standard for the creation and operation of, and  
 53 procedures for, veterans treatment courts.  
 54 (2) DEFINITIONS.—For purposes of this section, the term:  
 55 (a) "Defendant" means a veteran or servicemember who has  
 56 been charged with or convicted of a criminal offense.  
 57 (b) "Participant agreement" means the agreement as set  
 58 forth in subsection (9) and any specific terms and conditions

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59 applicable to the defendant. The term includes any modifications  
 60 made to the agreement under subsection (10).

61 (c) "Servicemember" means:

62 1. A member of the active or reserve components of the  
 63 United States Army, Navy, Air Force, Marine Corps, or Coast  
 64 Guard;

65 2. A member of the Florida National Guard or a National  
 66 Guard of another state;

67 3. A current or former contractor for the United States  
 68 Department of Defense; or

69 4. A current or former military member of a foreign allied  
 70 country.

71 (d) "Veteran" means a person who has served in the  
 72 military.

73 (e) "Veterans treatment court" means a specialized docket  
 74 administered by a court for veterans and servicemembers as set  
 75 forth in this section.

76 (3) AUTHORIZATION.—

77 (a) A court with jurisdiction over criminal cases may  
 78 create and administer a veterans treatment court.

79 (b) A veterans treatment court may adjudicate misdemeanors  
 80 and felonies.

81 (c) The chief judge may issue administrative orders  
 82 concerning the veterans treatment court.

83 (d) The chief judge and state attorney of the circuit that  
 84 creates and administers the veterans treatment court have the  
 85 exclusive authority to determine whether veterans who have been  
 86 dishonorably discharged may participate in the veterans  
 87 treatment court within the circuit.

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88 (4) ADMISSION.—A defendant who meets the eligibility  
 89 requirements under subsection (8) may be admitted to a veterans  
 90 treatment court at any stage of a criminal proceeding. A  
 91 defendant seeking to participate in a veterans treatment court  
 92 must submit an application to the state attorney. The state  
 93 attorney and court must review each application and determine  
 94 whether the defendant meets the eligibility requirements in  
 95 subsection (8).

96 (5) RECORD OF POLICIES AND PROCEDURES.—

97 (a) Each veterans treatment court shall seek input from the  
 98 state attorney and other interested persons in developing and  
 99 adopting policies and procedures to implement subsections (6)  
 100 and (7).

101 (b) A veterans treatment court shall create a record of the  
 102 policies and procedures adopted to implement subsections (6) and  
 103 (7).

104 (6) KEY COMPONENTS OF A VETERANS TREATMENT COURT.—

105 (a) A veterans treatment court shall adopt policies and  
 106 procedures to implement the following key components:

107 1. Integrating substance abuse and mental health treatment  
 108 services and any other related treatment and rehabilitation  
 109 services with justice system case processing;

110 2. Using a nonadversarial approach in which the state  
 111 attorney and defense counsel promote public safety while  
 112 protecting the due process rights of the defendant;

113 3. Providing for early identification of eligible  
 114 defendants;

115 4. Monitoring defendants for abstinence from alcohol and  
 116 drugs by frequent testing;

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- 117 5. Providing ongoing judicial interaction with each  
 118 defendant;
- 119 6. Monitoring and evaluating the achievement of each  
 120 defendant's program goals; and
- 121 7. Forging partnerships among the veterans treatment  
 122 courts, the United States Department of Veterans Affairs, the  
 123 Florida Department of Veterans' Affairs, public agencies, and  
 124 community-based organizations to generate local support and  
 125 enhance the effectiveness of the veterans treatment court.
- 126 (b) In adopting policies and procedures under this section,  
 127 the court shall consult nationally recognized best practices  
 128 related to the key components of veterans treatment courts.
- 129 (7) SUPPLEMENTAL POLICIES AND PROCEDURES OF VETERANS  
 130 TREATMENT COURTS.—A veterans treatment court may adopt  
 131 supplemental policies and procedures to:
- 132 (a) Refer a defendant with a medical need to an appropriate  
 133 health care provider or refer a defendant for appropriate  
 134 assistance, including assistance with housing, employment,  
 135 nutrition, mentoring, education, and driver license  
 136 reinstatement.
- 137 (b) Otherwise encourage participation in the veterans  
 138 treatment court.
- 139 (8) ELIGIBILITY.—
- 140 (a) A defendant may participate in a veterans treatment  
 141 court if:
- 142 1. The defendant has a military- or service-related mental  
 143 health condition, traumatic brain injury, substance use  
 144 disorder, or psychological problem;
- 145 2. The defendant voluntarily agrees to the terms of the

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- 146 participant agreement by signing the agreement; and
- 147 3. The defendant's participation in the veterans treatment  
 148 court is in the interest of justice and of benefit to the  
 149 defendant and the community, as determined by:
- 150 a. The state attorney, with regard to pretrial diversion;  
 151 and
- 152 b. The court, with regard to all other matters.
- 153 (b) In making the determination under subparagraph (a)3.,  
 154 the state attorney and court must consider:
- 155 1. The nature and circumstances of the offense charged;
- 156 2. The special characteristics or circumstances of the  
 157 defendant and any victim or alleged victim, including any  
 158 recommendation of the victim or alleged victim;
- 159 3. The defendant's criminal history and whether the  
 160 defendant previously participated in a veterans treatment court  
 161 or similar program;
- 162 4. Whether the defendant's needs exceed the treatment  
 163 resources available to the veterans treatment court;
- 164 5. The effect on the community of the defendant's  
 165 participation and treatment in the veterans treatment court;
- 166 6. Recommendations of any law enforcement agency involved  
 167 in investigating or arresting the defendant;
- 168 7. If the defendant owes restitution, the likelihood of  
 169 payment during the defendant's participation in the veterans  
 170 treatment court;
- 171 8. Any mitigating circumstances; and
- 172 9. Any other circumstances reasonably related to the  
 173 defendant's case.
- 174 (9) LIBERAL CONSTRUCTION.—The provisions of this section

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175 shall be liberally construed.

176 (10) NO RIGHT TO PARTICIPATE.—This section does not create  
 177 a right of a veteran or servicemember to participate in a  
 178 veterans treatment court. The chief judge of each judicial  
 179 circuit may establish a Military Veterans and Servicemembers  
 180 Court Program under which veterans, as defined in s. 1.01;  
 181 veterans who were discharged or released under any condition;  
 182 servicemembers, as defined in s. 250.01; individuals who are  
 183 current or former United States Department of Defense  
 184 contractors; and individuals who are current or former military  
 185 members of a foreign allied country, who are charged or  
 186 convicted of a criminal offense, and who suffer from a military  
 187 related mental illness, traumatic brain injury, substance abuse  
 188 disorder, or psychological problem can be sentenced in  
 189 accordance with chapter 921 in a manner that appropriately  
 190 addresses the severity of the mental illness, traumatic brain  
 191 injury, substance abuse disorder, or psychological problem  
 192 through services tailored to the individual needs of the  
 193 participant. Entry into any Military Veterans and Servicemembers  
 194 Court Program must be based upon the sentencing court's  
 195 assessment of the defendant's criminal history, military  
 196 service, substance abuse treatment needs, mental health  
 197 treatment needs, amenability to the services of the program, the  
 198 recommendation of the state attorney and the victim, if any, and  
 199 the defendant's agreement to enter the program.

200 Section 2. Subsection (2) of section 43.51, Florida  
 201 Statutes, is amended to read:

202 43.51 Problem-solving court reports.—

203 (2) For purposes of this section, the term "problem-solving

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204 court" includes, but is not limited to, a drug court pursuant to  
 205 s. 397.334, s. 948.01, s. 948.06, s. 948.08, s. 948.16, or s.  
 206 948.20; a ~~veterans treatment military veterans' and~~  
 207 ~~servicemembers'~~ court pursuant to s. 394.47891, s. 948.08, s.  
 208 948.16, or s. 948.21; a mental health court program pursuant to  
 209 s. 394.47892, s. 948.01, s. 948.06, s. 948.08, or s. 948.16; a  
 210 community court pursuant to s. 948.081; or a delinquency  
 211 pretrial intervention court program pursuant to s. 985.345.

212 Section 3. Paragraph (a) of subsection (5) of section  
 213 910.035, Florida Statutes, is amended to read:

214 910.035 Transfer from county for plea, sentence, or  
 215 participation in a problem-solving court.—

216 (5) TRANSFER FOR PARTICIPATION IN A PROBLEM-SOLVING COURT.—

217 (a) For purposes of this subsection, the term "problem-  
 218 solving court" means a drug court pursuant to s. 948.01, s.  
 219 948.06, s. 948.08, s. 948.16, or s. 948.20; a veterans treatment  
 220 military veterans' and servicemembers' court pursuant to s.  
 221 394.47891, s. 948.08, s. 948.16, or s. 948.21; a mental health  
 222 court program pursuant to s. 394.47892, s. 948.01, s. 948.06, s.  
 223 948.08, or s. 948.16; or a delinquency pretrial intervention  
 224 court program pursuant to s. 985.345.

225 Section 4. Paragraph (k) of subsection (2) of section  
 226 948.06, Florida Statutes, is amended to read:

227 948.06 Violation of probation or community control;  
 228 revocation; modification; continuance; failure to pay  
 229 restitution or cost of supervision.—

230 (2)

231 (k)1. Notwithstanding s. 921.0024 and effective for  
 232 offenses committed on or after July 1, 2016, the court may order



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233 the offender to successfully complete a postadjudicatory mental  
 234 health court program under s. 394.47892 or a veterans treatment  
 235 ~~military veterans and servicemembers~~ court program under s.  
 236 394.47891 if:

237 a. The court finds or the offender admits that the offender  
 238 has violated his or her community control or probation;

239 b. The underlying offense is a nonviolent felony. As used  
 240 in this subsection, the term "nonviolent felony" means a third  
 241 degree felony violation under chapter 810 or any other felony  
 242 offense that is not a forcible felony as defined in s. 776.08.  
 243 Offenders charged with resisting an officer with violence under  
 244 s. 843.01, battery on a law enforcement officer under s. 784.07,  
 245 or aggravated assault may participate in the mental health court  
 246 program if the court so orders after the victim is given his or  
 247 her right to provide testimony or written statement to the court  
 248 as provided in s. 921.143;

249 c. The court determines that the offender is amenable to  
 250 the services of a postadjudicatory mental health court program,  
 251 including taking prescribed medications, or a veterans treatment  
 252 ~~military veterans and servicemembers~~ court program;

253 d. The court explains the purpose of the program to the  
 254 offender and the offender agrees to participate; and

255 e. The offender is otherwise qualified to participate in a  
 256 postadjudicatory mental health court program under s.  
 257 394.47892(4) or a veterans treatment ~~military veterans and~~  
 258 ~~servicemembers~~ court program under s. 394.47891.

259 2. After the court orders the modification of community  
 260 control or probation, the original sentencing court shall  
 261 relinquish jurisdiction of the offender's case to the

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262 postadjudicatory mental health court program or the veterans  
 263 treatment court program until the offender is no longer active  
 264 in the program, the case is returned to the sentencing court due  
 265 to the offender's termination from the program for failure to  
 266 comply with the terms thereof, or the offender's sentence is  
 267 completed.

268 Section 5. Paragraph (a) of subsection (7) of section  
 269 948.08, Florida Statutes, is amended to read:

270 948.08 Pretrial intervention program.—

271 (7) (a) ~~Notwithstanding any provision of this section,~~ A  
 272 person who is charged with a felony, other than a felony listed  
 273 in s. 948.06(8)(c), and who is identified as a veteran or a  
 274 servicemember, as defined in s. 394.47891, and is otherwise  
 275 qualified to participate in a veterans treatment court program  
 276 under s. 394.47891 s. 1.01; a veteran who is discharged or  
 277 released under any condition; a servicemember, as defined in s.  
 278 250.01; an individual who is a current or former United States  
 279 Department of Defense contractor; or an individual who is a  
 280 current or former military member of a foreign allied country,  
 281 who suffers from a military service-related mental illness,  
 282 traumatic brain injury, substance abuse disorder, or  
 283 psychological problem is eligible for voluntary admission into a  
 284 veterans treatment court program pursuant to the requirements of  
 285 s. 394.47891(4) and (8). ~~pretrial veterans' treatment~~  
 286 ~~intervention program approved by the chief judge of the circuit,~~  
 287 ~~upon motion of either party or the court's own motion, except:~~

288 1. ~~If a defendant was previously offered admission to a~~  
 289 ~~pretrial veterans' treatment intervention program at any time~~  
 290 ~~before trial and the defendant rejected that offer on the~~

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291 record, the court may deny the defendant's admission to such a  
292 program.

293 ~~2. If a defendant previously entered a court-ordered~~  
294 ~~veterans' treatment program, the court may deny the defendant's~~  
295 ~~admission into the pretrial veterans' treatment program.~~

296 Section 6. Paragraph (a) of subsection (2) of section  
297 948.16, Florida Statutes, is amended to read:

298 948.16 Misdemeanor pretrial substance abuse education and  
299 treatment intervention program; misdemeanor pretrial veterans'  
300 treatment intervention program; misdemeanor pretrial mental  
301 health court program.-

302 (2) (a) A veteran or a servicemember, as defined in s.  
303 394.47891, who is otherwise qualified to participate in a  
304 veterans treatment court program under s. 394.47891 s. 1.01; a  
305 veteran who is discharged or released under any condition; a  
306 servicemember, as defined in s. 250.01; an individual who is a  
307 current or former United States Department of Defense  
308 contractor; or an individual who is a current or former military  
309 member of a foreign allied country, who suffers from a military  
310 service-related mental illness, traumatic brain injury,  
311 substance abuse disorder, or psychological problem, and who is  
312 charged with a misdemeanor is eligible for voluntary admission  
313 into a misdemeanor veterans treatment court pretrial veterans'  
314 treatment intervention program approved by the chief judge of  
315 the circuit, for a period based on the program's requirements  
316 and the treatment plan for the offender, pursuant to the  
317 requirements of s. 394.47891(4) and (8) upon motion of either  
318 party or the court's own motion. However, the court may deny the  
319 defendant admission into a misdemeanor pretrial veterans'

Page 11 of 12

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

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320 treatment intervention program if the defendant has previously  
321 entered a court-ordered veterans' treatment program.

322 Section 7. Present subsection (4) of section 948.21,  
323 Florida Statutes, is redesignated as subsection (5), and a new  
324 subsection (4) is added to that section, to read:

325 948.21 Condition of probation or community control;  
326 military servicemembers and veterans.-

327 (4) Effective for a probationer or community controllee  
328 whose crime is committed on or after July 1, 2021, who is a  
329 veteran or a servicemember as defined in s. 394.47891, and who  
330 is otherwise qualified to participate in a veterans treatment  
331 court program under s. 394.47891, the court may, in addition to  
332 any other conditions imposed, require the probationer or  
333 community controllee to participate in a treatment program  
334 capable of treating the probationer or community controllee's  
335 military- or service-related mental illness, traumatic brain  
336 injury, substance use disorder, or psychological problem.

337 Section 8. A Military Veterans and Servicemembers Court  
338 Program in operation under s. 394.47891, Florida Statutes, on or  
339 before June 30, 2021, may continue to operate following the  
340 effective date of this act, but must comply with the amendments  
341 made by this act to that section. This act does not affect or  
342 alter the rights or responsibilities of any person who, on or  
343 before June 30, 2021, was admitted to and participating in a  
344 Military Veterans and Servicemembers Court Program established  
345 under s. 394.47891, Florida Statutes.

346 Section 9. This act shall take effect July 1, 2021.

Page 12 of 12

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

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/23/21

Meeting Date

SB 764

Bill Number (if applicable)

Topic Veterans Treatment Courts

Amendment Barcode (if applicable)

Name Daniel Olson

Job Title Director of Government Relations

Address 400 South Monroe

Phone \_\_\_\_\_

Street

Tallahassee

FL

32399

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing Office of the Attorney General

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)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

03/23/21

Meeting Date

SB 764

Bill Number (if applicable)

Topic Veterans Treatment Courts

Amendment Barcode (if applicable)

Name James "Hammer" Hartsell, Major General, USMC (Ret)

Job Title Deputy Executive Director

Address 400 S. Monroe Street Ste 2105

Phone 850-487-1533

Street

Tallahassee

FL

32399

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing Department of Veterans' Affairs

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)

March 23, 2021

Meeting Date

CS/SB 704

Bill Number (if applicable)

Topic CS/SB 704: Veterans Treatment Courts

Amendment Barcode (if applicable)

Name Shannon Pettifere

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

Address 3405 Dami-Fitz Ct.

Phone 407 480 4887

Street

Orlando

City

Fl.

State

32805

Zip

Email shannoncarson18@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.

**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.)

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

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BILL: CS/SB 1344

INTRODUCER: Criminal Justice Committee and Senator Burgess

SUBJECT: Protection of Elderly Persons and Disabled Adults

DATE: March 24, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Cox</u>	<u>CF</u>	<b>Favorable</b>
2.	<u>Siples</u>	<u>Jones</u>	<u>CJ</u>	<b>Fav/CS</b>
3.	_____	_____	<u>RC</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1344 expands the jurisdiction of the Office of Statewide Prosecution (OSP) within the Florida Office of the Attorney General (OAG) to include specified authority over crimes against elderly persons and disabled adults as outlined in ch. 825, F.S.

The bill also provides additional methods of proving abuse and exploitation of an elderly person or disabled adult by criminalizing the intentional isolation of vulnerable adults from family members for a length of time which could reasonably lead to physical or psychological injury to the elderly person, or with the intent to effect, conceal, or disguise criminal activity involving the elderly person or disabled adult or their property.

The bill criminalizes the previously uncharged conduct of an exploiter who fraudulently creates or changes the terms of the will or trust of a vulnerable adult in order to benefit the exploiter or a co-conspirator. The bill forfeits inheritances under a will, through a trust, through joint tenancy or contractual arrangements for a person convicted of abuse, neglect, exploitation, or aggravated manslaughter. In the absence of a conviction, the bill effects disinheritance if a court finds, by the greater weight of the evidence, that an individual caused or contributed to the death of the decedent. The bill also expands who may file an injunction for protection for exploitation of a vulnerable adult and extends the time of a temporary injunction to up to 45 days.

The OAG anticipates that the bill will have a positive fiscal impact on state government by consolidating the investigation and prosecution of multi-circuit criminal activity related to crimes

of elder abuse and exploitation, alleviating some of the burden on local law enforcement and prosecution. The Legislature Office of Economic and Demographic Research preliminarily estimates that the bill will have a “positive indeterminate” prison bed impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

## II. Present Situation:

Refer to Section III. Effect of Proposed Changes for discussion of the relevant portions of current law.

## III. Effect of Proposed Changes:

### Elder Population

As the country’s “baby-boomer” population reaches retirement age and life expectancy increases, the nation’s elder population is projected to increase from 49.2 million in 2016<sup>1</sup> to 77 million by 2034.<sup>2</sup> Florida has long been a destination state for senior citizens and has the highest percentage of senior residents in the entire nation.<sup>3</sup> In 2019, individuals age 65 and older represented approximately 20.9 percent of Florida’s total population.<sup>4</sup> By 2030, this number is projected to increase to 5.9 million, meaning the elderly will make up approximately one quarter of the state’s population and it is estimated that individuals age 65 and older will account for approximately 47.9 percent of the state’s population growth between 2010 and 2030.<sup>5</sup>

### Vulnerable Adults and Elderly Residents

In 2016, 35.2 percent of individuals nationwide 65 years of age or older were reported to have a disability.<sup>6</sup> Moreover, 19 percent of Florida elders surveyed in a 2016 study conducted by the

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<sup>1</sup> Press Release, U.S. Census Bureau, *The Nation’s Older Population is Still Growing*, *Census Bureau Reports* (June 22, 2017), Release Number: CB17-100, available at <https://www.census.gov/newsroom/press-releases/2017/cb17-100.html> (last visited March 18, 2021).

<sup>2</sup> Press Release, U.S. Census Bureau, *Older People Projected to Outnumber Children for First Time in U.S. History* (revised October 8, 2019), available at <https://www.census.gov/newsroom/press-releases/2018/cb18-41-population-projections.html> (last visited March 18, 2021).

<sup>3</sup> Pew Research Center, *Where Do the Oldest Americans Live?*, July 9, 2015, available at <https://www.pewresearch.org/fact-tank/2015/07/09/where-do-the-oldest-americans-live/> (last visited March 18, 2021).

<sup>4</sup> U.S. Census Bureau, *65 and Older Population Grows Rapidly as Baby Boomers Age*, June 25, 2020, available at <https://www.census.gov/newsroom/press-releases/2020/65-older-population-grows.html> (last visited March 18, 2021).

<sup>5</sup> The Office of Economic & Demographic Research (EDR), *Population Data: 2016, 2020, 2025, 2030, 2035, 2040, & 2045, County by Age, Race, Sex, and Hispanic Origin*, pp. 89-90 and 269-70, available at [http://edr.state.fl.us/Content/population-demographics/data/Medium\\_Projections\\_ARSH.pdf](http://edr.state.fl.us/Content/population-demographics/data/Medium_Projections_ARSH.pdf); and the EDR, *Econographic News: Economic and Demographic News for Decision Makers, 2019, Vol. 1*, available at <http://edr.state.fl.us/content/population-demographics/reports/econographicnews-2019v1.pdf> (all sites last visited March 18, 2021).

<sup>6</sup> University of New Hampshire Institute on Disability/UCED, *2017 Disability Statistics Annual Report*, p. 2, available at [https://disabilitycompendium.org/sites/default/files/user-uploads/2017\\_AnnualReport\\_2017\\_FINAL.pdf](https://disabilitycompendium.org/sites/default/files/user-uploads/2017_AnnualReport_2017_FINAL.pdf) (last visited March 18, 2021).

Department of Elder Affairs (DOEA) indicated that they required assistance with activities of daily living, such as walking, bathing, and dressing.<sup>7</sup>

Elder populations are vulnerable to abuse and exploitation due to risk factors associated with aging, such as physical and mental infirmities and social isolation.<sup>8</sup> In Florida, almost 1.3 million senior citizens live in medically underserved areas and 1.4 million suffer from one or more disabilities.<sup>9</sup> According to the U.S. Department of Justice, approximately 1 in 10 seniors is abused each year in the United States, though incidents of elder abuse are reported to local authorities in 1 out of every 24 cases.<sup>10</sup> Elder abuse can have significant physical and emotional effects on an older adult and can lead to premature death.<sup>11</sup> Abused seniors are twice as likely to be hospitalized and three times more likely to die than non-abused seniors.<sup>12</sup>

Elder abuse occurs in community settings, such as private homes, as well as in institutional settings like nursing homes and other long-term care facilities. Prevalent forms of abuse are financial exploitation, neglect, emotional or psychological abuse, and physical abuse; however, an elder abuse victim will often experience multiple forms of abuse at the same time.<sup>13</sup> The most common perpetrators of elder abuse are relatives, such as adult children or a spouse, followed by friends and neighbors, and then home care aides.<sup>14</sup> Research shows that elder abuse is underreported, often because the victims fear retribution or care for or trust their perpetrators.<sup>15</sup> Elder abuse deaths are more likely to go undetected because an elder death is expected to occur, given age or infirmity, more so than other deaths due to abuse such as a child death or a death

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<sup>7</sup> Florida Department of Elder Affairs, *2016 Report Assessing the Needs of Elder Floridians*, p.1, available at [http://elderaffairs.state.fl.us/does/pubs/pubs/2016\\_Assessing\\_the\\_Needs\\_of\\_Elder\\_Floridians.pdf](http://elderaffairs.state.fl.us/does/pubs/pubs/2016_Assessing_the_Needs_of_Elder_Floridians.pdf) (last visited March 18, 2021).

<sup>8</sup> National Center on Elder Abuse, *What are the Risk Factors?*, available at <https://ncea.acl.gov/What-We-Do/Research/Statistics-and-Data.aspx#risk>; and U.S. Department of Justice, *Elder Justice Initiative, Older Adults, Families, and Caregivers*, available at <https://www.justice.gov/elderjustice/victims-families-caregivers> (all sites last visited March 18, 2021).

<sup>9</sup> The Department of Elder Affairs, *2018 Profile of Older Floridians*, p. 6, available at [http://elderaffairs.state.fl.us/does/pubs/stats/County\\_2018/Counties/Florida.pdf](http://elderaffairs.state.fl.us/does/pubs/stats/County_2018/Counties/Florida.pdf) (last visited March 18, 2021).

<sup>10</sup> U.S. Department of Justice, *Elder Justice Initiative*, available at <https://www.justice.gov/elderjustice>; and National Center on Elder Abuse, *What is Known about the Incidence and Prevalence of Elder Abuse in the Community Setting?*, available at <https://ncea.acl.gov/What-We-Do/Research/Statistics-and-Data.aspx#prevalence>; see also, Ron Acierno et al., *Prevalence and Correlates of Emotional, Physical, Sexual, and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study*, 100:2 Am. J. Pub. Health, at 292-297 (February 2010), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2804623/> (all sites last visited March 18, 2021).

<sup>11</sup> U.S. Department of Justice, *Elder Justice Initiative: About Elder Abuse*, available at <https://www.justice.gov/elderjustice/about-elder-abuse>; see also, Mark S. Lachs et al., *The Mortality of Elder Mistreatment*, 280:5 JAMA at 428-432 (1998), available at <https://jamanetwork.com/journals/jama/fullarticle/187817> (all sites last visited March 18, 2021).

<sup>12</sup> XinQi Dong, et al., *Elder Abuse as a Risk Factor for Hospitalization in Older Persons*, 173(10), JAMA Intern Med. At 911-917 (2013), available at <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/1675876> (last visited March 18, 2021).

<sup>13</sup> National Center on Elder Abuse, *Challenges in Elder Abuse Research*, available at <https://ncea.acl.gov/About-Us/What-We-Do/Research/Statistics-and-Data.aspx#challenges> (last visited March 18, 2021).

<sup>14</sup> National Center on Elder Abuse, *Who are the Perpetrators?*, available at <https://ncea.acl.gov/About-Us/What-We-Do/Research/Statistics-and-Data.aspx#perpetrators> (last visited March 18, 2021).

<sup>15</sup> Center for Disease Control and Prevention, *Understanding Elder Abuse, Fact Sheet 2016*, available at <https://www.cdc.gov/violenceprevention/pdf/em-factsheet-a.pdf> (last visited March 18, 2021).



involving domestic violence.<sup>16</sup> Experts believe this may be one of the reasons elder abuse lags behind child abuse and domestic violence in research, awareness, and systemic change.<sup>17</sup>

Vulnerable adults residing in nursing homes, assisted living facilities, and adult family care homes are particularly vulnerable to financial exploitation due to the risk of discharge or eviction because of the inability to pay for necessary care and services.<sup>18</sup> Under state and federal law, a nursing home may discharge or transfer a resident with 30 days written notice if the resident has failed to pay a bill for care, after reasonable and appropriate notice for residence at the facility.<sup>19</sup> Assisted living facilities and adult family care homes can relocate or terminate the residency of a vulnerable adult with 45 days notice or 30 days notice, respectively.<sup>20</sup>

### Adult Protective Services Act

In 1977, the Legislature enacted the “Adult Protective Services Act” (APSA), ch. 415, F.S., authorizing the Department of Children and Families (DCF) to investigate reports of abuse, neglect, or exploitation of a vulnerable adult. An assessment of an individual’s need for protective services is initiated upon a report of alleged abuse, neglect, or exploitation.<sup>21</sup>

The APSA defines a “vulnerable adult” as a person 18 years of age or older whose ability to perform the normal activities of daily living, or whose ability to provide for his or her own care or protection, is impaired due to a mental, emotional, sensory, long-term physical, developmental disability or dysfunction, brain damage, or the infirmities of aging.<sup>22</sup> Under the APSA, abuse, neglect, or exploitation constitutes the following conduct:

- **Abuse:** Any willful act or threatened act by a relative, caregiver,<sup>23</sup> or household member which causes or is likely to cause significant impairment to a vulnerable adult’s physical, mental, or emotional health.<sup>24</sup>
- **Neglect:** The failure or omission on the part of the caregiver or vulnerable adult to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, which a prudent person would consider essential for the well-being of a vulnerable adult. “Neglect” also means the failure of a caregiver or

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<sup>16</sup> See U.S. Department of Justice, National Institute of Justice, *Elder Justice Roundtable Report: Medical Forensic Issues Concerning Abuse and Neglect*, October 18, 2000, pp. 8-9, available at <https://www.ncjrs.gov/pdffiles1/nij/242221.pdf> (last visited March 18, 2021).

<sup>17</sup> *Id.* at pp. 7-10.

<sup>18</sup> The Consumer Financial Protection Bureau, *We’re helping long-term care facilities protect older Americans from financial exploitation*, June 19, 2014, available at <http://www.consumerfinance.gov/blog/were-helping-long-term-care-facilities-protect-older-americans-from-financial-exploitation/> (last visited March 18, 2021).

<sup>19</sup> Section 400.022(1)(p), F.S.; 42 U.S.C. s. 1396r.

<sup>20</sup> Sections 429.28(1)(k) and 429.85(1)(l), F.S.

<sup>21</sup> Section 415.104, F.S.

<sup>22</sup> Section 415.102(28), F.S.

<sup>23</sup> Section 415.102(5), F.S. defines “caregiver” to mean “a person who has been entrusted with or has assumed the responsibility for frequent and regular care of or services to a vulnerable adult on a temporary or permanent basis and who has a commitment, agreement, or understanding with that person or that person’s guardian that a caregiver role exists.” “Caregiver” includes, but is not limited to, relatives, household members, guardians, neighbors, and employees and volunteers of facilities.

<sup>24</sup> Section 415.102(1), F.S.

vulnerable adult to make a reasonable effort to protect a vulnerable adult from abuse, neglect, or exploitation by others.<sup>25</sup>

- **Exploitation:** Knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult by a person who stands in a position of trust and confidence with a vulnerable adult or by a person who knows or should know that the vulnerable adult lacks the capacity to consent. Exploitation may include breaches of fiduciary relationships, unauthorized taking of personal assets; misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or intentional or negligent failure to effectively use a vulnerable adult's income and assets for the necessities required for that person's support and maintenance.<sup>26</sup>

### **Criminal Penalties Under ch. 825, F.S.**

Current law provides criminal penalties for the abuse, neglect, and exploitation of elderly and disabled adults.<sup>27</sup> Under s. 825.103, F.S., a person is guilty of the "exploitation of an elderly person or disabled adult" when he or she:

- Stands in a position of trust and confidence, or has a business relationship, with an elderly person or a disabled adult and knowingly obtains or uses, or endeavors to obtain or use, the elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive that person of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult;<sup>28</sup>
- Obtains or uses, endeavors to obtain or use, or conspires with another to obtain or use an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, and he or she knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent;<sup>29</sup>
- Breaches a fiduciary duty to the elderly person or disabled adult while acting as the person's guardian, trustee, or agent under a power of attorney, and such breach results in an unauthorized appropriation, sale, or transfer of property;<sup>30</sup>
- Misappropriates, misuses, or transfers without authorization money belonging to an elderly person or disabled adult from an account in which the elderly person or disabled adult placed the funds, owned the funds, and was the sole contributor or payee of the funds before the misappropriation, misuse, or unauthorized transfer;<sup>31</sup> or
- Intentionally or negligently fails to effectively use an elderly person's or disabled adult's income and assets for the necessities required for that person's support and maintenance

<sup>25</sup> Section 415.102(16), F.S.

<sup>26</sup> Section 415.102(8), F.S.

<sup>27</sup> Sections 825.101-825.106, F.S.

<sup>28</sup> Section 825.103(1)(a), F.S.

<sup>29</sup> Section 825.103(1)(b), F.S.

<sup>30</sup> Section 825.103(1)(c), F.S.

<sup>31</sup> Section 825.103(1)(d), F.S.

while acting as a caregiver or standing in a position of trust and confidence with the elderly person or disabled adult.<sup>32</sup>

The term “lacks capacity to consent” means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause, causing an elderly person or disabled adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning their person or property.<sup>33</sup>

An offender commits a first-degree felony<sup>34</sup> if the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at \$50,000 or more.<sup>35</sup> An offender commits a second-degree felony<sup>36</sup> if the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued between \$10,000 and \$50,000.<sup>37</sup> An offender commits a third-degree felony<sup>38</sup> if the funds, assets, or property involved in the exploitation of an elderly person or disabled adult is valued at less than \$10,000.<sup>39</sup>

The court is required to hold an evidentiary hearing when a person is charged with financial exploitation of an elderly person or disabled adult involving the taking of or loss of property valued at more than \$5,000 and property belonging to a victim is seized from the defendant pursuant to a search warrant. The court then determines, by a preponderance of the evidence, whether the defendant unlawfully obtained the victim’s property. The court may order it returned to the victim for restitution purposes before trial if the court finds that the property was unlawfully obtained.<sup>40</sup>

### ***Fiduciary Relationships, and Kickbacks, Improper Benefits***

Current law does not address instances where the fiduciary is either employed by, or has some pecuniary relationship with, a third party involved in the care or provision of services to the elderly person or disabled adult.<sup>41</sup> A relationship between the fiduciary and third-party provider may not always lead to an identifiable financial loss by an elderly person or disabled adult; however, this relationship creates a conflict of interest and breach of fiduciary duty.<sup>42</sup>

Current law also does not specifically address cases where a perpetrator seeks a designation as a specified fiduciary with the intent to benefit someone other than the elderly person or disabled

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<sup>32</sup> Section 825.103(1)(e), F.S.

<sup>33</sup> Section 825.101(8), F.S.

<sup>34</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>35</sup> Section 825.103(3)(a), F.S.

<sup>36</sup> A second degree felony is punishable by up to 15 years imprisonment and up to a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>37</sup> Section 825.103(3)(b), F.S.

<sup>38</sup> A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

<sup>39</sup> Section 825.103(3)(c), F.S.

<sup>40</sup> Section 825.103(4), F.S.

<sup>41</sup> The Florida Office of Attorney General (OAG), *White Paper Related to SB 1344*, at p. 2, March 4, 2021 (on file with the Senate Committee on Criminal Justice) (hereinafter cited as “The OAG White Paper”).

<sup>42</sup> The OAG White Paper at pp. 2-3.

adult.<sup>43</sup> The absence of a specific prohibition on such conduct creates a potential gap for prosecution and enforcement when a perpetrator seeks out appointment as a guardian, trustee, or agent under power of attorney with the intention and design of obtaining control over the victim's assets and person for the benefit of the perpetrator or a third party.<sup>44</sup> Current law also criminalizes conduct which results in a taking or other specified harm while the elderly person or disabled adult victim is alive, but does not specifically prohibit conduct by a perpetrator who intentionally alters a victim's will, trust, or other testamentary devise.<sup>45</sup>

### ***Isolation***

The Florida Office of Attorney General (OAG) states that in many instances of abuse, neglect, and exploitation, the perpetrator will first isolate the elderly person or disabled adult victim from family and friends who might otherwise intervene or object to the perpetrator's involvement on the victim's behalf.<sup>46</sup> Isolation is particularly problematic with victims who either lack the mental capacity to fully comprehend or react to the isolation, or with victims who depend upon the perpetrator for their physical care and wellbeing.<sup>47</sup> The perpetrator is often a family member or other individual trusted by the victim in such cases, and will use social isolation to achieve their efforts and exert a level of control and influence over the victim unrelated to, or disproportionately related to, effective caregiving, with the intent of concealing underlying criminal conduct, which may include, but is not limited to; abuse, neglect, or exploitation.<sup>48</sup>

In cases beginning with intentional social isolation, the resulting injury or harm to the victim often could have been avoided with earlier intervention by law enforcement.<sup>49</sup> If ch. 825, F.S., specifically prohibited acts of unreasonable isolation of an elderly or disabled adult from family, irreversible harm to the victim may be avoided.<sup>50</sup>

### ***Effect of the Bill***

#### **Definitions**

The bill amends s. 825.101, F.S., adding definitions for the terms, 'improper benefit' and 'kickback.' These terms will apply to ch. 825, F.S.

The bill defines "improper benefit" to mean "any remuneration or payment, by or on behalf of any service provider or merchant of goods, to any person as an incentive or inducement to refer customers or patrons for past or future services or goods." The bill defines "kickback" to have the same meaning as s. 456.054(1), F.S., which means "a remuneration or payment, by or on behalf of a provider of health care services or items, to any person as an incentive or inducement to refer patients for past or future services or items, when the payment is not tax deductible as an ordinary and necessary expense."

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<sup>43</sup> The OAG White Paper at p. 3.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> The OAG White Paper at p. 2.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

### Abuse of an Elderly Person or Disabled Adult

The bill amends s. 825.102, F.S., expanding the definition of “abuse of an elderly person or disabled adult” to include “intentionally, and without lawful authority, isolating or restricting access of an elderly person or a disabled adult to family members for any length of time which could reasonably be expected to result in physical or psychological injury to the elderly person or disabled adult, or with the intent to promote, facilitate, conceal, or disguise some form of criminal activity involving the person or property of the elderly person or disabled adult.” The effect of this provision is that a person who commits abuse of an elderly person or disabled adult in the newly defined manner will be subject to the criminal penalties mentioned above.

The bill adds that a reasonable cause to believe that a defendant’s action was necessary to protect the elderly person or disabled adult from danger constitutes a valid defense to a potential abuse violation under s. 825.102, F.S.

### Exploitation of an Elderly Person or Disabled Adult

The bill amends s. 825.103, F.S., adding to the current definition of “exploitation of an elderly person or disabled adult.” Specifically, the bill provides that a breach of a fiduciary duty to an elderly person or disabled adult by their guardian, trustee, or agent under power of attorney that results in a “kickback” or “receipt of improper benefits” constitutes the offense of exploitation (in addition to prohibited breaches of fiduciary duty under current law, which include actions resulting in an unauthorized appropriation, sale, or transfer of property). Where the fiduciary owing a duty to an elderly person or disabled adult is also an agent of such a person appointed under ch. 709, F.S.<sup>51</sup> or a guardian or trustee appointed under chs. 736 and 744, F.S., respectively, the bill adds that obtaining appointments with the purpose and design of benefiting someone other than the principal or beneficiary is considered an unauthorized appropriation and therefore constitutes the offense of exploitation.

The bill also adds financial exploitation of an elderly person or disabled adult to the current definition. Any person who knowingly obtains or uses, endeavors to obtain or use, or conspires with another to obtain or use the funds, assets, property, or the estate of an elderly person or disabled adult through the intentional modification, alteration, or fraudulent creation of a planned distribution or disbursement in a will, trust, or other testamentary document commits exploitation under the bill unless they have first obtained any of the following:

- A court order authorizing the modification;
- A written instrument authored by the elderly person or disabled adult, sworn to by the elderly person or disabled adult with two witnesses, authorizing the change; or
- The action of an agent under a valid power of attorney authorized by the elderly person or disabled adult permitting the change.

### **Florida Office of the Attorney General**

The Florida Attorney General (AG) is recognized as the chief legal officer of the state and, absent express legislative restriction, may exercise such power and authority as the public

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<sup>51</sup> Chapter 709, F.S., relates to power of attorney and similar instruments.

interest may require.<sup>52</sup> As chief legal officer of the state, the AG must be noticed in certain proceedings under Florida law and may bring actions on behalf of citizens of the state as provided for by law.<sup>53</sup>

### ***The Office of Statewide Prosecution***

The Florida Constitution gives the Office of Statewide Prosecution (OSP) concurrent jurisdiction with the state attorneys to prosecute violations of criminal laws that occur in two or more judicial circuits, or when any such offense is affecting or has affected two or more judicial circuits as provided by general law.<sup>54</sup> The Statewide Prosecutor is appointed by the AG and serves a term of four years.<sup>55</sup> The OSP is authorized to investigate and prosecute a number of statutorily enumerated offenses.<sup>56</sup>

### ***Effect of the Bill***

The bill amends s. 16.56, F.S., broadening the investigative and prosecutorial authority of the OSP to cover criminal offenses enumerated in ch. 825, F.S. Specifically, this change would result in the following offenses being under the OSP:

- Abuse, aggravated abuse, and neglect of an elderly person or disabled adult;
- Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person, including;
  - Lewd or lascivious battery upon an elderly or disabled person;
  - Lewd or lascivious molestation of an elderly or disabled person; and
  - Lewd or lascivious exhibition in the presence of an elderly or disabled person;
- Exploitation of an elderly person or disabled adult; and
- Violation of an injunction for protection against exploitation of a vulnerable adult.

The other jurisdictional requirements must be met for OSP to investigate or prosecute one of these offenses.

### **Elder Exploitation Injunctions**

In 2018, the Legislature created a cause of action for an injunction prohibiting exploitation of a vulnerable adult.<sup>57</sup> Section 825.1035, F.S., specifies who may file for an injunction, including:

- A vulnerable adult in imminent danger of being exploited;
- The guardian of a vulnerable adult in imminent danger of being exploited;
- A person or organization acting on behalf of the vulnerable adult with the consent of the vulnerable adult or his or her guardian; or

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<sup>52</sup> The Florida Office of the Attorney General (OAG), *The Role and Function of the Attorney General*, available at <https://myfloridalegal.com/pages.nsf/Main/F06F66DA272F37C885256CCB0051916F> (last visited March 18, 2021).

<sup>53</sup> See e.g., s. 736.0110, F.S., relating to charitable trusts.

<sup>54</sup> Fla. Const. art. IV, s. 4(b); The OAG, *The Office of Statewide Prosecution*, available at <https://www.myfloridalegal.com/pages.nsf/Main/D243EF87774E965185256CC600785693> (last visited March 18, 2021).

<sup>55</sup> Section 16.56(2), F.S.

<sup>56</sup> See s. 16.56(1)(a), F.S., for a list of criminal offenses investigated and prosecuted by the OSP.

<sup>57</sup> Chapter 2018-100, L.O.F.; codified in s. 825.1035, F.S.

- A person who simultaneously files a petition for determination of incapacity and appointment of an emergency temporary guardian with respect to the vulnerable adult.<sup>58</sup>

Current law also:

- Identifies proper venue and details procedural framework for the parties and court;
- Requires the clerk of the circuit court to perform specific duties and limits the amount of the fee for filing a petition;
- Provides a sworn petition form for parties filing an injunction;
- Allows the court to grant a temporary injunction under certain circumstances;
- Provides direction for effecting service of process;
- Lists standards for the court to follow when issuing an injunction;
- Identifies forms of relief the court may grant to a vulnerable adult in issuing an injunction, including temporary and exclusive use of a shared residence and freezing the assets and credit lines of the vulnerable adult and those of an individual accused of exploiting the vulnerable adult;
- Permits the court to order payment of specified living expenses when the vulnerable adult's assets are frozen;
- Requires the sheriff or a law enforcement agency to assist the court and clerks of court with specific tasks in issuing and executing an injunction;
- Provides criminal penalties for violating an injunction and authorizes law enforcement to arrest an individual who has violated the terms of an injunction; and
- Limits the liability of financial institutions for freezing assets or credit lines.<sup>59</sup>

The court may issue a temporary injunction *ex parte*, prior to the hearing on the petition, which grants relief as the court deems proper if the court finds:

- An immediate and present danger of exploitation of the vulnerable adult exists;
- There is a likelihood of irreparable harm and nonavailability of an adequate remedy at law;
- There is a substantial likelihood of success on the merits;
- The threatened injury to the vulnerable adult outweighs possible harm to the respondent;
- Granting a temporary injunction will not disserve the public interest; and
- Such injunction provides for the vulnerable adult's physical or financial safety.<sup>60</sup>

The relief granted by the court may include, but is not limited to:

- Restraining the respondent from committing any acts of exploitation against the vulnerable adult;
- Awarding to the vulnerable adult the temporary exclusive use and possession of the dwelling shared by the vulnerable adult and the respondent, or barring the respondent from the residence of the vulnerable adult; and
- Freezing any assets of the vulnerable adult in any depository or financial institution whether titled solely in the vulnerable adult's name, solely in the respondent's name, jointly with the respondent, in guardianship, in trust, or in a Totten trust under certain circumstances.<sup>61</sup>

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<sup>58</sup> Section 825.1035(2)(a)1.-4., F.S.

<sup>59</sup> *See* s. 825.1035, F.S.

<sup>60</sup> Section 825.1035(5)(a), F.S.

<sup>61</sup> *Id.*

An ex parte temporary injunction may not exceed 15 days, and a hearing on the petition for the injunction must be set for a date no later than the last day the temporary injunction is effective.<sup>62</sup> The court may grant a continuance for the hearing, for good cause shown. However, the ex parte injunction is not be extended beyond the initial 15 days as a result of the continuance.<sup>63</sup>

### ***Petition for Injunction for the Protection of a Vulnerable Adult***

A sworn petition must be filed alleging exploitation, or imminent exploitation, of a vulnerable adult, containing the following information:

- The last known residence of both the vulnerable adult and the respondent;
- The respondent's last known employer, a physical description of the respondent, and any aliases they are known to have;
- The manner in which the respondent is associated with the vulnerable adult and any previous or pending legal actions between the respondent and the vulnerable adult;
- The petitioner's knowledge of any reports made to a state agency regarding exploitation, abuse, or neglect of the vulnerable adult;
- The reasons the petitioner claims to genuinely fear an imminent danger of exploitation, or any facts the petitioner believes show the respondent has already committed exploitation;
- The petitioner's knowledge of reasons why the adult depends on the respondent for care, any alternative provisions for care not involving the respondent, resources allowing the adult to access such provisions, and the willingness of the adult to access such provisions;
- Financial institutions where the petitioner knows the adult maintains assets, accounts, or lines of credit;
- Whether the estimated value of the adult's assets is below \$1500, between \$1500 and \$5000, or greater than \$5000;
- Attestation that the petitioner genuinely fears imminent exploitation of the vulnerable adult by the respondent; and
- Remedies sought through the injunction, which may include:
  - Prohibiting any direct or indirect contact between the respondent and the vulnerable adult;
  - Immediately restraining the respondent from committing any acts of exploitation;
  - Freezing specified assets of the vulnerable adult, whether solely in the adult's name, jointly named with the respondent, or solely in the respondent's name; and
  - Providing any other conditions the court feels necessary to protect the vulnerable adult or their assets.<sup>64</sup>

### ***Effect of the Bill***

The bill amends s. 825.1035, F.S., adding authorized agents acting under a durable power of attorney to the list of individuals authorized to petition for an injunction for protection against exploitation of a vulnerable adult.

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<sup>62</sup> Section 825.1035(5)(d), F.S.

<sup>63</sup> *Id.*

<sup>64</sup> Section 825.1035(3)(a)1.-14., F.S.



The bill also specifies new informational fields for the petition for protective injunction against exploitation of a vulnerable adult. Specifically, the bill requires the following to be included in a petition for injunction under s. 825.1035, F.S.:

- The petitioner’s name;
- The petitioner’s address;
- The petitioner’s relationship to the vulnerable adult;
- The length of time the petitioner has known the vulnerable adult;
- The vulnerable adult’s name and aliases;
- The vulnerable adult’s date of birth; and
- Any known impairments affecting either the vulnerable adult’s normal activities of daily living or ability to provide for their own care or protection, specifically any of the following:
  - Long-term physical disabilities;
  - Sensory disabilities, such as hearing or vision impairments;
  - Cognitive disabilities;
  - Mental or emotional disabilities;
  - Developmental disabilities;
  - Infirmities of aging; or
  - Any other known impairments.

The bill also allows courts to extend an ex parte temporary injunction from a maximum of 15 days to up to 30 days beyond the initial injunction period (for a total of 45 days) if good cause for an extension is shown. Only one such extension is permitted under the bill. The bill also repeals the authority of the court to grant a continuance of the hearing on the petition for injunction against exploitation of a vulnerable adult.

### **Probate Process in Florida**

Probate is a court-supervised process for identifying and gathering the assets of a deceased person (decedent), paying the decedent’s debts, and distributing the decedent’s assets to his or her beneficiaries.<sup>65</sup> Probate proceedings are governed by The Florida Probate Code, found in chs. 731–735, F.S., and the Florida Probate Rules of court.<sup>66</sup> The probate process ensures that the decedent’s debts are paid in an orderly fashion and that the rightful beneficiaries, whether determined according to a will or by default rules of succession, receive the property to which they are entitled.<sup>67</sup>

Assets subject to probate are those that were owned in the decedent’s sole name at death or that were owned by the decedent and one or more co-owners but lacked a provision for automatic succession of ownership at death.<sup>68</sup> The following are examples to illustrate common probate and non-probate assets:

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<sup>65</sup> The Florida Bar, *Consumer Pamphlet: Probate in Florida*, available at <https://www.floridabar.org/public/consumer/pamphlet026/> (last visited March 18, 2021) (hereinafter cited as “Consumer Pamphlet 1”).

<sup>66</sup> The Florida Bar, *The Florida Probate Rules*, available at <https://www-media.floridabar.org/uploads/2020/01/Probate-Rules-01-01-20.pdf> (last visited March 18, 2021).

<sup>67</sup> Consumer Pamphlet 1.

<sup>68</sup> Consumer Pamphlet 1.

- A bank account or investment account in the sole name of a decedent is a probate asset; but a bank account or investment account owned by the decedent and payable on death or transferable on death to another, or held jointly with rights of survivorship with another, is not a probate asset.
- A life insurance policy, annuity contract or individual retirement account that is payable to a specific beneficiary is not a probate asset; but a life insurance policy, annuity contract, or individual retirement account payable to the decedent's estate is a probate asset.
- Real estate titled in the sole name of the decedent, or in the name of the decedent and another person as tenants in common, is a probate asset (unless it is homestead property); but real estate titled in the name of the decedent and one or more other persons as joint tenants with rights of survivorship is not a probate asset.
- Property owned by spouses as tenants by the entirety is not a probate asset on the death of the first spouse to die; it goes automatically to the surviving spouse.<sup>69</sup>

### *Qualified Personal Representatives in Probate Cases*

A personal representative is a person or business entity appointed by a circuit court to administer a decedent's estate.<sup>70</sup> If an individual serves as a personal representative, he or she must be at least 18 years old, have full capacity, and be a resident of Florida<sup>71</sup> at the time of the death of the person whose estate he or she is administering.<sup>72</sup> A person is not qualified to serve as a personal representative if he or she is under 18 years of age, has been convicted of a felony, or is mentally or physically unable to perform the duties of a personal representative.<sup>73</sup>

### *Slayer Statutes*

All states have enacted "slayer rules" which effectively bar a person who causes a killing from inheriting property from their victims.<sup>74</sup> While the specific criteria and applicability of slayer statutes vary by jurisdiction, these laws are uniformly predicated on the idea that those responsible for a killing should not benefit from their wrongful acts.<sup>75</sup>

Eight states have expanded their slayer rules to include disqualification of persons from inheriting if they have engaged in the abuse or financial exploitation of a decedent.<sup>76</sup> Six of the eight states with such laws require a criminal conviction in order to disinherit an individual responsible for abuse or exploitation.<sup>77</sup> Moreover, three of the eight states provide for

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<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> A non-resident of the state may qualify if he or she is a legally adopted child or adoptive parent of the decedent, related by lineal consanguinity, one of certain enumerated relatives of the decedent, or the spouse of a person otherwise qualified to be the personal representative. Section 733.304, F.S.

<sup>72</sup> Section 733.302, F.S.

<sup>73</sup> Section 733.303, F.S.

<sup>74</sup> Jennifer Piel, Journal of the American Academy of Psychiatry and the Law Online, *Expanding Slayer Statutes to Elder Abuse*, September 2015, available at <http://jaapl.org/content/43/3/369> (last visited March 18, 2021).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Travis Hunt, *Disincentivizing Elder Abuse Through Disinheritance: Revamping California Probate Code s. 259 and Using It as a Model*, 2014 BYU L. Rev. 445 at p. 446 (2014), available at <https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=2922&context=lawreview> (last visited March 18, 2021).

disinheritance only when financial elder abuse occurs.<sup>78</sup> California's slayer rule does not require a criminal conviction to effect disinheritance, and it covers physical abuse, neglect, false imprisonment, or financial abuse of an elder or a dependent adult.<sup>79</sup>

### ***Florida's Slayer Rule - Probate***

Current law provides that a surviving person who unlawfully and intentionally kills or participates in procuring the death of a decedent is not entitled to any benefits under a will or through intestacy under the Florida Probate Code.<sup>80</sup> In such instances, the estate of the decedent passes as if the killer had predeceased the decedent.<sup>81</sup> A joint tenant who unlawfully and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as the decedent's property and the killer has no rights by survivorship.<sup>82</sup> This also applies to tenancies with right of survivorship and tenancies by the entirety in real and personal property; joint and multiple-party accounts in banks, savings and loan associations, credit unions, and other institutions; and any other form of co-ownership with survivorship incidents.<sup>83</sup>

A named beneficiary of a bond, life insurance policy, or other contractual arrangements who unlawfully and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and the bond or policy becomes payable as though the killer had predeceased the decedent.<sup>84</sup> A final judgment of conviction of murder of any degree is conclusive.<sup>85</sup> In the absence of a conviction of murder, the court may determine by the greater weight of the evidence whether the killing of the decedent was unlawful and intentional.<sup>86</sup>

### ***Effect of the Bill***

The bill amends s. 733.303, F.S., prohibiting an individual convicted in any state or other jurisdiction of abuse, neglect, or exploitation of an elderly person or disabled adult from serving as a personal representative in probate matters.

The bill creates s. 732.8031, F.S., which expands Florida's slayer rule under the Florida Probate Code by prohibiting the following persons convicted in any state or other jurisdiction of abuse, neglect, exploitation, aggravated manslaughter of an elderly person or disabled adult from inheriting assets from a decedent, or other person whose death was necessary for passage of the perpetrator's interest, who was the victim of the disqualifying offense:

- A surviving person whose beneficiary interest depends on the death of the victim.
- A joint tenant with a right of survivorship and a tenant by the entirety in real and personal property, a joint and multiple-party accountholder in a bank, savings and loan association,

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<sup>78</sup> *Id.*

<sup>79</sup> Cal. Prob. Code s. 259.

<sup>80</sup> See s. 732.802, F.S.; the Florida Probate Code is contained in chs. 731-735, F.S.

<sup>81</sup> Section 732.802(1), F.S.

<sup>82</sup> Section 732.802(2), F.S.

<sup>83</sup> *Id.*

<sup>84</sup> Section 732.802(3), F.S.

<sup>85</sup> Section 732.802(5), F.S.

<sup>86</sup> *Id.*

credit union, and any other financial institution, and any other form of coownership with survivorship interests whose survivorship interest depends on the death of the victim.

- A named beneficiary of a bond, life insurance policy, or other contractual arrangement where the victim is the owner or principal obligee of the bond, life insurance policy, or other contractual arrangement or the person upon whose life such policy was issued.
- Any other acquisition of property or interest by the abuser, neglecter, exploiter, or killer, including a life estate in homestead property, whose beneficiary interest depends on the death of the victim.

Under the bill, assets in the will of the decedent which would otherwise pass to the perpetrator of the crime pass instead as if the perpetrator had predeceased the victim.

The bill creates a rebuttable presumption that disinheritance will apply if an individual is convicted of any of the aforementioned offenses. Absent a conviction, the bill allows a court to determine by the greater weight of the evidence whether the actions of the alleged perpetrator contributed to the death of the elderly person, disabled adult, or other person whose death is necessary for passage of the probate assets to the perpetrator.

The bill provides that the rights of any person who, before rights under this section of the bill are adjudicated, purchases from the abuser, neglecter, exploiter, or killer for value and without notice property that the perpetrator would have acquired except for this section of the bill. The perpetrator is held liable for the amount of the proceeds or the value of the property owed to such a purchaser.

Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable unless, before payment, it receives at its home office or principal address written notice of a claim under this section of the bill.

This section of the bill does not apply if, after the conviction of abuse, neglect, or exploitation, the victim of the offense, if capacitated, executes a written instrument, sworn to and witnessed by two persons who would be competent as witnesses to a will, which expresses a specific intent to allow the person so convicted of abuse, neglect, or exploitation to retain his or her inheritance or survivorship rights.

### **The Florida Trust Code**

The revocable, or “living,” trust is often promoted as a means of avoiding probate and saving taxes at death and is governed by ch. 736, F.S.,<sup>87</sup> referred to as the “Florida Trust Code” (Code). The term “terms of a trust” is defined to mean the manifestation of the settlor’s intent regarding a trust’s provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.<sup>88</sup> Under the Code, “settlor” is defined as a person who creates or contributes property to a trust.<sup>89</sup> A “beneficiary” of the trust is a person

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<sup>87</sup> The Florida Bar, *Consumer Pamphlet: The Revocable Trust in Florida*, available at <https://www.floridabar.org/public/consumer/pamphlet028/#WHAT%20IS%20A%20REVOCABLE%20TRUST%3F> (last visited March 18, 2021) (hereinafter cited as, “Consumer Pamphlet 2”).

<sup>88</sup> Section 736.0103(21), F.S.

<sup>89</sup> Section 736.0103(18), F.S.

who has a present or future beneficial interest in the trust.<sup>90</sup> The person responsible for the management of the trust assets is the “trustee.”<sup>91</sup>

Except as otherwise provided in the terms of the trust, the Code governs the duties and powers of a trustee, relations among trustees, and the rights and interests any beneficiaries. The terms of a trust prevail over any provision of the Code, except as provided in s. 736.0105(2), F.S. In all, the Code currently provides 23 terms that are solely governed by the Code and cannot be changed, waived, or otherwise altered by the terms of the trust.<sup>92</sup>

### ***Florida’s Slayer Rule - Trusts***

Under s. 736.1104, F.S., a beneficiary who unlawfully and intentionally kills or participates in procuring the death of the settlor or another person on whose death such beneficiary’s interest depends is precluded from taking that interest. Instead, the interest devolves as if the slayer predeceased the victim. This rule is triggered by a civil evidentiary standard (the greater weight of the evidence) although a final judgment of murder in any degree is conclusive.<sup>93</sup>

### ***Effect of the Bill***

The bill amends s. 736.1104, F.S., similarly expanding Florida’s slayer rule under the Florida Trust Code by prohibiting a beneficiary of a trust convicted in any state or jurisdiction of abuse, neglect, or exploitation, or aggravated manslaughter of an elderly person or disabled adult, from receiving trust benefits when the victim is the settlor of a trust, or another person on whose death such beneficiary’s interest depends from inheriting trust interests, including a homestead dependent on the victim’s death.

Under the bill, trust interests which would otherwise pass to the perpetrator of the crime pass instead as if the perpetrator had predeceased the victim.

The bill creates a rebuttable presumption that the trust interest is extinguished if an individual is convicted of any of the aforementioned offenses. Absent a conviction, the bill allows a court to determine by the greater weight of the evidence whether the actions of the alleged perpetrator contributed to the death of the elderly person, disabled adult, or other person whose death is necessary for passage of the trust interest to the perpetrator.

### ***Effective Date***

The bill is effective July 1, 2021.

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<sup>90</sup> Section 736.0103(4), F.S.

<sup>91</sup> Consumer Pamphlet 2.

<sup>92</sup> See s. 736.0105(2)(a)-(w), F.S.

<sup>93</sup> Section 736.1104(2), F.S.

**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 OAG estimates that expanding the OSP's authority in s. 16.56, F.S., to investigate and prosecute qualifying cases under ch. 825, F.S., would alleviate some of the financial burden on local law enforcement and prosecution, while consolidating the prosecution of multi-circuit criminal activity related to such crimes into comprehensive statewide prosecution cases.<sup>94</sup>

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

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<sup>94</sup> The OAG White Paper, at p. 5.

bill will have a “positive indeterminate” prison bed impact (an unquantifiable increase in prison beds).<sup>95</sup>

The EDR provides that the bill’s expansion of the definition of “abuse of an elderly person or disabled adult” in s. 825.102, F.S., would impact the multiple felonies listed under the statute. The bill adds the definitions of “improper benefit” and “kickback” in s. 825.101, F.S., and the following (new language in bold): “Breach of a fiduciary duty to an elderly person or disabled adult by the person’s guardian, trustee who is an individual, or agent under a power of attorney which results in an unauthorized appropriation, sale, transfer of property, **kickback, or receipt of an improper benefit,**” to s. 825.103, F.S. It also adds “obtaining appointments with the purpose and design of benefiting someone other than the principal or beneficiary” to the list of acts resulting in unauthorized appropriations. It also adds the act of “knowingly obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person’s or a disabled adult’s funds, assets, property, or estate through intentional modification or alteration of a plan of distribution or disbursement expressed in a will, trust agreement, or other testamentary devise of the elderly person or disabled adult.” This expands the definition for exploitation of an elderly person or disabled adult, impacting the multiple felonies listed under this statute. Finally, this bill amends s. 825.1035, F.S., adding “an agent under a valid durable power of attorney with the authority specifically granted in the power of attorney” to those who may file an injunction for protection against exploitation of a vulnerable adult, and extends the time for a temporary injunction from 15 days to up to 45 days. This would impact the Level 1, 3rd degree felony under s. 825.1036, F.S., for “a person who has two or more prior convictions for violation of an injunction or foreign protection order against the same victim, and who subsequently commits a violation of any injunction or foreign protection order against the same victim.”<sup>96</sup>

The EDR advises that per DOC, in FY 18-19, there were 35 new commitments to prison for felonies listed under these statutes (14 for abuse, 21 for exploitation), and 29 new commitments in FY 19-20 (11 for abuse, 18 for exploitation). It is not known how this new language will impact prison beds, but commitments are low under current language.<sup>97</sup>

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

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<sup>95</sup> The EDR estimate is on file with the Senate Committee on Criminal Justice.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 16.56, 733.303, 736.1104, 825.101, 825.102, 825.103, and 825.1035.

This bill creates section 732.8031 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 March 23, 2021:**

The committee substitute:

- Prohibits a person convicted of abuse, neglect, or exploitation of an elderly person or disabled adult, in any state or other jurisdiction, rather than only Florida, from serving as a personal representative in probate matters.
- Forfeits the inheritance under a will or life insurance policy or through a trust, joint tenancy, or other contractual arrangement for a person convicted of abuse, neglect, exploitation, or manslaughter in any state or other jurisdiction, rather than only Florida.
- Clarifies that the terms “elderly person” and “disabled adult” used in this section are defined in s. 825.101, F.S.
- Specifies the sections of laws that describe the conduct the judge must weigh when determining if sufficient evidence exists that the actions of the abuser, neglecter, exploiter, or killer caused or contributed to the decedent’s death.
- Adds fraudulent creation of a plan of distribution or disbursement expressed in a will, trust agreement, or testamentary devise of an elderly person or disabled adult to the definition of “exploitation of an elderly person or disabled adult.”

**B. Amendments:**

None.





948234

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2021	.	
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The Committee on Criminal Justice (Burgess) recommended the following:

**Senate Amendment**

Delete lines 102 - 313

and insert:

(b) Has been convicted in any state or other jurisdiction of abuse, neglect, or exploitation of an elderly person or a disabled adult as those terms are defined in s. 825.101.

(c)~~(b)~~ Is mentally or physically unable to perform the duties.

(d)~~(e)~~ Is under the age of 18 years.



948234

11 Section 3. Section 732.8031, Florida Statutes, is created  
12 to read:

13 732.8031 Forfeiture for abuse, neglect, exploitation, or  
14 aggravated manslaughter of an elderly person or disabled adult.-

15 (1) A surviving person who is convicted in any state or  
16 other jurisdiction of abuse, neglect, exploitation, or  
17 aggravated manslaughter of an elderly person or disabled adult,  
18 as those terms are defined in s. 825.101, for conduct against  
19 the decedent or another person on whose death such beneficiary's  
20 interest depends is not entitled to any benefits under the will  
21 of the decedent or the Florida Probate Code, and the estate of  
22 the decedent passes as if the abuser, neglector, exploiter, or  
23 killer had predeceased the decedent. Property appointed by the  
24 will of the decedent to or for the benefit of the abuser,  
25 neglector, exploiter, or killer passes as if the abuser,  
26 neglector, exploiter, or killer had predeceased the decedent.

27 (a) A conviction for abuse, neglect, exploitation, or  
28 aggravated manslaughter of the decedent or other person creates  
29 a rebuttable presumption that this section applies.

30 (b) In the absence of a qualifying conviction, the court  
31 may determine by the greater weight of the evidence whether the  
32 decedent's or other person's death was caused by or contributed  
33 to by the conduct of the abuser or neglector as those terms are  
34 described in s. 825.102, exploiter as described in s. 825.103,  
35 or killer as provided in s. 782.07.

36 (2) A joint tenant who is convicted in any state or other  
37 jurisdiction of abuse, neglect, exploitation, or aggravated  
38 manslaughter of an elderly person or disabled adult, as those  
39 terms are defined in s. 825.101, for conduct against another



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40 joint tenant decedent thereby effects a severance of the  
41 interest of the decedent so that the share of the decedent  
42 passes as the decedent's sole property and as if the abuser,  
43 neglector, exploiter, or killer has no rights by survivorship.  
44 This subsection applies to joint tenancies with right of  
45 survivorship and tenancies by the entirety in real and personal  
46 property; joint and multiple-party accounts in banks, savings  
47 and loan associations, credit unions, and other financial  
48 institutions; and any other form of coownership with  
49 survivorship interests.

50 (a) A conviction for abuse, neglect, exploitation, or  
51 aggravated manslaughter of the decedent or other person creates  
52 a rebuttable presumption that this section applies.

53 (b) In the absence of a qualifying conviction, the court  
54 may determine by the greater weight of the evidence whether the  
55 decedent's or other person's death was caused by or contributed  
56 to by the conduct of the abuser or neglector as those terms are  
57 described in s. 825.102, exploiter as described in s. 825.103,  
58 or killer as provided in s. 782.07.

59 (3) A named beneficiary of a bond, life insurance policy,  
60 or other contractual arrangement who is convicted in any state  
61 or other jurisdiction of abuse, neglect, exploitation, or  
62 aggravated manslaughter of an elderly person or disabled adult,  
63 as those terms are defined in s. 825.101, for conduct against  
64 the owner or principal obligee of the bond, life insurance  
65 policy, or other contractual arrangement or the person upon  
66 whose life such policy was issued is not entitled to any benefit  
67 under the bond, policy, or other contractual arrangement, and  
68 the bond, policy, or other contractual arrangement becomes



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69 payable as though the abuser, neglector, exploiter, or killer  
70 had predeceased the decedent.

71 (a) A conviction for abuse, neglect, exploitation, or  
72 aggravated manslaughter of the decedent or other person creates  
73 a rebuttable presumption that this section applies.

74 (b) In the absence of a qualifying conviction, the court  
75 may determine by the greater weight of the evidence whether the  
76 decedent's or other person's death was caused by or contributed  
77 to by the conduct of the abuser or neglector as those terms are  
78 described in s. 825.102, exploiter as described in s. 825.103,  
79 or killer as provided in s. 782.07.

80 (4) Any other acquisition of property or interest by the  
81 abuser, neglector, exploiter, or killer, including a life estate  
82 in homestead property, shall be treated in accordance with the  
83 principles of this section.

84 (5) (a) This section does not affect the rights of any  
85 person who, before rights under this section have been  
86 adjudicated, purchases from the abuser, neglector, exploiter, or  
87 killer for value and without notice property that the abuser,  
88 neglector, exploiter, or killer would have acquired except for  
89 this section.

90 (b) The abuser, neglector, exploiter, or killer is liable  
91 for the amount of the proceeds or the value of the property  
92 under paragraph (a).

93 (6) Any insurance company, bank, or other obligor making  
94 payment according to the terms of its policy or obligation is  
95 not liable by reason of this section unless before payment it  
96 receives at its home office or principal address written notice  
97 of a claim under this section.



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98           (7) This section does not apply if, after the conviction of  
99 abuse, neglect, or exploitation, the victim of the offense, if  
100 capacitated, executes a written instrument, sworn to and  
101 witnessed by two persons who would be competent as witnesses to  
102 a will, which expresses a specific intent to allow the person so  
103 convicted of abuse, neglect, or exploitation to retain his or  
104 her inheritance or survivorship rights.

105           Section 4. Subsection (3) is added to section 736.1104,  
106 Florida Statutes, to read:

107           736.1104 Person Killer not entitled to receive property or  
108 other benefits by reason of victim's death.-

109           (3) A beneficiary of a trust who was convicted in any state  
110 or other jurisdiction of abuse, neglect, exploitation, or  
111 aggravated manslaughter of an elderly person or disabled adult,  
112 as those terms are defined in s. 825.101, for conduct against a  
113 settlor or another person on whose death such beneficiary's  
114 interest depends is not entitled to any trust interest,  
115 including a homestead dependent on the victim's death, and such  
116 interest shall devolve as though the abuser, neglecter,  
117 exploiter, or killer had predeceased the victim.

118           (a) A conviction for abuse, neglect, exploitation, or  
119 aggravated manslaughter of the decedent or other person creates  
120 a rebuttable presumption that this section applies.

121           (b) In the absence of a qualifying conviction, the court  
122 may determine by the greater weight of the evidence whether the  
123 decedent's or other person's death was caused by or contributed  
124 to by the conduct of the abuser or neglecter as those terms are  
125 described in s. 825.102, exploiter as described in s. 825.103,  
126 or killer as provided in s. 782.07.



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127 Section 5. Subsections (8) through (14) of section 825.101,  
128 Florida Statutes, are renumbered as subsections (10) through  
129 (16), respectively, and new subsections (8) and (9) are added to  
130 that section, to read:

131 825.101 Definitions.—As used in this chapter:

132 (8) "Improper benefit" means any remuneration or payment,  
133 by or on behalf of any service provider or merchant of goods, to  
134 any person as an incentive or inducement to refer customers or  
135 patrons for past or future services or goods.

136 (9) "Kickback" has the same meaning as in s. 456.054(1).

137 Section 6. Paragraphs (b) and (c) of subsection (1) of  
138 section 825.102, Florida Statutes, are amended, and paragraph  
139 (d) is added to that subsection, to read:

140 825.102 Abuse, aggravated abuse, and neglect of an elderly  
141 person or disabled adult; penalties.—

142 (1) "Abuse of an elderly person or disabled adult" means:

143 (b) An intentional act that could reasonably be expected to  
144 result in physical or psychological injury to an elderly person  
145 or disabled adult; ~~or~~

146 (c) Active encouragement of any person to commit an act  
147 that results or could reasonably be expected to result in  
148 physical or psychological injury to an elderly person or  
149 disabled adult; or

150 (d) Intentionally, and without lawful authority, isolating  
151 or restricting access of an elderly person or a disabled adult  
152 to family members for any length of time which could reasonably  
153 be expected to result in physical or psychological injury to the  
154 elderly person or disabled adult, or with the intent to promote,  
155 facilitate, conceal, or disguise some form of criminal activity



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156 involving the person or property of the elderly person or  
157 disabled adult. It is a defense to a violation of this paragraph  
158 that the defendant had reasonable cause to believe that his or  
159 her action was necessary to protect the elderly person or  
160 disabled adult from danger to his or her welfare.

161  
162 A person who knowingly or willfully abuses an elderly person or  
163 disabled adult without causing great bodily harm, permanent  
164 disability, or permanent disfigurement to the elderly person or  
165 disabled adult commits a felony of the third degree, punishable  
166 as provided in s. 775.082, s. 775.083, or s. 775.084.

167 Section 7. Paragraphs (c), (d), and (e) of subsection (1)  
168 of section 825.103, Florida Statutes, are amended, and paragraph  
169 (f) is added to that subsection, to read:

170 825.103 Exploitation of an elderly person or disabled  
171 adult; penalties.—

172 (1) "Exploitation of an elderly person or disabled adult"  
173 means:

174 (c) Breach of a fiduciary duty to an elderly person or  
175 disabled adult by the person's guardian, trustee who is an  
176 individual, or agent under a power of attorney which results in  
177 an unauthorized appropriation, sale, ~~or~~ transfer of property,  
178 kickback, or receipt of an improper benefit. An unauthorized  
179 appropriation under this paragraph occurs when the elderly  
180 person or disabled adult does not receive the reasonably  
181 equivalent financial value in goods or services, or when the  
182 fiduciary violates any of these duties:

183 1. For agents appointed under chapter 709:

184 a. Committing fraud in obtaining their appointments;



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185           b. Obtaining appointments with the purpose and design of  
186 benefiting someone other than the principal or beneficiary;  
187           ~~c.b.~~ Abusing their powers;  
188           ~~d.e.~~ Wasting, embezzling, or intentionally mismanaging the  
189 assets of the principal or beneficiary; or  
190           ~~e.d.~~ Acting contrary to the principal's sole benefit or  
191 best interest; or  
192           2. For guardians and trustees who are individuals and who  
193 are appointed under chapter 736 or chapter 744:  
194           a. Committing fraud in obtaining their appointments;  
195           b. Obtaining appointments with the purpose and design of  
196 benefiting someone other than the principal or beneficiary;  
197           ~~c.b.~~ Abusing their powers; or  
198           ~~d.e.~~ Wasting, embezzling, or intentionally mismanaging the  
199 assets of the ward or beneficiary of the trust;  
200           (d) Misappropriating, misusing, or transferring without  
201 authorization money belonging to an elderly person or disabled  
202 adult from an account in which the elderly person or disabled  
203 adult placed the funds, owned the funds, and was the sole  
204 contributor or payee of the funds before the misappropriation,  
205 misuse, or unauthorized transfer. This paragraph only applies to  
206 the following types of accounts:  
207           1. Personal accounts;  
208           2. Joint accounts created with the intent that only the  
209 elderly person or disabled adult enjoys all rights, interests,  
210 and claims to moneys deposited into such account; or  
211           3. Convenience accounts created in accordance with s.  
212 655.80; ~~or~~  
213           (e) Intentionally or negligently failing to effectively use





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214 an elderly person's or disabled adult's income and assets for  
215 the necessities required for that person's support and  
216 maintenance, by a caregiver or a person who stands in a position  
217 of trust and confidence with the elderly person or disabled  
218 adult; or

219 (f) Knowingly obtaining or using, endeavoring to obtain or  
220 use, or conspiring with another to obtain or use an elderly  
221 person's or a disabled adult's funds, assets, property, or  
222 estate through intentional modification, alteration, or  
223 fraudulent creation of a plan

By Senator Burgess

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1 A bill to be entitled  
 2 An act relating to protection of elderly persons and  
 3 disabled adults; amending s. 16.56, F.S.; adding  
 4 offenses concerning elderly persons and disabled  
 5 adults to the authority of the Office of Statewide  
 6 Prosecution; amending s. 733.303, F.S.; providing that  
 7 a person who has been convicted of abuse, neglect, or  
 8 exploitation of an elderly person or a disabled adult  
 9 is not qualified to act as a personal representative;  
 10 creating s. 732.8031, F.S.; providing for forfeiture  
 11 of specified benefits of persons who have been  
 12 convicted of certain offenses involving elderly  
 13 persons or disabled adults; providing that certain  
 14 persons who have been convicted of certain offenses  
 15 involving elderly persons or disabled adults may still  
 16 retain an inheritance or survivorship interest if the  
 17 victim executes a specified instrument; amending s.  
 18 736.1104, F.S.; providing that a beneficiary of a  
 19 trust may not benefit under the trust if the person  
 20 was convicted of certain offenses involving elderly  
 21 persons or disabled adults; amending s. 825.101, F.S.;  
 22 defining terms; amending s. 825.102, F.S.; specifying  
 23 additional conduct that constitutes abuse of an  
 24 elderly person or a disabled adult; providing a  
 25 defense to certain violations; providing criminal  
 26 penalties; amending s. 825.103, F.S.; specifying  
 27 additional conduct that constitutes exploitation of an  
 28 elderly person or a disabled adult; providing criminal  
 29 penalties; amending s. 825.1035, F.S.; revising

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30 provisions concerning injunctions for protection  
 31 against exploitation of a vulnerable adult; providing  
 32 for extension of ex parte temporary injunctions;  
 33 providing an effective date.  
 34  
 35 Be It Enacted by the Legislature of the State of Florida:  
 36  
 37 Section 1. Paragraph (a) of subsection (1) of section  
 38 16.56, Florida Statutes, is amended to read:  
 39 16.56 Office of Statewide Prosecution.—  
 40 (1) There is created in the Department of Legal Affairs an  
 41 Office of Statewide Prosecution. The office shall be a separate  
 42 "budget entity" as that term is defined in chapter 216. The  
 43 office may:  
 44 (a) Investigate and prosecute the offenses of:  
 45 1. Bribery, burglary, criminal usury, extortion, gambling,  
 46 kidnapping, larceny, murder, prostitution, perjury, robbery,  
 47 carjacking, home-invasion robbery, and patient brokering;  
 48 2. Any crime involving narcotic or other dangerous drugs;  
 49 3. Any violation of the Florida RICO (Racketeer Influenced  
 50 and Corrupt Organization) Act, including any offense listed in  
 51 the definition of racketeering activity in s. 895.02(8)(a),  
 52 providing such listed offense is investigated in connection with  
 53 a violation of s. 895.03 and is charged in a separate count of  
 54 an information or indictment containing a count charging a  
 55 violation of s. 895.03, the prosecution of which listed offense  
 56 may continue independently if the prosecution of the violation  
 57 of s. 895.03 is terminated for any reason;  
 58 4. Any violation of the Florida Anti-Fencing Act;

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59 5. Any violation of the Florida Antitrust Act of 1980, as  
60 amended;

61 6. Any crime involving, or resulting in, fraud or deceit  
62 upon any person;

63 7. Any violation of s. 847.0135, relating to computer  
64 pornography and child exploitation prevention, or any offense  
65 related to a violation of s. 847.0135 or any violation of  
66 chapter 827 where the crime is facilitated by or connected to  
67 the use of the Internet or any device capable of electronic data  
68 storage or transmission;

69 8. Any violation of chapter 815;

70 9. Any violation of chapter 825;

71 10.9- Any criminal violation of part I of chapter 499;

72 11.10- Any violation of the Florida Motor Fuel Tax Relief  
73 Act of 2004;

74 12.11- Any criminal violation of s. 409.920 or s. 409.9201;

75 13.12- Any crime involving voter registration, voting, or  
76 candidate or issue petition activities;

77 14.13- Any criminal violation of the Florida Money  
78 Laundering Act;

79 15.14- Any criminal violation of the Florida Securities and  
80 Investor Protection Act; or

81 16.15- Any violation of chapter 787, as well as any and all  
82 offenses related to a violation of chapter 787;

83

84 or any attempt, solicitation, or conspiracy to commit any of the  
85 crimes specifically enumerated above. The office shall have such  
86 power only when any such offense is occurring, or has occurred,  
87 in two or more judicial circuits as part of a related

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88 transaction, or when any such offense is connected with an  
89 organized criminal conspiracy affecting two or more judicial  
90 circuits. Informations or indictments charging such offenses  
91 shall contain general allegations stating the judicial circuits  
92 and counties in which crimes are alleged to have occurred or the  
93 judicial circuits and counties in which crimes affecting such  
94 circuits or counties are alleged to have been connected with an  
95 organized criminal conspiracy.

96 Section 2. Subsection (1) of section 733.303, Florida  
97 Statutes, is amended to read:  
98 733.303 Persons not qualified.-  
99 (1) A person is not qualified to act as a personal  
100 representative if the person:  
101 (a) Has been convicted of a felony.  
102 (b) Has been convicted of abuse, neglect, or exploitation  
103 of an elderly person or a disabled adult.  
104 (c) (b) Is mentally or physically unable to perform the  
105 duties.  
106 (d) (e) Is under the age of 18 years.

107 Section 3. Section 732.8031, Florida Statutes, is created  
108 to read:  
109 732.8031 Forfeiture for abuse, neglect, exploitation, or  
110 aggravated manslaughter of an elderly person or disabled adult.-  
111 (1) A surviving person who is convicted of abuse, neglect,  
112 or exploitation under s. 825.102 or s. 825.103 or aggravated  
113 manslaughter under s. 782.07(2) of the decedent or another  
114 person on whose death such beneficiary's interest depends is not  
115 entitled to any benefits under the will of the decedent or the  
116 Florida Probate Code, and the estate of the decedent passes as

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117 if the abuser, neglector, exploiter, or killer had predeceased  
 118 the decedent. Property appointed by the will of the decedent to  
 119 or for the benefit of the abuser, neglector, exploiter, or  
 120 killer passes as if the abuser, neglector, exploiter, or killer  
 121 had predeceased the decedent.

122 (a) A final judgment of conviction for abuse, neglect,  
 123 exploitation, or aggravated manslaughter of the decedent or  
 124 other person creates a rebuttable presumption that this section  
 125 applies.

126 (b) In the absence of a qualifying conviction, the court  
 127 may determine by the greater weight of the evidence whether the  
 128 decedent's or other person's death was caused by or contributed  
 129 to by the abuser, neglector, exploiter, or killer for purposes  
 130 of this section.

131 (2) A joint tenant who is convicted of abuse, neglect, or  
 132 exploitation under s. 825.102 or s. 825.103 or aggravated  
 133 manslaughter under s. 782.07(2) of another joint tenant decedent  
 134 thereby effects a severance of the interest of the decedent so  
 135 that the share of the decedent passes as the decedent's sole  
 136 property and as if the abuser, neglector, exploiter, or killer  
 137 has no rights by survivorship. This subsection applies to joint  
 138 tenancies with right of survivorship and tenancies by the  
 139 entirety in real and personal property; joint and multiple-party  
 140 accounts in banks, savings and loan associations, credit unions,  
 141 and other financial institutions; and any other form of  
 142 coownership with survivorship interests.

143 (a) A final judgment of conviction for abuse, neglect,  
 144 exploitation, or aggravated manslaughter of the decedent or  
 145 other person creates a rebuttable presumption that this section

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146 applies.

147 (b) In the absence of a qualifying conviction, the court  
 148 may determine by the greater weight of the evidence whether the  
 149 decedent's or other person's death was caused by or contributed  
 150 to by the abuser, neglector, exploiter, or killer for purposes  
 151 of this section.

152 (3) A named beneficiary of a bond, life insurance policy,  
 153 or other contractual arrangement who is convicted of abuse,  
 154 neglect, or exploitation under s. 825.102 or s. 825.103 or  
 155 aggravated manslaughter under s. 782.07(2) of the owner or  
 156 principal obligee of the bond, life insurance policy, or other  
 157 contractual arrangement or the person upon whose life such  
 158 policy was issued is not entitled to any benefit under the bond,  
 159 policy, or other contractual arrangement, and the bond, policy,  
 160 or other contractual arrangement becomes payable as though the  
 161 abuser, neglector, exploiter, or killer had predeceased the  
 162 decedent.

163 (a) A final judgment of conviction for abuse, neglect,  
 164 exploitation, or aggravated manslaughter of the decedent or  
 165 other person creates a rebuttable presumption that this section  
 166 applies.

167 (b) In the absence of a qualifying conviction, the court  
 168 may determine by the greater weight of the evidence whether the  
 169 decedent's or other person's death was caused by or contributed  
 170 to by the abuser, neglector, exploiter, or killer for purposes  
 171 of this section.

172 (4) Any other acquisition of property or interest by the  
 173 abuser, neglector, exploiter, or killer, including a life estate  
 174 in homestead property, shall be treated in accordance with the

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175 principles of this section.

176 (5) (a) This section does not affect the rights of any  
 177 person who, before rights under this section have been  
 178 adjudicated, purchases from the abuser, neglector, exploiter, or  
 179 killer for value and without notice property that the abuser,  
 180 neglector, exploiter, or killer would have acquired except for  
 181 this section.

182 (b) The abuser, neglector, exploiter, or killer is liable  
 183 for the amount of the proceeds or the value of the property  
 184 under paragraph (a).

185 (6) Any insurance company, bank, or other obligor making  
 186 payment according to the terms of its policy or obligation is  
 187 not liable by reason of this section unless before payment it  
 188 receives at its home office or principal address written notice  
 189 of a claim under this section.

190 (7) This section does not apply if, after the conviction of  
 191 abuse, neglect, or exploitation, the victim of the offense, if  
 192 capacitated, executes a written instrument, sworn to and  
 193 witnessed by two persons who would be competent as witnesses to  
 194 a will, which expresses a specific intent to allow the person so  
 195 convicted of abuse, neglect, or exploitation to retain his or  
 196 her inheritance or survivorship rights.

197 Section 4. Subsection (3) is added to section 736.1104,  
 198 Florida Statutes, to read:

199 736.1104 ~~Person Killer~~ not entitled to receive property or  
 200 other benefits by reason of victim's death.—

201 (3) A beneficiary of a trust who was convicted of abuse,  
 202 neglect, or exploitation under s. 825.102 or s. 825.103 or  
 203 aggravated manslaughter under s. 782.07(2) of a settlor or

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204 another person on whose death such beneficiary's interest  
 205 depends is not entitled to any trust interest, including a  
 206 homestead dependent on the victim's death, and such interest  
 207 shall devolve as though the abuser, neglecter, exploiter, or  
 208 killer had predeceased the victim.

209 (a) A final judgment of conviction for abuse, neglect,  
 210 exploitation, or aggravated manslaughter of the decedent or  
 211 other person creates a rebuttable presumption that this section  
 212 applies.

213 (b) In the absence of a qualifying conviction, the court  
 214 may determine by the greater weight of the evidence whether the  
 215 decedent's or other person's death was either caused by or  
 216 contributed to by the abuser, neglector, exploiter, or killer  
 217 for purposes of this section.

218 Section 5. Subsections (8) through (14) of section 825.101,  
 219 Florida Statutes, are renumbered as subsections (10) through  
 220 (16), respectively, and new subsections (8) and (9) are added to  
 221 that section, to read:

222 825.101 Definitions.—As used in this chapter:

223 (8) "Improper benefit" means any remuneration or payment,  
 224 by or on behalf of any service provider or merchant of goods, to  
 225 any person as an incentive or inducement to refer customers or  
 226 patrons for past or future services or goods.

227 (9) "Kickback" has the same meaning as in s. 456.054(1).

228 Section 6. Paragraphs (b) and (c) of subsection (1) of  
 229 section 825.102, Florida Statutes, are amended, and paragraph  
 230 (d) is added to that subsection, to read:

231 825.102 Abuse, aggravated abuse, and neglect of an elderly  
 232 person or disabled adult; penalties.—

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233 (1) "Abuse of an elderly person or disabled adult" means:

234 (b) An intentional act that could reasonably be expected to

235 result in physical or psychological injury to an elderly person

236 or disabled adult; ~~or~~

237 (c) Active encouragement of any person to commit an act

238 that results or could reasonably be expected to result in

239 physical or psychological injury to an elderly person or

240 disabled adult; or

241 (d) Intentionally, and without lawful authority, isolating

242 or restricting access of an elderly person or a disabled adult

243 to family members for any length of time which could reasonably

244 be expected to result in physical or psychological injury to the

245 elderly person or disabled adult, or with the intent to promote,

246 facilitate, conceal, or disguise some form of criminal activity

247 involving the person or property of the elderly person or

248 disabled adult. It is a defense to a violation of this paragraph

249 that the defendant had reasonable cause to believe that his or

250 her action was necessary to protect the elderly person or

251 disabled adult from danger to his or her welfare.

252

253 A person who knowingly or willfully abuses an elderly person or

254 disabled adult without causing great bodily harm, permanent

255 disability, or permanent disfigurement to the elderly person or

256 disabled adult commits a felony of the third degree, punishable

257 as provided in s. 775.082, s. 775.083, or s. 775.084.

258 Section 7. Paragraphs (c), (d), and (e) of subsection (1)

259 of section 825.103, Florida Statutes, are amended, and paragraph

260 (f) is added to that subsection, to read:

261 825.103 Exploitation of an elderly person or disabled

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262 adult; penalties.-

263 (1) "Exploitation of an elderly person or disabled adult"

264 means:

265 (c) Breach of a fiduciary duty to an elderly person or

266 disabled adult by the person's guardian, trustee who is an

267 individual, or agent under a power of attorney which results in

268 an unauthorized appropriation, sale, ~~or~~ transfer of property,

269 kickback, or receipt of an improper benefit. An unauthorized

270 appropriation under this paragraph occurs when the elderly

271 person or disabled adult does not receive the reasonably

272 equivalent financial value in goods or services, or when the

273 fiduciary violates any of these duties:

274 1. For agents appointed under chapter 709:

275 a. Committing fraud in obtaining their appointments;

276 b. Obtaining appointments with the purpose and design of

277 benefiting someone other than the principal or beneficiary;

278 c.~~b~~. Abusing their powers;

279 d.~~e~~. Wasting, embezzling, or intentionally mismanaging the

280 assets of the principal or beneficiary; or

281 e.~~d~~. Acting contrary to the principal's sole benefit or

282 best interest; or

283 2. For guardians and trustees who are individuals and who

284 are appointed under chapter 736 or chapter 744:

285 a. Committing fraud in obtaining their appointments;

286 b. Obtaining appointments with the purpose and design of

287 benefiting someone other than the principal or beneficiary;

288 c.~~b~~. Abusing their powers; or

289 d.~~e~~. Wasting, embezzling, or intentionally mismanaging the

290 assets of the ward or beneficiary of the trust;

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291 (d) Misappropriating, misusing, or transferring without  
 292 authorization money belonging to an elderly person or disabled  
 293 adult from an account in which the elderly person or disabled  
 294 adult placed the funds, owned the funds, and was the sole  
 295 contributor or payee of the funds before the misappropriation,  
 296 misuse, or unauthorized transfer. This paragraph only applies to  
 297 the following types of accounts:

- 298 1. Personal accounts;
- 299 2. Joint accounts created with the intent that only the  
 300 elderly person or disabled adult enjoys all rights, interests,  
 301 and claims to moneys deposited into such account; or
- 302 3. Convenience accounts created in accordance with s.  
 303 655.80; ~~or~~
- 304 (e) Intentionally or negligently failing to effectively use  
 305 an elderly person's or disabled adult's income and assets for  
 306 the necessities required for that person's support and  
 307 maintenance, by a caregiver or a person who stands in a position  
 308 of trust and confidence with the elderly person or disabled  
 309 adult; or

310 (f) Knowingly obtaining or using, endeavoring to obtain or  
 311 use, or conspiring with another to obtain or use an elderly  
 312 person's or a disabled adult's funds, assets, property, or  
 313 estate through intentional modification or alteration of a plan  
 314 of distribution or disbursement expressed in a will, trust  
 315 agreement, or other testamentary devise of the elderly person or  
 316 disabled adult without:

- 317 1. A court order, from a court having jurisdiction over the  
 318 elderly person or disabled adult, which authorizes the  
 319 modification or alteration;

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

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320 2. A written instrument executed by the elderly person or  
 321 disabled adult, sworn to and witnessed by two persons who would  
 322 be competent as witnesses to a will, which authorizes the  
 323 modification or alteration; or

324 3. Action of an agent under a valid power of attorney  
 325 executed by the elderly person or disabled adult which  
 326 authorizes the modification or alteration.

327 Section 8. Paragraph (a) of subsection (2), paragraph (a)  
 328 of subsection (3), and paragraph (d) of subsection (5) of  
 329 section 825.1035, Florida Statutes, are amended to read:

330 825.1035 Injunction for protection against exploitation of  
 331 a vulnerable adult.—

332 (2) WHO MAY FILE; VENUE; RECORDING.—

333 (a) The cause of action may be sought in an adversary  
 334 proceeding by:

- 335 1. A vulnerable adult in imminent danger of being  
 336 exploited;
- 337 2. The guardian of a vulnerable adult in imminent danger of  
 338 being exploited;
- 339 3. A person or organization acting on behalf of the  
 340 vulnerable adult with the consent of the vulnerable adult or his  
 341 or her guardian; ~~or~~

342 4. An agent under a valid durable power of attorney with  
 343 the authority specifically granted in the power of attorney; or

344 ~~5.4-~~ A person who simultaneously files a petition for  
 345 determination of incapacity and appointment of an emergency  
 346 temporary guardian with respect to the vulnerable adult.

347 (3) FORM OF PETITION.—

348 (a) A sworn petition filed under this section must allege

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349 the existence of exploitation, or the imminent exploitation, of  
 350 the vulnerable adult and must include the specific facts and  
 351 circumstances for which relief is sought. The sworn petition  
 352 must be in substantially the following form:

353  
 354 PETITION FOR INJUNCTION FOR PROTECTION  
 355 AGAINST EXPLOITATION OF A VULNERABLE ADULT  
 356

357 Before me, the undersigned authority, personally appeared  
 358 Petitioner ...(Name)..., who has been sworn and says that the  
 359 following statements are true:

- 360 1. The petitioner's name is: \_\_\_\_\_
- 361 2. The petitioner's address is: \_\_\_\_\_
- 362 3. The petitioner's relationship to the vulnerable adult  
 363 is: \_\_\_\_\_
- 364 4. How long has the petitioner known the vulnerable adult:  
 365 \_\_\_\_\_
- 366 5. The vulnerable adult's name is: \_\_\_\_\_
- 367 6. Aliases of the vulnerable adult are: \_\_\_\_\_
- 368 7. The vulnerable adult's date of birth is: \_\_\_\_\_
- 369 8.1- The vulnerable adult's address is adult resides at:  
 370 \_\_\_\_\_ ...(address)....
- 371 9. Does the vulnerable adult have one or more impairments  
 372 that impact his or her ability to perform normal activities of  
 373 daily living or to provide for his or her own care or  
 374 protection?  
 375 Yes No  
 376 If so, what are this person's impairments? (check all that  
 377 apply)

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- 378 ... Long-term physical disability
- 379 ... Sensory disability (e.g., hearing or vision impaired)
- 380 ... Cognitive disability
- 381 ... Mental or emotional disability
- 382 ... Developmental disability
- 383 ... Infirmity of aging
- 384 ... Other (explain)
- 385 10.2- The respondent's last known address is respondent  
 386 resides at: \_\_\_\_\_ ...(last known address)....
- 387 11.3- The respondent's last known place of employment is:  
 388 ...(name of business and address)....
- 389 12.4- Physical description of the respondent: ....
- 390 Race....
- 391 Sex....
- 392 Date of birth....
- 393 Height....
- 394 Weight....
- 395 Eye color....
- 396 Hair color....
- 397 Distinguishing marks or scars....
- 398 13.5- Aliases of the respondent: ....
- 399 14.6- The respondent is associated with the vulnerable  
 400 adult as follows: ....
- 401 15.7- The following describes any other cause of action  
 402 currently pending between the petitioner and the respondent, any  
 403 proceeding under chapter 744 concerning the vulnerable adult,  
 404 and any previous or pending attempts by the petitioner to obtain  
 405 an injunction for protection against exploitation of the  
 406 vulnerable adult in this or any other circuit; related case



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407 numbers, if available; and the results of any such  
 408 attempts:.....  
 409 .....

410 ~~16.8.~~ The following describes the petitioner’s knowledge of  
 411 any reports made to a government agency, including, but not  
 412 limited to, the Department of Elderly Affairs, the Department of  
 413 Children and Families, and the adult protective services program  
 414 relating to the abuse, neglect, or exploitation of the  
 415 vulnerable adult; any investigations performed by a government  
 416 agency relating to abuse, neglect, or exploitation of the  
 417 vulnerable adult; and the results of any such reports or  
 418 investigations: ....

419 ~~17.9.~~ The petitioner knows the vulnerable adult is either a  
 420 victim of exploitation or the petitioner has reasonable cause to  
 421 believe the vulnerable adult is, or is in imminent danger of  
 422 becoming, a victim of exploitation because the respondent has:  
 423 ...(describe in the spaces below the incidents or threats of  
 424 exploitation)....

425 ~~18.10.~~ The following describes the petitioner’s knowledge  
 426 of the vulnerable adult’s dependence on the respondent for care;  
 427 alternative provisions for the vulnerable adult’s care in the  
 428 absence of the respondent, if necessary; available resources the  
 429 vulnerable adult has to access such alternative provisions; and  
 430 the vulnerable adult’s willingness to use such alternative  
 431 provisions: ....

432 ~~19.11.~~ The petitioner knows the vulnerable adult maintains  
 433 assets, accounts, or lines of credit at the following financial  
 434 institution(s): ...(list name, address, and account number of  
 435 each)....

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436 ~~20.12.~~ The petitioner believes that the vulnerable adult’s  
 437 assets to be frozen are: ...(mark one)...  
 438 ...Worth less than \$1500;  
 439 ...Worth between \$1500 and \$5000; or  
 440 ...Worth more than \$5000.

441 ~~21.13.~~ The petitioner genuinely fears imminent exploitation  
 442 of the vulnerable adult by the respondent.

443 ~~22.14.~~ The petitioner seeks an injunction for the  
 444 protection of the vulnerable adult, including: ...(mark  
 445 appropriate section or sections)...  
 446 ...Prohibiting the respondent from having any direct or  
 447 indirect contact with the vulnerable adult.

448 ...Immediately restraining the respondent from committing  
 449 any acts of exploitation against the vulnerable adult.  
 450 ...Freezing the assets of the vulnerable adult held at  
 451 ...(name and address of depository or financial institution)...  
 452 even if titled jointly with the respondent, or in the  
 453 respondent’s name only, in the court’s discretion.

454 ...Freezing the credit lines of the vulnerable adult at  
 455 ...(name and address of financial institution)... even if  
 456 jointly with the respondent, in the court’s discretion.  
 457 ...Providing any terms the court deems necessary for the  
 458 protection of the vulnerable adult or his or her assets,  
 459 including any injunctions or directives to law enforcement  
 460 agencies.

461 ~~23.15.~~ Should the court enter an injunction freezing assets  
 462 and credit lines, the petitioner believes that the critical  
 463 expenses of the vulnerable adult will be paid for or provided by  
 464 the following persons or entities, or the petitioner requests

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465 that the following expenses be paid notwithstanding the freeze:  
466 ... (for each expense, list the name of the payee, address,  
467 account number if known, amount, and a brief explanation of why  
468 payment is critical)....

469 (5) TEMPORARY INJUNCTION; SERVICE; HEARING.-

470 (d) An ex parte temporary injunction may be effective for a  
471 fixed period not to exceed 15 days unless good cause is shown to  
472 extend the injunction. The ex parte temporary injunction may be  
473 extended one time for up to an additional 30 days. A full  
474 hearing, as provided by this section, must be set for a date no  
475 later than the date when the ex parte temporary injunction  
476 ceases to be effective. ~~The court may grant a continuance of the~~  
477 ~~hearing, before or during the hearing, for good cause shown by~~  
478 ~~any party, which good cause may include a continuance to obtain~~  
479 ~~service of process. An ex parte injunction is not extended~~  
480 ~~beyond the initial 15 days as a result of a continuance.~~

481 Section 9. This act shall take effect July 1, 2021.

## WHITE PAPER

### **PROPOSED CRIMINAL AMENDMENTS TO FLORIDA STATUTES 16.56 (OFFICE OF STATEWIDE PROSECUTION), 825.101 (DEFINITIONS), 825.102 (ABUSE, AGGRAVATED AUBSE, AND NEGLECT OF AN ELDERLY PERSON OR DISABLED ADULT; PENALTIES), AND 825.103 (EXPLOITATION OF AN ELDERLY PERSON OR DISABLED ADULT; PENALTIES) AN ACT RELATING TO PROTECTION OF ELDERLY PERSONS AND DISABLED ADULTS**

This White Paper relates to the proposed amendments to ss. 16.56, 825.101, 825.102, and 825.103, Florida Statutes. Section 16.56, F.S., describes the purpose and subject matter authority of the Office of Statewide Prosecution, a criminal investigation and prosecution division of the Florida Office of the Attorney General. Chapter 825, F.S., pertains to crimes of abuse, neglect, and exploitation of elderly persons and disabled adults.

#### **I. SUMMARY**

The Florida Office of the Attorney General (hereinafter referred to as the Attorney General's Office) has closely monitored crimes impacting seniors and vulnerable adults and has identified limitations under existing Florida law impacting the successful intervention, enforcement, and prosecution of certain predatory and abusive behaviors by criminals targeting elderly persons and disabled adults. The purpose of the proposed amendments is to provide greater protection for elderly persons and disabled adults under Florida law, while increasing criminal enforcement across the state for crimes committed against these vulnerable adults. The proposed amendments to s. 16.56, F.S., and to Chapter 825, F.S., are designed to clarify and enhance the existing criminal statutes used to prosecute these offenders.

#### **II. CURRENT SITUATION**

##### **a. The Office of Statewide Prosecution lacks specific authority to investigate and prosecute Chapter 825 crimes:**

Currently, victim advocates, elder law attorneys, and other key stakeholders across the state have voiced concerns regarding the underenforcement and a lack of statewide uniformity in the identification, investigation and prosecution of Chapter 825 crimes against elderly persons and disabled adults. In March 2019, the Attorney General's Office announced the creation of the Senior Protection Team, with the mission to protect vulnerable seniors from fraud, exploitation, and other crimes and abuses. As a leading member of the Senior Protection Team, the Office of Statewide Prosecution (hereinafter referred to as "OSP") has enhanced criminal investigation and prosecution efforts across the state for crimes against seniors and elderly persons. The Attorney General's Office Senior Protection Team and related OSP members have identified predatory and career violators of Chapter 825 offenses who participate in organized criminal activity affecting two or more judicial circuits in the state and facilitate their criminal activities through use of the Internet.

However, OSP’s authority to investigate and prosecute criminal violations generates from the Florida Constitution and is codified in Section 16.56, F.S. (OSP’s enabling statute).<sup>1</sup> Section 16.56, F.S., enumerates the specific criminal violations over which the OSP has authority to investigate and prosecute when any such listed offense is, “occurring, or has occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits.”<sup>2</sup> Chapter 825 offenses of abuse, neglect, and exploitation of elderly persons or disabled adults are not included within the s. 16.56, F.S., list of criminal violations over which OSP has authority to investigate and prosecute.

**b. Chapter 825, F.S., fails to expressly prohibit the isolation of an elderly person or disabled adult, which may reasonably be expected to result in physical or psychological harm to victim, or with purpose and intent to facilitate and conceal other criminal conduct:**

In many cases of abuse, neglect, and exploitation, the perpetrator will first isolate the elderly person or disabled adult victim from family and friends who might intervene or object to the perpetrator’s involvement on the victim’s behalf. This isolation occurs most frequently with victims who either lack the mental capacity to fully appreciate or react to the isolation or with victims who are dependent upon the perpetrator for their physical care and wellbeing. The perpetrator, typically a family member or other individual trusted by the victim, utilizes social isolation to facilitate his or her efforts to exert a level of control and influence over the victim unrelated to, or disproportionately related to, effective caregiving, with the intent to conceal the underlying criminal conduct, which may include, but is not limited to: abuse, neglect, or exploitation. In cases beginning with intentional social isolation, oftentimes the resulting injury or harm to the victim (i.e. death, physical or psychological injury, or substantial financial loss) could have been avoided with earlier intervention by authorities. If Chapter 825 specifically prohibited acts of unreasonable isolation of an elderly or disabled adult from family, irreversible harm to the victim may be avoided.

**c. Section 825.103(1)(c), F.S., fails to address exploitation by a fiduciary for the benefit of someone other than the beneficiary or principal:**

Currently, the s. 825.103(1)(c), F.S., definition of “Exploitation of an elderly person or disabled adult” by “[b]reach of a fiduciary duty,” does not specifically address an issue of public concern, namely: when the fiduciary is either employed by or has some pecuniary relationship with a *third party* directly involved in the care or provision of services to the elderly person or disabled adult.<sup>3</sup> A relationship between the fiduciary and third-party provider may not directly

---

<sup>1</sup> Fla. CS for HJR 386, 1985 Fla. Laws 2220; See also, R. S. Palmer & Barbara M. Linthicum, *The Statewide Prosecutor: A New Weapon against Organized Crime*, 13 Fla. St. U. L. Rev. 653 (2017).

<sup>2</sup> Section 16.56, F.S.

<sup>3</sup> Section 825.103, in pertinent portion, reads,

**825.103 Exploitation of an elderly person or disabled adult; penalties.—**

(1) “Exploitation of an elderly person or disabled adult” means:

...

result in an identifiable financial loss by elderly person or disabled adult, however this relationship creates a conflict of interest and breach of fiduciary duty that should be clearly articulated and defined within s. 825.103 (1)(c).

Additionally, the current language of subsection (1)(c) fails to specifically address incidents where the perpetrator seeks his or her designation as a specified fiduciary with the intent to benefit someone other than the elderly person or disabled adult. The absence of specific, clarifying language on this conduct creates a potential gap for prosecution and enforcement when a perpetrator seeks out appointment as a guardian, trustee, or agent under power of attorney with the purpose and design of obtaining control over the victim's assets and person for the benefit of the perpetrator or some third party.

**d. Section 825.103(1), F.S., fails to address exploitation by intentionally modifying or altering an estate plan or trust:**

Currently s. 825.103(1), F.S., criminalizes conduct which results in a taking or other specified harm while the elderly person or disabled adult victim *is alive*. However, the current statute does not specifically prohibit conduct by a perpetrator who takes advantage of a vulnerable adult victim by intentionally modifying or altering the victim's will, trust, or other testamentary devise, thus affecting a future interest in property by someone other than the victim.<sup>4</sup> The absence of specific language criminalizing a perpetrator's unlawful actions to obtain a future interest in the victim's property, for the benefit of either the perpetrator or a third party, by intentionally modifying or altering the victim's will, trust, or other testamentary devise

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(c) Breach of a fiduciary duty to an elderly person or disabled adult by the person's guardian, trustee who is an individual, or agent under a power of attorney which results in an unauthorized appropriation, sale, or transfer of property. An unauthorized appropriation under this paragraph occurs when the elderly person or disabled adult does not receive the reasonably equivalent financial value in goods or services, or when the fiduciary violates any of these duties:

1. For agents appointed under chapter 709:
  - a. Committing fraud in obtaining their appointments;
  - b. Abusing their powers;
  - c. Wasting, embezzling, or intentionally mismanaging the assets of the principal or beneficiary; or
  - d. Acting contrary to the principal's sole benefit or best interest; or
2. For guardians and trustees who are individuals and who are appointed under chapter 736 or chapter 744:
  - a. Committing fraud in obtaining their appointments;
  - b. Abusing their powers; or
  - c. Wasting, embezzling, or intentionally mismanaging the assets of the ward or beneficiary of the trust;

s. 825.103 (1)(c), F.S. (2020).

<sup>4</sup> Section 825.103(1)(a), reads,

**825.103 Exploitation of an elderly person or disabled adult; penalties.—**

(1) "Exploitation of an elderly person or disabled adult" means:

(a) Knowingly obtaining or using, or endeavoring to obtain or use, an elderly person's or disabled adult's funds, assets, or property with the *intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession* of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, ...."

s. 825.103 (1)(a), F.S. (2020)(emphasis added).

creates a prosecutorial gap not adequately addressed in Chapter 825 or by other general “theft” statutes.<sup>5</sup>

### **III. EFFECT OF PROPOSED CHANGES**

#### **a. Fill a statutory gap by codifying specific authority for the Office of Statewide Prosecution to investigate and prosecute Chapter 825 crimes:**

The proposed amendments would codify authority of the OSP to investigate and prosecute Chapter 825 crimes. If OSP had authority over Chapter 825 offenses, the full efforts of the Attorney General’s Office Senior Protection Team and related OSP members could enhance the investigation and enforcement, with increased statewide uniformity in the identification, investigation and prosecution of Chapter 825 crimes against elderly persons and disabled adults.

#### **b. Prevent irreparable harm by expressly prohibiting acts of unreasonable isolation of an elderly person or disabled adult:**

The proposed amendment to s. 825.102(1), F.S., with the addition of subsection (d) would provide specific, clarifying language to fill the gap in Chapter 825, in instances where a perpetrator unreasonably and unlawfully isolates an elderly person or disabled adult from his or her family members. Criminalizing intentional acts of unlawful isolation of elderly persons or disabled adults would provide law enforcement with an opportunity for early detection and intervention *before* a victim suffers irreparable loss or injury, while also preserving the opportunity for prosecution of the perpetrator who was prevented from causing long-lasting harm to the victim or stopped short of completion of the underlying crime the isolation was used to conceal or disguise (especially pertaining to the crimes of abuse, neglect, or exploitation).

#### **c. Fill a statutory gap by expressly prohibiting exploitation by a fiduciary for the benefit of someone other than the beneficiary or principal:**

The proposed amendments to s. 825.103(1)(c), F.S., would provide specific, clarifying language to fill the gap in Chapter 825, in instances where a perpetrator seeks out appointment as a guardian, trustee, or agent under power of attorney with the purpose and design of obtaining control over the victim’s assets and person for the benefit of the perpetrator or some third party. Further adding language regarding the requisite intent and motivation required of an individual seeking appointment as a specified fiduciary for an elderly person or disabled adult would serve to deter predatory practices by professionals seeking to take advantage of, and profit from, vulnerable and isolated elderly persons or disabled adults.

---

<sup>5</sup> Namely those described in Chapter 812, F.S. (“THEFT, ROBBERY, AND RELATED CRIMES”).

**d. Fill a statutory gap by criminalizing the intentional modifying or altering an estate plan or trust of an elderly or disabled adults to facilitate exploitation or unlawful gain:**

The proposed amendment to s. 825.103 (1), F.S., and the addition of subsection (f) would expressly prohibit intentional conduct by a perpetrator who takes advantage of an elderly person or disabled adult by modifying or altering the victim's originally intended estate plan in order to financially benefit either the perpetrator or some other individual in a manner that is inconsistent with the intent of the elderly person or disabled adult. Such amendment fills a gap in the criminal prohibitions of Chapter 825.

**IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS**

Chapter 825 investigations place a high demand on limited agency resources and often require a level of expertise or familiarity with unique and complicated legal issues associated with elderly-person-victim or disabled-adult-victim cases. Expanding OSP's authority in s. 16.56 to investigate and prosecute qualifying cases under Chapter 825 would alleviate some of the financial burden on local law enforcement and prosecution, as well as consolidate the prosecution of multi-circuit criminal activity under this Chapter into comprehensive statewide prosecution cases.

**V. DIRECT FISCAL IMPACT ON PRIVATE SECTOR**

None anticipated.

**VI. CONSTITUTIONAL ISSUES**

There are no recognized, expected constitutional issued related to the proposed amendments.

**VII. OTHER INTERESTED PARTIES**

The Criminal Law Section, Elder Law Section, and Real Property and Probate and Trust Law Section of the Florida Bar.

## **HB 1041 – Protection of Elderly Persons and Disabled Adults (Identical SB 1344)**

This bill amends multiple statutes. It amends s. 825.102, F.S., adding the following to the definition of abuse of an elderly person or disabled adult: “Intentionally, and without lawful authority, isolating or restricting access of an elderly person or a disabled adult to family members for any length of time which could reasonably be expected to result in physical or psychological injury to the elderly person or disabled adult, or with the intent to promote, facilitate, conceal, or disguise some form of criminal activity involving the person or property of the elderly person or disabled adult. It is a defense to a violation of this paragraph that the defendant had reasonable cause to believe that his or her action was necessary to protect the elderly person or disabled adult from danger to his or her welfare.” This expansion of the definition would impact the multiple felonies listed under this statute. This bill also amends s. 825.101, F.S., defining “improper benefit” and “kickback,” and amends s. 825.103, F.S., adding the following (new language in bold): “Breach of a fiduciary duty to an elderly person or disabled adult by the person’s guardian, trustee who is an individual, or agent under a power of attorney which results in an unauthorized appropriation, sale, transfer of property, **kickback, or receipt of an improper benefit.**” It also adds “obtaining appointments with the purpose and design of benefiting someone other than the principal or beneficiary” to the list of acts resulting in unauthorized appropriations. It also adds the act of “knowingly obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person’s or a disabled adult’s funds, assets, property, or estate through intentional modification or alteration of a plan of distribution or disbursement expressed in a will, trust agreement, or other testamentary devise of the elderly person or disabled adult.” This expands the definition for exploitation of an elderly person or disabled adult, impacting the multiple felonies listed under this statute. Finally, this bill amends s. 825.1035, F.S., adding “an agent under a valid durable power of attorney with the authority specifically granted in the power of attorney” to those who may file an injunction for protection against exploitation of a vulnerable adult, and extends the time for a temporary injunction from 15 days to up to 45 days. This would impact the Level 1, 3<sup>rd</sup> degree felony under s. 825.1036, F.S. for “a person who has two or more prior convictions for violation of an injunction or foreign protection order against the same victim, and who subsequently commits a violation of any injunction or foreign protection order against the same victim.”

Per DOC, in FY 18-19, there were 35 new commitments to prison for felonies listed under these statutes (14 for abuse, 21 for exploitation), and 29 new commitments in FY 19-20 (11 for abuse, 18 for exploitation). It is not known how this new language will impact prison beds, but commitments are low under current language.

**EDR PROPOSED ESTIMATE: Positive Insignificant**

**Requested by: Senate**



**YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM**

**THE FLORIDA SENATE**

**APPEARANCE RECORD**

3/23/21

*Meeting Date*

1344

*Bill Number (if applicable)*

Topic Protection of Elderly Persons and Disabled Adults

*Amendment Barcode (if applicable)*

Name Will McKinley

Job Title President

Address 106 E. College Ave., Suite 1100

Phone (850) 681-1980

*Street*

Tallahassee, FL 32301

Email will@poolemckinley.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Dr. Steve Scott / Scott Holdings LLC

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)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/23/21

Meeting Date

1344

Bill Number (if applicable)

Topic Protection of Elderly Persons and Disabled Adults

Amendment Barcode (if applicable)

Name Greg Black

Job Title Lobbyist

Address PO Box 838

Phone 8505098022

Street

Tallahassee

FL

32302

Email Greg@WaypointStrat.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Elder Law Section of the Florida Bar/Academy of Elder Law Attorneys

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/23/21

Meeting Date

SB 1344

Bill Number (if applicable)

Topic Protection of Elderly Persons and Disabled Adults

Amendment Barcode (if applicable)

Name Daniel Olson

Job Title Director of Government Relations

Address 400 South Monroe

Street

Tallahassee

City

FL

State

32399

Zip

Phone \_\_\_\_\_

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Office of the Attorney General

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)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/23/21  
Meeting Date

SB 1344  
Bill Number (if applicable)

Topic Protection of Elderly Persons and Disabled Adults

Amendment Barcode (if applicable)

Name Karen Murillo

Job Title Assistant Statewide Prosecutor

Address 400 South Monroe

Phone

Street

Tallahassee

FL

32399

Email

City

State

Zip

Speaking:  For  Against  Information

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

Representing Office of the Attorney General

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

3/23/2021

Meeting Date

SB 1344

Bill Number (if applicable)

948234

Amendment Barcode (if applicable)

Topic Protection of Elderly Persons and Disabled Adults

Name French Brown

Job Title Lobbyist

Address 106 East College Avenue, Suite 1200

Phone 850-459-0992

Street

Tallahassee

FL

32301

Email fbrown@deanmead.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Real Property, Probate, and Trust Law Section of the Florida Bar

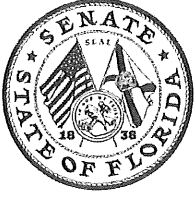
Appearing at request of Chair:  Yes  No

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

## Committee Agenda Request

**To:** Senator Jason Pizzo, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** March 10, 2021

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I respectfully request that **Senate Bill #1344**, relating to Protection of Elderly Persons and Disabled Adults, be placed on the:

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

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

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Senator Danny Burgess  
Florida Senate, District 20

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

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

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

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BILL: SB 1476

INTRODUCER: Senator Brodeur

SUBJECT: Controlled Substances

DATE: March 22, 2021

REVISED: 03/23/21 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	<u>HP</u>	_____
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 1476 amends s. 893.03, F.S., Florida’s controlled substance schedules, to remove the following substance from Schedule V: a drug product in finished dosage formulation which has been approved by the U.S. Food and Drug Administration (FDA) and which contains cannabidiol (CBD) derived from cannabis and no more than 0.1 percent tetrahydrocannabinols.

In 2019, the Legislature placed the previously-described language in Schedule V. From that time to the present date, the scheduling language has only applied to Epidiolex®, the first pharmaceutical oral solution containing highly purified CBD to be approved by the FDA. It is used for the treatment of seizures associated with two rare and severe forms of epilepsy. While making Epidiolex® a Schedule V controlled substance was consistent with the federal scheduling in 2019, the substance has since been descheduled by the U.S. Drug Enforcement Administration (DEA). Therefore, the bill’s removal of the Schedule V language (and the descheduling of Epidiolex®) would be consistent with federal descheduling action.

The bill takes effect upon becoming a law.

**II. Present Situation:**

**Florida’s Controlled Substance Schedules**

Section 893.03, F.S., classifies controlled substances into five categories or classifications, known as schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed in the schedules. The most important factors in determining which schedule may apply to a substance are the “potential for abuse”<sup>1</sup> of the substance and

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<sup>1</sup> Pursuant to s. 893.035(3)(a), F.S., “potential for abuse” means a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: (1) used in amounts that

whether there is a currently accepted medical use for the substance. The controlled substance schedules are as follows:

- Schedule I substances (s. 893.03(1), F.S.) have a high potential for abuse and no currently accepted medical use in treatment in the United States. Use of these substances under medical supervision does not meet accepted safety standards.
- Schedule II substances (s. 893.03(2), F.S.) have a high potential for abuse and a currently accepted but severely restricted medical use in treatment in the United States. Abuse of these substances may lead to severe psychological or physical dependence.
- Schedule III substances (s. 893.03(3), F.S.) have a potential for abuse less than the Schedule I and Schedule II substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to moderate or low physical dependence or high psychological dependence. Abuse of anabolic steroids may lead to physical damage.
- Schedule IV substances (s. 893.03(4), F.S.) have a low potential for abuse relative to Schedule III substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule III substances.
- Schedule V substances (s. 893.03(5), F.S.) have a low potential for abuse relative to the substances in Schedule IV and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule IV substances.

### **Prescribing and Dispensing a Schedule V Controlled Substance**

A prescriber<sup>2</sup> or dispenser<sup>3</sup> of controlled substances in Florida is required to consult the Prescription Drug Monitoring Program (PDMP) system each time a controlled substance is prescribed or dispensed to a patient age 16 or over unless a statutory exemption applies.<sup>4</sup> A dispenser is required to report to the PDMP each time a controlled substance in Schedule V is dispensed to a patient.<sup>5</sup> Willful and knowing failure to report the dispensing of a controlled substance is a first degree misdemeanor.<sup>6</sup>

Numerous pieces of information are required to appear on the face or written record of the prescription for a controlled substance<sup>7</sup> and the prescription must be retained by the prescribing pharmacy for two years.<sup>8</sup> There are also numerous labeling requirements relating to the container in which a controlled substance is delivered.<sup>9</sup> There are also limitations on filling or refilling a

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create a hazard to the user's health or the safety of the community; (2) diverted from legal channels and distributed through illegal channels; or (3) taken on the user's own initiative rather than on the basis of professional medical advice.

<sup>2</sup> A "prescriber" is a prescribing physician, prescribing practitioner, or other prescribing health care practitioner authorized by the laws of this state to order controlled substances. Section 893.055(1)(k), F.S.

<sup>3</sup> A "dispenser" is a dispensing health care practitioner, pharmacy, or pharmacist licensed to dispense controlled substances in or into this state. Section 893.055(1)(e), F.S.

<sup>4</sup> Section 893.055(8), F.S.

<sup>5</sup> Section 893.055(3), F.S. Schedule I substances are not included because, by definition, a Schedule I substance has no accepted medical use, and therefore, is not prescribed or dispensed.

<sup>6</sup> Section 893.055(9), F.S. A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

<sup>7</sup> Section 893.04(1)(c), F.S.

<sup>8</sup> Section 893.04(1)(d), F.S.

<sup>9</sup> Section 893.04(1)(d), F.S.



prescription for a controlled substance: no more than five times within a period of six months after the date on which the prescription was written unless the prescription is renewed by a practitioner.<sup>10</sup>

### **Punishment of Prohibited Drug Acts Involving Cannabis and Schedule V Controlled Substances**

Cannabis is a Schedule I controlled substance.<sup>11</sup> Schedule I is the most restrictive controlled substance schedule. Section 893.13, F.S., in part, punishes unlawful possession, sale, purchase, manufacture, delivery, and importation of a Schedule I controlled substance. Simple possession of 20 grams or less of cannabis is a first degree misdemeanor,<sup>12</sup> and simple possession of more than 20 grams of cannabis is a third degree felony.<sup>13</sup> Purchase, or possession with intent to purchase, cannabis is a third degree felony.<sup>14</sup> Delivery, without consideration, of 20 grams or less of cannabis is a first degree misdemeanor.<sup>15</sup> Generally, it is a third degree felony to deliver, sell, manufacture, import, or possess with the intent to sell, manufacture, or deliver cannabis.<sup>16</sup> Section 893.135, F.S., punishes drug trafficking. Trafficking in significant quantities of cannabis is a first degree felony, which is subject to a 3, 7, or 15-year mandatory minimum term and mandatory fine based on the quantity of cannabis trafficked.<sup>17</sup>

Schedule V is the least restrictive controlled substance schedule. Section 893.13, F.S., in part, punishes unlawful possession, sale, purchase, manufacture, delivery, and importation of a Schedule V controlled substance. Simple possession of a Schedule V controlled substance is a second degree misdemeanor.<sup>18</sup> Purchase, or possession with intent to purchase, a Schedule V controlled substance is a first degree misdemeanor.<sup>19</sup> Generally, it is a first degree misdemeanor to deliver, sell, manufacture, import, or possess with the intent to sell, manufacture, or deliver a Schedule V controlled substance.<sup>20</sup> Drug trafficking offenses in s. 893.135, F.S., do not apply to Schedule V controlled substances.<sup>21</sup>

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<sup>10</sup> Section 893.04(1)(g), F.S.

<sup>11</sup> Section 893.03(1)(c)7., F.S.

<sup>12</sup> Section 893.13(6)(b), F.S.

<sup>13</sup> Section 893.13(6)(a), F.S. A third degree felony is punishable by up to five years in state prison and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

<sup>14</sup> Section 893.13(2)(a)2., F.S.

<sup>15</sup> Section 893.13(3), F.S.

<sup>16</sup> Section 893.13(1)(a)2. and (5)(b), F.S.

<sup>17</sup> Section 893.135(1)(a), F.S. A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

<sup>18</sup> Section 893.13(6)(d), F.S. A second degree misdemeanor is punishable by up to 60 days in county jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

<sup>19</sup> Section 893.13(2)(a)3., F.S.

<sup>20</sup> Section 893.13(1)(a)3. and (5)(c), F.S.

<sup>21</sup> See s. 893.135(1)(a)-(n), F.S.

## Scheduling of Epidiolex®

Epidiolex® is an oral solution developed by GW Pharmaceuticals (GW).<sup>22</sup> According to GW, Epidiolex® is “a pharmaceutical formulation of highly purified cannabidiol (CBD)[.]”<sup>23</sup> CBD is “a chemical constituent of the cannabis plant (commonly referred to as marijuana).”<sup>24</sup> “However, CBD does not cause intoxication or euphoria (the ‘high’) that comes from tetrahydrocannabinol (THC).”<sup>25</sup>

In June of 2018, the FDA announced that it approved Epidiolex® for the treatment of seizures associated with two rare and severe forms of epilepsy, Lennox-Gastaut syndrome and Dravet syndrome, in patients two years of age and older.<sup>26</sup> Epidiolex® “is the first FDA-approved drug that contains a purified drug substance derived from marijuana.”<sup>27</sup>

On September 28, 2018, the DEA rescheduled Epidiolex® from Schedule I to Schedule V of the federal Controlled Substance Act (CSA).<sup>28</sup> Because Epidiolex® was approved by the FDA, the DEA determined it has a currently accepted medical use in treatment in the United States, and no longer met criteria for placement in Schedule I of the CSA.<sup>29</sup> Epidiolex® was a Schedule I substance under federal law because it contains CBD, a chemical component of the cannabis plant, which is a Schedule I controlled substance.<sup>30</sup>

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<sup>22</sup> EPIDIOLEX® (cannabidiol) Oral Solution – the First FDA-approved Plant-derived Cannabinoid Medicine – Now Available by Prescription in the U.S., Press Release (Nov. 1, 2018), GW Pharmaceuticals, Ltd., available at <http://ir.gwpharm.com/news-releases/news-release-details/epidiolexr-cannabidiol-oral-solution-first-fda-approved-plant> (last visited on March 16, 2021). According to GW, Epidiolex® “will be marketed in the U.S. by its subsidiary, Greenwich Biosciences.” *Id.*

<sup>23</sup> FDA-approved drug Epidiolex placed in schedule V of Controlled Substance Act, Press Release (Sept. 27, 2018), U.S. Drug Enforcement Administration, available at <https://www.dea.gov/press-releases/2018/09/27/fda-approved-drug-epidiolex-placed-schedule-v-controlled-substance-act> (last visited on March 16, 2021).

<sup>24</sup> *Id.*

<sup>25</sup> FDA approves first drug comprised of an active ingredient derived from marijuana to treat rare, severe forms of epilepsy, News Release (June 25, 2018), U.S. Food and Drug Administration, available at <https://www.fda.gov/newsevents/newsroom/pressannouncements/ucm611046.htm> (last visited on March 16, 2021).

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

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

<sup>28</sup> Schedules of Controlled Substances: Placement in Schedule V of Certain FDA-Approved Drugs Containing Cannabidiol; Corresponding Change to Permit Requirements, 83 FR 48950 (Sept. 28, 2018), available at <https://www.federalregister.gov/documents/2018/09/28/2018-21121/schedules-of-controlled-substances-placement-in-schedule-v-of-certain-fda-approved-drugs-containing> (last visited on March 16, 2021). The U.S. Department of Health and Human Services advised the DEA “that it found the Epidiolex formulation to have a very low potential for abuse[.]” *Id.* The federal Controlled Substance Act is codified at 21 U.S.C. ss. 801-978.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

On October 31, 2018, former Florida Attorney General Pam Bondi, pursuant to her emergency scheduling authority under s. 893.0355, F.S.,<sup>31</sup> rescheduled Epidiolex® from Schedule I of the Florida controlled substance schedules (s. 893.03, F.S.) to Schedule V of the schedules.<sup>32</sup>

In 2019, the Legislature placed the following language in Schedule V: “a drug product in finished dosage formulation which has been approved by the U.S. Food and Drug Administration (FDA) and which contains cannabidiol (CBD) derived from cannabis and no more than 0.1 percent tetrahydrocannabinols.”<sup>33</sup> From that time to the present date, the scheduling language has only applied to Epidiolex®.

In 2020, the DEA removed Epidiolex® from Schedule V and descheduled it entirely, meaning Epidiolex® is no longer subject to the federal CSA.<sup>34</sup> Epidiolex® remains a Schedule V controlled substance in Florida’s controlled substance schedules until or unless the Legislature removes the scheduling language applicable to Epidiolex®.

### “Low-THC Cannabis” and Epidiolex®

The Compassionate Medical Cannabis Act of 2014<sup>35</sup> legalized “low-THC cannabis,” a low THC and high CBD form of cannabis,<sup>36</sup> for medical use<sup>37</sup> by patients suffering from cancer, epilepsy, and certain other specified medical conditions.<sup>38</sup>

A “low-THC cannabis” product obtained from a medical marijuana treatment center is not an FDA-approved CBD product. As previously described, Epidiolex® is the only CBD product that is currently approved by the FDA. Further, Epidiolex® is *prescribed* by a physician. A “low-

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<sup>31</sup> Section 893.0355(2), F.S., delegates to the Attorney General the authority to adopt rules rescheduling specified substances to a less controlled schedule, or deleting specified substances from a schedule, upon a finding that reduced control of such substances is in the public interest. Rulemaking under s. 893.0355, F.S., must be in accordance with the procedural requirements of ch. 120, F.S., including the emergency rule provisions found in s. 120.54, F.S., except that s. 120.54(7), F.S. (petition to initiate rulemaking), does not apply. Section 893.0355(4), F.S.

<sup>32</sup> The text of Emergency Rule 2ER18-1 is available at [https://www.flrules.org/gateway/notice\\_Files.asp?ID=21109642](https://www.flrules.org/gateway/notice_Files.asp?ID=21109642) (last visited on March 16, 2021).

<sup>33</sup> Section 893.03(5)(d), F.S.

<sup>34</sup> See *Implementation of the Agriculture Improvement Act of 2018* (interim final rule), Drug Enforcement Administration, 85 FR 51639 (Aug. 21, 2020), available at <https://www.federalregister.gov/documents/2020/08/21/2020-17356/implementation-of-the-agriculture-improvement-act-of-2018> (last visited March 16, 2021). The interim final rule, in part, removed “from control in schedule V under 21 CFR 1308.15(f) a “drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1% (w/w) residual tetrahydrocannabinols.” *Id.* “... [I]nterim final rules are considered final rules that carry the force and effect of law.” Todd Gravey, *A Brief Overview of Rulemaking and Judicial Review* (March 27, 2017), Congressional Research Service, at p. 9 and n. 79 (citing *Career College Ass’n v. Riley*, 74 F.3d 1265 (D.C. Cir. 1996)), available at <https://fas.org/sgp/crs/misc/R41546.pdf>. (last visited March 16, 2021). See also prescription information for Epidiolex® (on file with the Senate Committee on Criminal Justice).

<sup>35</sup> See ch. 2014-157, L.O.F., and s. 381.986, F.S.

<sup>36</sup> “Low-THC cannabis” means a plant of the genus *Cannabis*, the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or resin that is dispensed from a medical marijuana treatment center. Section 381.986(1)(e), F.S.

<sup>37</sup> With specified exceptions, “medical use” means the acquisition, possession, use, delivery, transfer, or administration of marijuana authorized by a physician certification. Section 381.986(1)(j), F.S.

<sup>38</sup> Section 381.986(2), F.S.

THC cannabis” product is not prescribed. In addition to other requirements, a *physician certification* from a qualified physician is required for a qualified patient to obtain a “low-THC cannabis” product from a medical marijuana treatment center.<sup>39</sup>

Epidiolex® was subject to extensive nonclinical and clinical studies to determine its safety and efficacy for the treatment of Lennox-Gastaut syndrome and Dravet syndrome in patients two years of age and older.<sup>40</sup> In contrast, a “low-THC cannabis” product dispensed by a medical marijuana treatment center is tested by a medical marijuana testing laboratory to determine that the product meets the definition of “low-THC cannabis,” the THC concentration meets the potency requirements of s. 381.986, F.S., the labeling of the concentration of THC and CBD is accurate, and the product is safe for human consumption and free from contaminants that are unsafe for human consumption.<sup>41</sup>

“Low-THC cannabis” described in s. 381.986(1)(e), F.S., is still cannabis and cannabis is a Schedule I controlled substance. As previously described, unlawful acts involving a Schedule I controlled substance are generally subject to significant criminal penalties. However, when a qualified patient lawfully obtains “low-THC cannabis” (as provided in s. 381.986, F.S.), he or she is not subject to criminal penalties.<sup>42</sup> In contrast, as previously described, Epidiolex® is a Schedule V controlled substance pursuant to Florida law, and unlawful acts involving a Schedule V controlled substance are punished less severely than unlawful acts involving a Schedule I controlled substance.

### III. Effect of Proposed Changes:

The bill amends s. 893.03, F.S., Florida’s controlled substance schedules, to remove the following substance from Schedule V: a drug product in finished dosage formulation which has been approved by the FDA and which contains CBD derived from cannabis and no more than 0.1 percent tetrahydrocannabinols. This drug product is referenced in s. 893.03(5)(d), F.S. The bill also amends the definition of “cannabis,” which is relevant to ch. 893, F.S., to remove a sentence in the definition that currently states that the term “cannabis” does not include a drug product described in s. 893.03(5)(d), F.S.

In 2019, the Legislature placed the previously-described language relevant to Epidiolex® in Schedule V. From that time to the present date, the scheduling language has only applied to Epidiolex®, the first pharmaceutical oral solution containing highly purified CBD to be approved by the FDA. It is used for the treatment of seizures associated with two rare and severe forms of epilepsy. While making Epidiolex® a Schedule V controlled substance was consistent with the federal scheduling in 2019, the substance has since been descheduled by the DEA, and

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<sup>39</sup> Section 381.986(2)-(8), F.S.

<sup>40</sup> See footnote 23, *supra*.

<sup>41</sup> Section 381.986(8)(e)10.d., F.S.

<sup>42</sup> Notwithstanding s. 893.13, F.S., s. 893.135, F.S., s. 893.147, F.S., or any other provision of law, but subject to the requirements of this section, a qualified patient and the qualified patient’s caregiver may purchase from a medical marijuana treatment center for the patient’s medical use a marijuana delivery device and up to the amount of marijuana authorized in the physician certification, but may not possess more than a 70-day supply of marijuana at any given time and all marijuana purchased must remain in its original packaging. Section 381.986(14)(a), F.S.

therefore, the bill's removal of the Schedule V language (and the descheduling of Epidiolex®) is consistent with federal scheduling action.

The bill takes effect upon becoming a law.

#### **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:**

The descheduling of Epidiolex® means that a prescriber would no longer have to consult the PDMP system before prescribing Epidiolex®, and a dispenser would no longer have to report to the PDMP system each time the prescriber dispenses Epidiolex®. Other requirements relating to Schedule V controlled substances (information-reporting, recordkeeping, labeling containers, and filling and refilling prescriptions) would no longer apply.

##### **C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Although the bill removes language from Schedule V applicable to Epidiolex®, there is nothing in the bill that would specifically indicate that a drug product in finished dosage formulation which has been approved by the FDA and which contains CBD derived from cannabis and no more than 0.1 percent tetrahydrocannabinols is not “cannabis” as defined in ch. 893, F.S., or a controlled substance under ch. 893, F.S. A statement to this effect would preclude any interpretation that such drug product is cannabis, a Schedule I controlled substance.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 893.03 and 893.02.

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

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

None.

**B. Amendments:**

None.

By Senator Brodeur

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1                                   A bill to be entitled  
 2           An act relating to controlled substances; amending s.  
 3           893.03, F.S.; removing from Schedule V certain drug  
 4           products in finished dosage formulation which have  
 5           been approved by the United States Food and Drug  
 6           Administration; amending s. 893.02, F.S.; conforming a  
 7           provision to changes made by the act; providing an  
 8           effective date.  
 9  
 10   Be It Enacted by the Legislature of the State of Florida:  
 11  
 12           Section 1. Paragraph (d) of subsection (5) of section  
 13   893.03, Florida Statutes, is amended to read:  
 14           893.03 Standards and schedules.—The substances enumerated  
 15   in this section are controlled by this chapter. The controlled  
 16   substances listed or to be listed in Schedules I, II, III, IV,  
 17   and V are included by whatever official, common, usual,  
 18   chemical, trade name, or class designated. The provisions of  
 19   this section shall not be construed to include within any of the  
 20   schedules contained in this section any excluded drugs listed  
 21   within the purview of 21 C.F.R. s. 1308.22, styled "Excluded  
 22   Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical  
 23   Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted  
 24   Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt  
 25   Anabolic Steroid Products."  
 26           (5) SCHEDULE V.—A substance, compound, mixture, or  
 27   preparation of a substance in Schedule V has a low potential for  
 28   abuse relative to the substances in Schedule IV and has a  
 29   currently accepted medical use in treatment in the United

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

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30   States, and abuse of such compound, mixture, or preparation may  
 31   lead to limited physical or psychological dependence relative to  
 32   the substances in Schedule IV.  
 33           ~~(d) A drug product in finished dosage formulation that has  
 34   been approved by the United States Food and Drug Administration  
 35   that contains cannabidiol (2-[1R-3-methyl-6R-(1-methylethenyl)-  
 36   2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from  
 37   cannabis and no more than 0.1 percent (w/w) residual  
 38   tetrahydrocannabinols.~~  
 39           Section 2. Subsection (3) of section 893.02, Florida  
 40   Statutes, is amended to read:  
 41           893.02 Definitions.—The following words and phrases as used  
 42   in this chapter shall have the following meanings, unless the  
 43   context otherwise requires:  
 44           (3) "Cannabis" means all parts of any plant of the genus  
 45   *Cannabis*, whether growing or not; the seeds thereof; the resin  
 46   extracted from any part of the plant; and every compound,  
 47   manufacture, salt, derivative, mixture, or preparation of the  
 48   plant or its seeds or resin. The term does not include  
 49   "marijuana," as defined in s. 381.986, if manufactured,  
 50   possessed, sold, purchased, delivered, distributed, or  
 51   dispensed, in conformance with s. 381.986. The term does not  
 52   include hemp as defined in s. 581.217 or industrial hemp as  
 53   defined in s. 1004.4473. ~~The term does not include a drug  
 54   product described in s. 893.03(5)(d).~~  
 55           Section 3. This act shall take effect upon becoming a law.

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

## HIGHLIGHTS OF PRESCRIBING INFORMATION

These highlights do not include all the information needed to use EPIDIOLEX® safely and effectively. See full prescribing information for EPIDIOLEX.

EPIDIOLEX® (cannabidiol) oral solution

Initial U.S. Approval: 2018

### RECENT MAJOR CHANGES

Indications (1)	07/2020
Dosage and Administration (2.2, 2.3, 2.4, 2.6)	07/2020
Warnings and Precautions (5.1, 5.2, 5.4)	07/2020

### INDICATIONS AND USAGE

EPIDIOLEX is indicated for the treatment of seizures associated with Lennox-Gastaut syndrome, Dravet syndrome, or tuberous sclerosis complex in patients 1 year of age and older (1)

### DOSAGE AND ADMINISTRATION

- Obtain serum transaminases (ALT and AST) and total bilirubin levels in all patients prior to starting treatment. (2.1, 5.1)
- See Full Prescribing Information for titration. (2.2, 2.3)

#### Seizures Associated with Lennox-Gastaut Syndrome or Dravet Syndrome

- The recommended starting dosage is 2.5 mg/kg by mouth twice daily (5 mg/kg/day). After one week, the dosage can be increased to a maintenance dosage of 5 mg/kg twice daily (10 mg/kg/day). (2.2)
- Based on individual clinical response and tolerability, EPIDIOLEX can be increased up to a maximum recommended maintenance dosage of 10 mg/kg twice daily (20 mg/kg/day).

#### Seizures Associated with Tuberous Sclerosis Complex

- The recommended starting dosage is 2.5 mg/kg by mouth twice daily (5 mg/kg/day). Increase the dose weekly by 2.5 mg/kg twice daily (5 mg/kg/day), as tolerated, to a recommended maintenance dosage of 12.5 mg/kg twice daily (25 mg/kg/day). (2.3)

#### Patients with Impaired Hepatic Function

- Dosage adjustment is recommended for patients with moderate or severe hepatic impairment. (2.6, 8.6)

### DOSAGE FORMS AND STRENGTHS

Oral solution: 100 mg/mL (3)

### CONTRAINDICATIONS

Hypersensitivity to cannabidiol or any of the ingredients in EPIDIOLEX (4)

### WARNINGS AND PRECAUTIONS

- Hepatocellular Injury: EPIDIOLEX can cause transaminase elevations. Concomitant use of valproate and higher doses of EPIDIOLEX increase the risk of transaminase elevations. See Full Prescribing Information for serum transaminase and bilirubin monitoring recommendations. (5.1)
- Somnolence and Sedation: Monitor for somnolence and sedation and advise patients not to drive or operate machinery until they have gained sufficient experience on EPIDIOLEX. (5.2)
- Suicidal Behavior and Ideation: Monitor patients for suicidal behavior and thoughts. (5.3)
- Hypersensitivity Reactions: Advise patients to seek immediate medical care. Discontinue and do not restart EPIDIOLEX if hypersensitivity occurs. (5.4)
- Withdrawal of Antiepileptic Drugs: EPIDIOLEX should be gradually withdrawn to minimize the risk of increased seizure frequency and status epilepticus. (5.5)

### ADVERSE REACTIONS

The most common adverse reactions (10% or more for EPIDIOLEX and greater than placebo) in patients with Lennox-Gastaut syndrome or Dravet syndrome are: somnolence; decreased appetite; diarrhea; transaminase elevations; fatigue, malaise, and asthenia; rash; insomnia, sleep disorder, and poor quality sleep; and infections. (6.1)

The most common adverse reactions (10% or more for EPIDIOLEX and greater than placebo) in patients with tuberous sclerosis complex are: diarrhea; transaminase elevations; decreased appetite; somnolence; pyrexia; and vomiting. (6.1)

To report SUSPECTED ADVERSE REACTIONS, contact Greenwich Biosciences at 1-833-424-6724 (1-833-GBIOSCI) or FDA at 1-800-FDA-1088 or [www.fda.gov/medwatch](http://www.fda.gov/medwatch).

### DRUG INTERACTIONS

- Strong inducer of CYP3A4 or CYP2C19: Consider dose increase of EPIDIOLEX. (7.1)
- Consider a dose reduction of substrates of UGT1A9, UGT2B7, CYP1A2, CYP2C8, CYP2C9, and CYP2C19 (e.g., clobazam). (7.2)
- Substrates of CYP2B6 may also require dose adjustment. (7.2)

### USE IN SPECIFIC POPULATIONS

Pregnancy: Based on animal data, may cause fetal harm. (8.1)

See 17 for PATIENT COUNSELING INFORMATION and Medication Guide

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## FULL PRESCRIBING INFORMATION

### 1 INDICATIONS AND USAGE

- EPIDIOLEX is indicated for the treatment of seizures associated with Lennox-Gastaut syndrome (LGS), Dravet syndrome (DS), or tuberous sclerosis complex (TSC) in patients 1 year of age and older.

### 2 DOSAGE AND ADMINISTRATION

#### 2.1 Assessments Prior to Initiating EPIDIOLEX

Because of the risk of hepatocellular injury, obtain serum transaminases (ALT and AST) and total bilirubin levels in all patients prior to starting treatment with EPIDIOLEX [see *Warnings and Precautions (5.1)*].

#### 2.2 Dosing for Seizures Associated with Lennox-Gastaut Syndrome or Dravet Syndrome

- The starting dosage is 2.5 mg/kg by mouth twice daily (5 mg/kg/day).
- After one week, the dosage can be increased to a maintenance dosage of 5 mg/kg twice daily (10 mg/kg/day).
- Patients who are tolerating EPIDIOLEX at 5 mg/kg twice daily and require further reduction of seizures may benefit from a dosage increase up to a maximum recommended maintenance dosage of 10 mg/kg twice daily (20 mg/kg/day), in weekly increments of 2.5 mg/kg twice daily (5 mg/kg/day), as tolerated. For patients in whom a more rapid titration from 10 mg/kg/day to 20 mg/kg/day is warranted, the dosage may be increased no more frequently than every other day. Administration of the 20 mg/kg/day dosage resulted in somewhat greater reductions in seizure rates than the recommended maintenance dosage of 10 mg/kg/day, but with an increase in adverse reactions.

#### 2.3 Dosing for Seizures Associated with Tuberous Sclerosis Complex

- The starting dosage is 2.5 mg/kg by mouth twice daily (5 mg/kg/day).
- Increase the dose in weekly increments of 2.5 mg/kg twice daily (5 mg/kg/day), as tolerated, to a recommended maintenance dosage of 12.5 mg/kg twice daily (25 mg/kg/day). For patients in whom a more rapid titration to 25 mg/kg/day is warranted, the dosage may be increased no more frequently than every other day.
- The effectiveness of doses lower than 12.5 mg/kg twice daily has not been studied in patients with TSC.

#### 2.4 Administration Instructions

Food may affect EPIDIOLEX levels [see *Clinical Pharmacology (12.3)*]. Consistent dosing of EPIDIOLEX with respect to meals is recommended to reduce variability in cannabidiol plasma exposure.

A calibrated measuring device (either 5 mL or 1 mL oral syringe) will be provided and is recommended to measure and deliver the prescribed dose accurately [see *How Supplied/Storage and Handling (16.1)*]. A household teaspoon or tablespoon is not an adequate measuring device.

Oral administration is recommended. When necessary, can be enterally administered via feeding tubes, such as nasogastric or gastrostomy tubes. Do not use with tubes made of polyvinyl chloride (PVC).

Discard any unused EPIDIOLEX remaining 12 weeks after first opening the bottle [see *How Supplied/Storage and Handling (16.2)*].

#### 2.5 Discontinuation of EPIDIOLEX

When discontinuing EPIDIOLEX, the dose should be decreased gradually. As with most antiepileptic drugs, abrupt discontinuation should be avoided when possible, to minimize the risk of increased seizure frequency and status epilepticus [see *Warnings and Precautions (5.5)*].

#### 2.6 Patients with Hepatic Impairment

Dose adjustment is recommended in patients with moderate (Child-Pugh B) hepatic impairment or severe (Child-Pugh C) hepatic impairment [see *Warnings and Precautions (5.1)*, *Use in Specific Populations (8.6)*, and *Clinical Pharmacology (12.3)*]. It may be necessary to have slower dose titration in patients with moderate or severe hepatic impairment than in patients without hepatic impairment (see Table 1).

EPIDIOLEX does not require dose adjustment in patients with mild (Child-Pugh A) hepatic impairment.

**Table 1: Dose Adjustments in Patients with Hepatic Impairment**

Hepatic Impairment	Starting Dosage	In Patients with LGS or DS	In Patients with TSC
		Maintenance Dosage Range	Maintenance Dosage
Mild	2.5 mg/kg twice daily (5 mg/kg/day)	5 to 10 mg/kg twice daily (10 to 20 mg/kg/day)	12.5 mg/kg twice daily (25 mg/kg/day)
Moderate	1.25 mg/kg twice daily (2.5 mg/kg/day)	2.5 to 5 mg/kg twice daily (5 to 10 mg/kg/day)	6.25 mg/kg twice daily (12.5 mg/kg/day)
Severe	0.5 mg/kg twice daily (1 mg/kg/day)	1 to 2 mg/kg twice daily (2 to 4 mg/kg/day)	2.5 mg/kg twice daily (5 mg/kg/day)

### 3 DOSAGE FORMS AND STRENGTHS

Cannabidiol oral solution: 100 mg/mL for oral administration. Each bottle contains 100 mL of a clear, colorless to yellow solution.

### 4 CONTRAINDICATIONS

EPIDIOLEX is contraindicated in patients with a history of hypersensitivity to cannabidiol or any of the ingredients in the product [see *Description (11)* and *Warnings and Precautions (5.4)*].

### 5 WARNINGS AND PRECAUTIONS

#### 5.1 Hepatocellular Injury

EPIDIOLEX can cause dose-related elevations of liver transaminases (alanine aminotransferase [ALT] and/or aspartate aminotransferase [AST]). In controlled studies for LGS and DS (10 and 20 mg/kg/day dosages) and TSC (25 mg/kg/day), the incidence of ALT elevations above 3 times the upper limit of normal (ULN) was 13% (10 and 20 mg/kg/day dosages) and 12% (25 mg/kg/day dosage) in EPIDIOLEX-treated patients compared with 1% in patients on placebo. Less than 1% of EPIDIOLEX-treated patients had ALT or AST levels greater than 20 times the ULN. There were cases of transaminase elevations associated with hospitalization in patients taking EPIDIOLEX. In clinical trials, serum transaminase elevations typically occurred in the first two months of treatment initiation; however, there were some cases observed up to 18 months after initiation of treatment, particularly in patients taking concomitant valproate. Resolution of transaminase elevations occurred with discontinuation of EPIDIOLEX or reduction of EPIDIOLEX and/or concomitant valproate in about two-thirds of the cases. In about one-third of the cases, transaminase elevations resolved during continued treatment with EPIDIOLEX, without dose reduction.

#### Risk Factors for Transaminase Elevation

##### Concomitant Valproate and Clobazam

The majority of ALT elevations occurred in patients taking concomitant valproate [see *Drug Interactions (7.3)*]. Concomitant use of clobazam also increased the incidence of transaminase elevations, although to a lesser extent than valproate [see *Drug Interactions (7.2)*]. In EPIDIOLEX-treated patients with LGS or DS (10 and 20 mg/kg/day dosages), the incidence of ALT elevations greater than 3 times the ULN was 30% in patients taking both concomitant valproate and clobazam, 21% in patients taking concomitant valproate (without clobazam), 4% in patients taking concomitant clobazam (without valproate), and 3% in patients taking neither drug. In EPIDIOLEX-treated patients with TSC (25 mg/kg/day), the incidence of ALT elevations greater than 3 times the ULN was 20% in patients taking both concomitant valproate and clobazam, 25% in patients taking concomitant valproate (without clobazam), 0% in patients taking concomitant clobazam (without valproate), and 6% in patients taking neither drug. Consider discontinuation or dose adjustment of valproate or clobazam if liver enzyme elevations occur.

#### Dose

Transaminase elevations are generally dose-related. In patients with DS or LGS (10 and 20 mg/kg/day) or TSC (25 mg/kg/day), ALT elevations greater than 3 times the ULN were reported in 17% and 12% of patients taking EPIDIOLEX 20 or 25 mg/kg/day, respectively, compared with 1% in patients taking EPIDIOLEX 10 mg/kg/day. The risk of ALT elevations was higher (25%) in patients with TSC receiving a dosage above the recommended maintenance dosage of 25 mg/kg/day in Study 4.

#### Baseline Transaminase Elevations

Patients with baseline transaminase levels above the ULN had higher rates of transaminase elevations when taking EPIDIOLEX. In the DS and LGS controlled trials (Studies 1, 2, and 3) in patients taking EPIDIOLEX 20 mg/kg/day, the frequency of treatment-emergent ALT elevations greater than 3 times the ULN was 30% when ALT was above the ULN at baseline, compared to 12% when ALT was within the normal range at baseline. No patients taking EPIDIOLEX 10 mg/kg/day experienced ALT elevations greater than 3 times the ULN when ALT was above the ULN at baseline, compared with 2% of patients in whom ALT was within the normal range at baseline. In the TSC controlled trial (Study 4) in patients taking EPIDIOLEX 25 mg/kg/day, the frequency of treatment-emergent ALT elevations greater than 3 and 5 times the ULN were both 11% when ALT was above the ULN at baseline, compared to 12% and 6%, respectively, when ALT was within the normal range at baseline.

#### Monitoring

In general, transaminase elevations of greater than 3 times the ULN in the presence of elevated bilirubin without an alternative explanation are an important predictor of severe liver injury. Early identification of elevated liver enzymes may decrease the risk of a serious outcome. Patients with elevated baseline transaminase levels above 3 times the ULN, accompanied by elevations in bilirubin above 2 times the ULN, should be evaluated prior to initiation of EPIDIOLEX treatment.

Prior to starting treatment with EPIDIOLEX, obtain serum transaminases (ALT and AST) and total bilirubin levels. Serum transaminases and total bilirubin levels should be obtained at 1 month, 3 months, and 6 months after initiation of treatment with EPIDIOLEX, and periodically thereafter or as clinically indicated.

Serum transaminases and total bilirubin levels should also be obtained within 1 month following changes in EPIDIOLEX dosage and addition of or changes in medications that are known to impact the liver. Consider more frequent monitoring of serum transaminases and bilirubin in patients who are taking valproate or who have elevated liver enzymes at baseline.

If a patient develops clinical signs or symptoms suggestive of hepatic dysfunction (e.g., unexplained nausea, vomiting, right upper quadrant abdominal pain, fatigue, anorexia, or jaundice and/or dark urine), promptly measure serum transaminases and total bilirubin and interrupt or discontinue treatment with EPIDIOLEX, as appropriate. Discontinue EPIDIOLEX in any patients with elevations of transaminase levels greater than 3 times the ULN and bilirubin levels greater than 2 times the ULN. Patients with sustained transaminase elevations of greater than 5 times the ULN should also have treatment discontinued. Patients with prolonged elevations of serum transaminases should be evaluated for other possible causes. Consider dosage adjustment of any co-administered medication that is known to affect the liver (e.g., valproate and clobazam).

### 5.2 Somnolence and Sedation

EPIDIOLEX can cause somnolence and sedation. In controlled studies for LGS and DS (10 and 20 mg/kg/day dosages), the incidence of somnolence and sedation (including lethargy) was 32% in EPIDIOLEX-treated patients (27% and 34% of patients taking EPIDIOLEX 10 or 20 mg/kg/day, respectively), compared with 11% in patients on placebo and was generally dose-related. The rate was higher in patients on concomitant clobazam (46% in EPIDIOLEX-treated patients taking clobazam compared with 16% in EPIDIOLEX-treated patients not on clobazam). In the controlled study for TSC, the incidence of somnolence and sedation (including lethargy) was 19% in EPIDIOLEX-treated patients (25 mg/kg/day), compared with 17% in patients on placebo. The rate was higher in patients on concomitant clobazam (33% in EPIDIOLEX-treated patients taking clobazam compared with 14% in EPIDIOLEX-treated patients not on clobazam). In general, these effects were more common early in treatment and may diminish with continued treatment. Other CNS depressants, including alcohol, could potentiate the somnolence and sedation effect of EPIDIOLEX. Prescribers should monitor patients for somnolence and sedation and should advise patients not to drive or operate machinery until they have gained sufficient experience on EPIDIOLEX to gauge whether it adversely affects their ability to drive or operate machinery.

### 5.3 Suicidal Behavior and Ideation

Antiepileptic drugs (AEDs), including EPIDIOLEX, increase the risk of suicidal thoughts or behavior in patients taking these drugs for any indication. Patients treated with an AED for any indication should be monitored for the emergence or worsening of depression, suicidal thoughts or behavior, or any unusual changes in mood or behavior.

Pooled analyses of 199 placebo-controlled clinical trials (mono- and adjunctive therapy) of 11 different AEDs showed that patients randomized to one of the AEDs had approximately twice the risk (adjusted Relative Risk 1.8, 95% CI:1.2, 2.7) of suicidal thinking or behavior compared to patients randomized to placebo. In these trials, which had a median treatment duration of 12 weeks, the estimated incidence rate of suicidal behavior or ideation among 27863 AED-treated patients was 0.43%, compared to 0.24% among 16029 placebo-treated patients, representing an increase of approximately one case of suicidal thinking or behavior for every 530 patients treated. There were four suicides in drug-treated patients in the trials and none in placebo-treated patients, but the number is too small to allow any conclusion about drug effect on suicide.

The increased risk of suicidal thoughts or behavior with AEDs was observed as early as 1 week after starting drug treatment with AEDs and persisted for the duration of treatment assessed. Because most trials included in the analysis did not extend beyond 24 weeks, the risk of suicidal thoughts or behavior beyond 24 weeks could not be assessed.

The risk of suicidal thoughts or behavior was generally consistent among drugs in the data analyzed. The finding of increased risk with AEDs of varying mechanisms of action and across a range of indications suggests that the risk applies to all AEDs used for any indication. The risk did not vary substantially by age (5–100 years) in the clinical trials analyzed. Table 2 shows absolute and relative risk by indication for all evaluated AEDs.

**Table 2: Risk of Suicidal Thoughts or Behaviors by Indication for Antiepileptic Drugs in the Pooled Analysis**

Indication	Placebo Patients with Events Per 1000 Patients	Drug Patients with Events Per 1000 Patients	Relative Risk: Incidence of Events in Drug Patients/ Incidence in Placebo Patients	Risk Difference: Additional Drug Patients with Events Per 1000 Patients
Epilepsy	1.0	3.4	3.5	2.4
Psychiatric	5.7	8.5	1.5	2.9
Other	1.0	1.8	1.9	0.9
Total	2.4	4.3	1.8	1.9

The relative risk for suicidal thoughts or behavior was higher in clinical trials in patients with epilepsy than in clinical trials in patients with psychiatric or other conditions, but the absolute risk differences were similar for the epilepsy and psychiatric indications.

Anyone considering prescribing EPIDIOLEX or any other AED must balance the risk of suicidal thoughts or behaviors with the risk of untreated illness. Epilepsy and many other illnesses for which AEDs are prescribed are themselves associated with morbidity and mortality and an increased risk of suicidal thoughts and behavior. Should suicidal thoughts and behavior emerge during treatment, consider whether the emergence of these symptoms in any given patient may be related to the illness being treated.

### 5.4 Hypersensitivity Reactions

EPIDIOLEX can cause hypersensitivity reactions. Some subjects in the EPIDIOLEX clinical trials had pruritus, erythema, and angioedema requiring treatment, including corticosteroids and antihistamines. Patients with known or suspected hypersensitivity to any ingredients of EPIDIOLEX were excluded from the clinical trials. If a patient develops hypersensitivity reactions after treatment with EPIDIOLEX, the drug should be discontinued. EPIDIOLEX is contraindicated in patients with a prior hypersensitivity reaction to cannabidiol or any of the ingredients in the product, which includes sesame seed oil [see Description (11)].

### 5.5 Withdrawal of Antiepileptic Drugs (AEDs)

As with most antiepileptic drugs, EPIDIOLEX should generally be withdrawn gradually because of the risk of increased seizure frequency and status epilepticus [see Dosage and Administration (2.5) and Clinical Studies (14)]. But if withdrawal is needed because of a serious adverse event, rapid discontinuation can be considered.

## 6 ADVERSE REACTIONS

The following important adverse reactions are described elsewhere in labeling:

- Hepatocellular Injury [see Warnings and Precautions (5.1)]
- Somnolence and Sedation [see Warnings and Precautions (5.2)]
- Suicidal Behavior and Ideation [see Warnings and Precautions (5.3)]
- Hypersensitivity Reactions [see Warnings and Precautions (5.4)]
- Withdrawal of Antiepileptic Drugs [see Warnings and Precautions (5.5)]

### 6.1 Clinical Trials Experience

Because clinical trials are conducted under widely varying conditions, adverse reaction rates observed in the clinical trials of a drug cannot be directly compared to rates in the clinical trials of another drug and may not reflect the rates observed in practice.

In controlled and uncontrolled trials in patients with LGS and DS, 689 patients were treated with EPIDIOLEX, including 533 patients treated for more than 6 months, and 391 patients treated for more than 1 year. In controlled and uncontrolled trials in patients with TSC, 223 patients were treated with EPIDIOLEX, including 151 patients treated for more than 6 months, 88 patients treated for more than 1 year, and 15 patients treated for more than 2 years.

In an expanded access program and other compassionate use programs, 271 patients with DS, LGS, or TSC were treated with EPIDIOLEX, including 237 patients treated for more than 6 months, 204 patients treated for more than 1 year, and 140 patients treated for more than 2 years.

#### Patients with LGS or DS

In placebo-controlled trials of patients with LGS or DS (includes Studies 1, 2, 3, and a Phase 2 controlled study in DS), 323 patients received EPIDIOLEX [see Clinical Studies (14.1, 14.2)]. Adverse reactions are presented below; the duration of treatment in these trials was up to 14 weeks. Approximately 46% of patients were female, 83% were Caucasian, and the mean age was 14 years (range 2 to 48 years). All patients were taking other AEDs.

In controlled trials in LGS or DS, the rate of discontinuation as a result of any adverse reaction was 2.7% for patients taking EPIDIOLEX 10 mg/kg/day, 11.8% for patients taking EPIDIOLEX 20 mg/kg/day, and 1.3% for patients on placebo. The most frequent cause of discontinuations was transaminase elevation. Discontinuation for transaminase elevation occurred at an incidence of 1.3% in patients taking EPIDIOLEX 10 mg/kg/day, 5.9% in patients taking EPIDIOLEX

20 mg/kg/day, and 0.4% in patients on placebo. Somnolence, sedation, and lethargy led to discontinuation in 3% of patients taking EPIDIOLEX 20 mg/kg/day compared to 0% of patients taking EPIDIOLEX 10 mg/kg/day or on placebo.

The most common adverse reactions that occurred in EPIDIOLEX-treated patients with LGS or DS (incidence at least 10% and greater than placebo) were somnolence; decreased appetite; diarrhea; transaminase elevations; fatigue, malaise, and asthenia; rash; insomnia, sleep disorder, and poor quality sleep; and infections.

Table 3 lists the adverse reactions that were reported in at least 3% of EPIDIOLEX-treated patients, and at a rate greater than those on placebo, in the placebo-controlled trials in LGS and DS.

**Table 3: Adverse Reactions in Patients Treated with EPIDIOLEX in Controlled Trials of LGS and DS (Studies 1, 2, and 3)**

Adverse Reactions	EPIDIOLEX		Placebo N=227 %
	10 mg/kg/day N=75 %	20 mg/kg/day N=238 %	
<b>Hepatic Disorders</b>			
Transaminases elevated	8	16	3
<b>Gastrointestinal Disorders</b>			
Decreased appetite	16	22	5
Diarrhea	9	20	9
Weight decreased	3	5	1
Gastroenteritis	0	4	1
Abdominal pain, discomfort	3	3	1
<b>Nervous System Disorders</b>			
Somnolence	23	25	8
Fatigue, malaise, asthenia	11	12	4
Lethargy	4	8	2
Sedation	3	6	1
Irritability, agitation	9	5	2
Aggression, anger	3	5	<1
Insomnia, sleep disorder, poor quality sleep	11	5	4
Drooling, salivary hypersecretion	1	4	<1
Gait disturbance	3	2	<1
<b>Infections</b>			
Infection, all	41	40	31
Infection, other	25	21	24
Infection, viral	7	11	6
Pneumonia	8	5	1
Infection, fungal	1	3	0
<b>Other</b>			
Rash	7	13	3
Hypoxia, respiratory failure	3	3	1

Adverse reactions were similar across LGS and DS in pediatric and adult patients.

#### Patients with TSC

In a placebo-controlled trial of patients with TSC (Study 4), 148 patients received EPIDIOLEX [see *Clinical Studies (14.3)*]. Adverse reactions are presented below; the duration of treatment in this trial was up to 16 weeks. Approximately 42% of patients were female, 90% were Caucasian, and the mean age was 14 years (range 1 to 57 years). All patients but one (25 mg/kg/day group) were taking other AEDs.

In the controlled trial in TSC, the rate of discontinuation as a result of any adverse reaction was 11% for patients taking EPIDIOLEX 25 mg/kg/day and 3% for patients on placebo. The most frequent cause of discontinuation was rash (5%).

The most common adverse reactions that occurred in EPIDIOLEX-treated patients with TSC (incidence at least 10% at the recommended dosage and greater than placebo) were diarrhea; transaminase elevations; decreased appetite; somnolence; pyrexia; and vomiting.

Table 4 lists the adverse reactions that were reported in at least 3% of EPIDIOLEX-treated patients, and at a rate greater than those on placebo, in the placebo-controlled trial in TSC.

**Table 4: Adverse Reactions in Patients Treated with EPIDIOLEX in Controlled Trial of TSC (Study 4)**

Adverse Reactions	EPIDIOLEX	Placebo
	25 mg/kg/day	
	N = 75 %	N = 76 %
<b>Hematological changes</b>		
Anemia	7	1
Platelet count decreased	5	1
Eosinophil count increased	5	0
<b>Hepatic Disorders</b>		
Transaminases elevated	25	0
<b>Gastrointestinal Disorders</b>		
Diarrhea	31	25
Decreased appetite	20	12
Vomiting	17	9
Nausea	9	3
Gastroenteritis	8	7
Weight decreased	7	0
<b>Nervous System Disorders</b>		
Somnolence	13	9
Gait disturbance	9	5
Fatigue, malaise, asthenia	5	1
<b>Infections</b>		
Ear infection	8	3
Urinary tract infection	5	0
Pneumonia	4	1
<b>Other</b>		
Pyrexia	19	8
Rash	8	4
Rhinorrhea	4	0

Adverse reactions were similar in pediatric and adult patients with TSC.

#### Additional Adverse Reactions in Patients with LGS, DS, or TSC

##### Decreased Weight

EPIDIOLEX can cause weight loss. In the controlled trials of patients with LGS or DS (10 and 20 mg/kg/day), based on measured weights, 16% of EPIDIOLEX-treated patients had a decrease in weight of at least 5% from their baseline weight, compared to 8% of patients on placebo. The decrease in weight appeared to be dose-related, with 18% of patients on EPIDIOLEX 20 mg/kg/day experiencing a decrease in weight at least 5%, compared to 9% in patients on EPIDIOLEX 10 mg/kg/day. In the controlled trial of patients with TSC (25 mg/kg/day), 31% of EPIDIOLEX-treated patients had a decrease in weight of at least 5% from their baseline weight, compared to 8% of patients on placebo. In some cases, the decreased weight was reported as an adverse event (see Tables 3 and 4).

##### Hematologic Abnormalities

EPIDIOLEX can cause decreases in hemoglobin and hematocrit. In controlled trials of patients with LGS or DS, the mean decrease in hemoglobin from baseline to end of treatment was -0.42 g/dL in EPIDIOLEX-treated patients receiving 10 or 20 mg/kg/day and -0.03 g/dL in patients on placebo. A corresponding decrease in hematocrit was also observed, with a mean change of -1.5% in EPIDIOLEX-treated patients, and -0.4% in patients on placebo. In the trial of patients with TSC, the mean decrease in hemoglobin from baseline to end of treatment was -0.37 g/dL in EPIDIOLEX-treated patients receiving 25 mg/kg/day and 0.07 g/dL in patients on placebo. A corresponding decrease in hematocrit was also observed, with a mean change of -1.2% in EPIDIOLEX-treated patients, and -0.2% in patients on placebo.

There was no effect on red blood cell indices. Thirty percent (30%) of EPIDIOLEX-treated patients with LGS and DS and 38% of EPIDIOLEX-treated patients with TSC developed a new laboratory-defined anemia during the course of the study (defined as a normal hemoglobin concentration at baseline, with a reported value less than the lower limit of normal at a subsequent time point), versus 13% of patients with LGS and DS on placebo and 15% of patients with TSC on placebo.

##### Increases in Creatinine

EPIDIOLEX can cause elevations in serum creatinine. The mechanism has not yet been determined. In controlled studies in healthy adults and in patients with LGS, DS, and TSC, an increase in serum creatinine of approximately 10% was observed within 2 weeks of starting EPIDIOLEX. The increase was reversible in healthy adults. Reversibility was not assessed in studies in LGS, DS, or TSC.

## 7 DRUG INTERACTIONS

### 7.1 Effect of Other Drugs on EPIDIOLEX

#### Strong CYP3A4 or CYP2C19 Inducers

Coadministration with a strong CYP3A4 and CYP2C19 inducer (rifampin 600 mg once daily) decreased cannabidiol and 7-OH-CBD plasma concentrations by approximately 32% and 63%. The impact of such changes on efficacy of EPIDIOLEX are not known [see *Clinical Pharmacology* (12.3)]. Consider an increase in EPIDIOLEX dosage (based on clinical response and tolerability) up to 2-fold, when coadministered with a strong CYP3A4 and/or CYP2C19 inducer.

### 7.2 Effect of EPIDIOLEX on Other Drugs

#### UGT1A9, UGT2B7, CYP1A2, CYP2B6, CYP2C8, CYP2C9 and CYP2C19 Substrates

Cannabidiol is a weak inhibitor of CYP1A2 [see *Clinical Pharmacology* (12.3)]. Increases in exposure of sensitive CYP1A2 substrates (e.g., caffeine, theophylline, or tizanidine) may be observed when co-administered with cannabidiol.

In vitro data predict drug-drug interactions with CYP2B6 substrates (e.g., bupropion, efavirenz), uridine 5'-diphospho-glucuronosyltransferase 1A9 (UGT1A9) substrates (e.g., diflunisal, propofol, fenofibrate), and UGT2B7 substrates (e.g., gemfibrozil, lamotrigine, morphine, lorazepam) when coadministered with EPIDIOLEX. Coadministration of EPIDIOLEX is also predicted to cause clinically significant interactions with CYP2C8 and CYP2C9 (e.g., phenytoin) substrates. Because of potential inhibition of enzyme activity, consider a reduction in dosage of substrates of UGT1A9, UGT2B7, CYP1A2, CYP2C8, and CYP2C9, as clinically appropriate, if adverse reactions are experienced when administered concomitantly with EPIDIOLEX. Because of the potential for both induction and inhibition of enzyme activity, consider adjusting dosage of substrates of CYP2B6, as clinically appropriate.

#### Sensitive CYP2C19 Substrates

In vivo data show that coadministration of EPIDIOLEX increases plasma concentrations of drugs that are metabolized by (i.e., are substrates of) CYP2C19 (e.g., diazepam) and may increase the risk of adverse reactions with these substrates [see *Clinical Pharmacology* (12.3)]. Consider a reduction in dosage of sensitive CYP2C19 substrates, as clinically appropriate, when coadministered with EPIDIOLEX.

#### Clobazam

Coadministration of EPIDIOLEX produces a 3-fold increase in plasma concentrations of N-desmethyloclobazam, the active metabolite of clobazam (a substrate of CYP2C19), with no effect on clobazam levels [see *Clinical Pharmacology* (12.3)]. The increase in N-desmethyloclobazam may increase the risk of clobazam-related adverse reactions [see *Warnings and Precautions* (5.1, 5.2)]. Consider a reduction in dosage of clobazam if adverse reactions known to occur with clobazam are experienced when co-administered with EPIDIOLEX.

#### Stiripentol

Concomitant use of EPIDIOLEX and stiripentol causes an elevation in exposure to stiripentol [see *Clinical Pharmacology* (12.3)]. The mechanism of this interaction has not been determined. The clinical relevance of this effect is unknown, but patients should be monitored for stiripentol-related adverse drug reactions.

### 7.3 Concomitant Use of EPIDIOLEX and Valproate

Concomitant use of EPIDIOLEX and valproate increases the incidence of liver enzyme elevations [see *Warnings and Precautions* (5.1)]. If such elevations occur, discontinuation or reduction of EPIDIOLEX and/or concomitant valproate should be considered. Insufficient data are available to assess the risk of concomitant administration of other hepatotoxic drugs and EPIDIOLEX.

### 7.4 Concomitant Use of EPIDIOLEX and Mammalian Target of Rapamycin (mTOR) or Calcineurin Inhibitors

No dedicated drug-drug interaction studies have been conducted with mTOR inhibitors (e.g., everolimus) or calcineurin inhibitors (e.g., tacrolimus). Reports in the literature suggest that cannabidiol administration resulted in increased serum levels of everolimus, sirolimus, or tacrolimus. The mechanism of increase in mTOR or calcineurin inhibitors concentrations is not clearly understood. Consider a reduction in dosage of everolimus, sirolimus, or tacrolimus, if adverse reactions known to occur with those medications are experienced when co-administered with EPIDIOLEX.

### 7.5 CNS Depressants and Alcohol

Concomitant use of EPIDIOLEX with other CNS depressants (including alcohol) may increase the risk of sedation and somnolence [see *Warnings and Precautions* (5.2)].

## 8 USE IN SPECIFIC POPULATIONS

### 8.1 Pregnancy

#### Pregnancy Exposure Registry

There is a pregnancy exposure registry that monitors pregnancy outcomes in women exposed to antiepileptic drugs (AEDs), such as EPIDIOLEX, during pregnancy. Encourage women who are taking EPIDIOLEX during pregnancy to enroll in the North American Antiepileptic Drug (NAAED) Pregnancy Registry by calling the toll free number 1-888-233-2334 or visiting <http://www.aedpregnancyregistry.org/>.

### Risk Summary

There are no adequate data on the developmental risks associated with the use of EPIDIOLEX in pregnant women. Administration of cannabidiol to pregnant animals produced evidence of developmental toxicity (increased embryofetal mortality in rats and decreased fetal body weights in rabbits; decreased growth, delayed sexual maturation, long-term neurobehavioral changes, and adverse effects on the reproductive system in rat offspring) at maternal plasma exposures similar to (rabbit) or greater than (rat) that in humans at therapeutic doses (see *Animal Data*). In the U.S. general population, the estimated background risk of major birth defects and miscarriage in clinically recognized pregnancies is 2–4% and 15–20%, respectively. The background risks of major birth defects and miscarriage for the indicated populations are unknown.

### Data

#### Animal Data

Oral administration of cannabidiol (0, 75, 150, or 250 mg/kg/day) to pregnant rats throughout the period of organogenesis resulted in embryofetal mortality at the highest dose tested. There were no other drug-related maternal or developmental effects. The highest no-effect dose for embryofetal toxicity in rats was associated with maternal plasma cannabidiol exposures (AUC) approximately 16 and 9 times that in humans at the recommended human doses (RHD) of 20 and 25 mg/kg/day, respectively.

Oral administration of cannabidiol (0, 50, 80, or 125 mg/kg/day) to pregnant rabbits throughout organogenesis resulted in decreased fetal body weights and increased fetal structural variations at the highest dose tested, which was also associated with maternal toxicity. Maternal plasma cannabidiol exposures at the no-effect level for embryofetal developmental toxicity in rabbits were less than that in humans at the RHDs.

When cannabidiol (75, 150, or 250 mg/kg/day) was orally administered to rats throughout pregnancy and lactation, decreased growth, delayed sexual maturation, neurobehavioral changes (decreased activity), and adverse effects on male reproductive organ development (small testes in adult offspring) and fertility were observed in the offspring at the mid and high dose. These effects occurred in the absence of maternal toxicity. The no-effect dose for pre- and post-natal developmental toxicity in rats was associated with maternal plasma cannabidiol exposures approximately 9 and 5 times that in humans at the RHDs of 20 and 25 mg/kg/day, respectively.

### 8.2 Lactation

#### Risk Summary

There are no data on the presence of cannabidiol or its metabolites in human milk, the effects on the breastfed infant, or the effects on milk production. The developmental and health benefits of breastfeeding should be considered along with the mother's clinical need for EPIDIOLEX and any potential adverse effects on the breastfed infant from EPIDIOLEX or from the underlying maternal condition.

### 8.4 Pediatric Use

Safety and effectiveness of EPIDIOLEX for the treatment of seizures associated with LGS, DS, or TSC have been established in patients 1 year of age and older. The use of EPIDIOLEX in these indications is supported by adequate and well-controlled studies in patients 2 years of age and older with LGS and DS and in patients 1 year of age and older with TSC [see *Clinical Studies* (14.1, 14.2, 14.3)].

Safety and effectiveness of EPIDIOLEX in pediatric patients below 1 year of age have not been established.

#### Juvenile Animal Data

Administration of cannabidiol (subcutaneous doses of 0 or 15 mg/kg on Postnatal Days (PNDs) 4-6 followed by oral administration of 0, 100, 150, or 250 mg/kg on PNDs 7-77) to juvenile rats for 10 weeks resulted in increased body weight, delayed male sexual maturation, neurobehavioral effects (decreased locomotor activity and auditory startle habituation), increased bone mineral density, and liver hepatocyte vacuolation. A no-effect dose was not established. The lowest dose causing developmental toxicity in juvenile rats (15 sc/100 po mg/kg) was associated with cannabidiol exposures (AUC) approximately 15 and 8 times that in humans at the RHDs of 20 and 25 mg/kg/day, respectively.

### 8.5 Geriatric Use

Clinical trials of EPIDIOLEX in the treatment of LGS, DS, and TSC did not include a sufficient number of patients aged above 55 years to determine whether or not they respond differently from younger patients. In general, dose selection for an elderly patient should be cautious, usually starting at the low end of the dosing range, reflecting the greater frequency of decreased hepatic, renal, or cardiac function, and of concomitant disease or other drug therapy [see *Dosage and Administration* (2.6), *Warnings and Precautions* (5.1), and *Clinical Pharmacology* (12.3)].

### 8.6 Hepatic Impairment

Because of an increase in exposure to EPIDIOLEX, dosage adjustments are necessary in patients with moderate or severe hepatic impairment [see *Dosage and Administration* (2.6), *Warnings and Precautions* (5.1), and *Clinical Pharmacology* (12.3)]. EPIDIOLEX does not require dosage adjustments in patients with mild hepatic impairment.

## 9 DRUG ABUSE AND DEPENDENCE

### 9.1 Controlled Substance

EPIDIOLEX is not a controlled substance.

### 9.2 Abuse

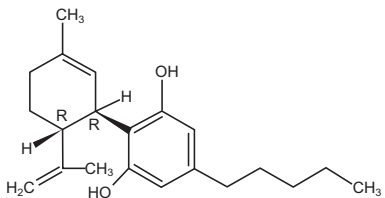
Animal abuse-related studies show that cannabidiol does not produce cannabinoid-like behavioral responses, including generalization to delta-9-tetrahydrocannabinol (THC) in a drug discrimination study. Cannabidiol also does not produce animal self-administration, suggesting it does not produce rewarding effects. In a human abuse potential study, acute administration of cannabidiol to non-dependent adult recreational drug users at therapeutic and supratherapeutic doses of 750, 1500, and 4500 mg in the fasted state (equivalent respectively to 10, 20, and 60 mg/kg in a 75 kg adult) produced responses on positive subjective measures such as Drug Liking and Take Drug Again that were within the acceptable placebo range. In contrast, 10 and 30 mg of dronabinol (synthetic THC) and 2 mg alprazolam produced large increases on positive subjective measures compared to placebo that were statistically significantly greater than those produced by cannabidiol. In other Phase 1 clinical studies conducted with cannabidiol, there were no reports of abuse-related adverse events.

### 9.3 Dependence

In a human physical dependence study, administration of cannabidiol 1500 mg/day (750 mg twice daily) to adults for 28 days did not produce signs or symptoms of withdrawal over a 6-week assessment period beginning three days after drug discontinuation. This suggests that cannabidiol likely does not produce physical dependence.

## 11 DESCRIPTION

Cannabidiol is a cannabinoid designated chemically as 2-[(1R,6R)-3-Methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol (IUPAC/CAS). Its empirical formula is  $C_{21}H_{30}O_2$  and its molecular weight is 314.46. The chemical structure is:



Cannabidiol, the active ingredient in EPIDIOLEX, is a cannabinoid that naturally occurs in the *Cannabis sativa* L. plant.

Cannabidiol is a white to pale yellow crystalline solid. It is insoluble in water and is soluble in organic solvents.

EPIDIOLEX (cannabidiol) oral solution is a clear, colorless to yellow liquid containing cannabidiol at a concentration of 100 mg/mL. Inactive ingredients include dehydrated alcohol (7.9% w/v), sesame seed oil, strawberry flavor, and sucralose. EPIDIOLEX contains no ingredient made from a gluten-containing grain (wheat, barley, or rye).

## 12 CLINICAL PHARMACOLOGY

### 12.1 Mechanism of Action

The precise mechanisms by which EPIDIOLEX exerts its anticonvulsant effect in humans are unknown. Cannabidiol does not appear to exert its anticonvulsant effects through interaction with cannabinoid receptors.

### 12.2 Pharmacodynamics

There are no relevant data on the pharmacodynamic effects of cannabidiol.

### 12.3 Pharmacokinetics

Cannabidiol demonstrated an increase in exposure that was less than dose-proportional over the range of 5 to 25 mg/kg/day in patients.

#### Absorption

Cannabidiol has a time to maximum plasma concentration ( $T_{max}$ ) of 2.5 to 5 hours at steady state ( $C_{ss}$ ).

#### Effect of Food

Coadministration of EPIDIOLEX (750 or 1500 mg) with a high-fat/high-calorie meal increased  $C_{max}$  by 5-fold, AUC by 4-fold, and reduced the total variability, compared with the fasted state in healthy volunteers [see *Dosage and Administration* (2.4)]. Coadministration of EPIDIOLEX with a low-fat/low-calorie meal increased  $C_{max}$  and AUC by 4-fold and 3-fold, respectively. Furthermore, coadministration of EPIDIOLEX with bovine milk increased exposure by approximately 3-fold for  $C_{max}$  and 2.5-fold for AUC. Coadministration of EPIDIOLEX with alcohol also caused increased exposure to cannabidiol, with 93% increased  $C_{max}$  and 63% greater AUC.

#### Distribution

The apparent volume of distribution in healthy volunteers was 20963 L to 42849 L. Protein binding of the cannabidiol and its metabolites was >94% in vitro.

#### Elimination

The half-life of cannabidiol in plasma was 56 to 61 hours after twice-daily dosing for 7 days in healthy volunteers. The plasma clearance of cannabidiol following a single EPIDIOLEX 1500 mg dose (approximately equal to the 20 mg/kg/day dosage) is 1111 L/h.

#### Metabolism

Cannabidiol is metabolized in the liver and the gut (primarily in the liver) by CYP2C19 and CYP3A4 enzymes, and UGT1A7, UGT1A9, and UGT2B7 isoforms.

After repeat dosing, the active metabolite of cannabidiol, 7-OH-CBD, has a 38% lower AUC than the parent drug. The 7-OH-CBD metabolite is converted to 7-COOH-CBD, which has an approximately 40-fold higher AUC than the parent drug. Based on preclinical models of seizure, the 7-OH-CBD metabolite is active; however, the 7-COOH-CBD metabolite is not active.

#### Excretion

EPIDIOLEX is excreted in feces, with minor renal clearance.

#### Specific Populations

##### Patients with Hepatic Impairment

No effects on the exposures of cannabidiol or metabolite exposures were observed following administration of a single dose of EPIDIOLEX 200 mg in patients with mild (Child-Pugh A) hepatic impairment. Patients with moderate (Child-Pugh B) or severe (Child-Pugh C) hepatic impairment had an approximately 2.5 to 5.2-fold higher AUC, compared with healthy volunteers with normal hepatic function [see *Dosage and Administration* (2.6), *Warnings and Precautions* (5.1), *Use in Specific Populations* (8.6)].

#### Drug Interaction Studies

##### In Vitro Assessment of Drug Interactions

##### Drug Metabolizing Enzymes [see *Drug Interactions* (7.1, 7.2)]

Cannabidiol is a substrate for CYP3A4 and CYP2C19. Cannabidiol has the potential to inhibit CYP1A2, CYP2B6, CYP2C8, CYP2C9, and CYP2C19 at clinically relevant concentrations.

Cannabidiol may induce or inhibit CYP2B6 at clinically relevant concentrations. Cannabidiol inhibits uridine 5'-diphospho-glucuronosyltransferase (UGT) enzymes UGT1A9 and UGT2B7, but does not inhibit the UGT1A1, UGT1A3, UGT1A4, UGT1A6, or UGT2B17 isoforms.

##### Transporters

Cannabidiol and the cannabidiol metabolite, 7-OH-CBD, are not anticipated to interact with BCRP, BSEP, MDR1/P-gp, OAT1, OAT3, OCT1, OCT2, MATE1, MATE2-K, OATP1B1, or OATP1B3. The cannabidiol metabolite, 7-COOH-CBD, is not a substrate of BCRP, OATP1B1, OATP1B3, or OCT1. However, 7-COOH-CBD is a substrate for P-gp. 7-COOH-CBD is an inhibitor of transport mediated via BCRP and BSEP at clinically relevant concentrations.

##### In Vivo Assessment of Drug Interactions

##### Drug Interaction Studies with AEDs

##### Clobazam and Valproate

The interaction potential with other AEDs (clobazam and valproate) was evaluated in dedicated clinical studies following coadministration of EPIDIOLEX (750 mg twice daily in healthy volunteers and 20 mg/kg/day in patients).

Coadministration with clobazam in healthy volunteers increased the cannabidiol active metabolite 7-OH-CBD mean  $C_{max}$  by 73% and AUC by 47%; and increased the clobazam active metabolite, N-desmethyloclobazam,  $C_{max}$  and AUC by approximately 3-fold, with no effect on clobazam levels [see *Drug Interactions* (7.2)].

When EPIDIOLEX was coadministered with valproate in a healthy-volunteer trial, there was no effect on the systemic exposure to valproate. In a separate study in epilepsy patients investigating the effect of EPIDIOLEX on valproate exposure, there were decreases in both the plasma  $C_{max}$  and AUC of valproate, which were not clinically relevant (approximately 17% and 21%, respectively), and a decrease in exposure of the putative hepatotoxic metabolite of valproate, 2-propyl-4-pentenoic acid (approximately 28% and 33%, respectively).

In the healthy-volunteer trial, coadministration with valproate resulted in no clinically relevant changes in exposure to cannabidiol or its major metabolites (cannabidiol  $C_{max}$  decreased by 26%; 6-OH-CBD AUC increased by 27%; 7-OH-CBD AUC increased by 22%; 7-COOH-CBD  $C_{max}$  and AUC increased by 25% and 32%, respectively).

##### Effect of EPIDIOLEX on Midazolam

Coadministration of EPIDIOLEX with midazolam (a sensitive CYP3A4 substrate) did not result in changes in plasma concentrations of midazolam compared to midazolam administered alone.

##### Effect of EPIDIOLEX on Stiripentol

When EPIDIOLEX was coadministered with stiripentol in a healthy volunteer trial,  $C_{max}$  and AUC of stiripentol increased 28% and 55%, respectively. In patients with epilepsy,  $C_{max}$  and AUC of stiripentol increased 17% and 30%, respectively [see *Drug Interactions* (7.2)].

### Effect of EPIDIOLEX on Caffeine

In vivo data from steady-state dosing with cannabidiol (750 mg twice daily) when coadministered with a single dose of caffeine (200 mg), a sensitive CYP1A2 substrate, showed increased caffeine exposure by 15% for  $C_{max}$  and 95% for AUC compared to when caffeine was administered alone [see Drug Interactions (7.2)].

### Effect of CYP3A4 and CYP2C19 Inducers and Inhibitors Coadministered with EPIDIOLEX on Exposure to Cannabidiol

Coadministration of EPIDIOLEX with potent inhibitors of CYP3A4 and CYP2C19 had the following effects on exposure to cannabidiol and its metabolites. The potent CYP3A4 inhibitor, itraconazole, increased exposure by < 10% for cannabidiol and < 20% for 7-OH-CBD and 7-COOH-CBD for both AUC and  $C_{max}$ . Although the effects of the potent CYP2C19 inhibitor fluconazole were slightly more marked, they are still considered not to be clinically meaningful (cannabidiol increased by 22% and 24% for AUC and  $C_{max}$ , respectively; 7-OH-CBD decreased by 28% and 41% for AUC and  $C_{max}$ ; 7-COOH-CBD decreased by 33% and 48% for AUC and  $C_{max}$ ).

Coadministration with the potent CYP3A4 and CYP2C19 inducing agent rifampin caused a decrease in cannabidiol exposure of 32% and 34% for AUC and  $C_{max}$  [see Drug Interactions (7.1)]. There were moderate changes in exposure to the active metabolite (7-OH-CBD decreased by 63% and 67% for AUC and  $C_{max}$ , 7-COOH-CBD decreased by 48% for AUC, whereas there was no change in  $C_{max}$ ).

## 13 NONCLINICAL TOXICOLOGY

### 13.1 Carcinogenesis and Mutagenesis

#### Carcinogenesis

Adequate studies of the carcinogenic potential of cannabidiol have not been conducted.

#### Mutagenesis

Cannabidiol was negative for genotoxicity in *in vitro* (Ames) and *in vivo* (rat Comet and bone marrow micronucleus) assays.

#### Impairment of Fertility

Oral administration of cannabidiol (0, 75, 150, or 250 mg/kg/day) to male and female rats, prior to and throughout mating and continuing in females during early gestation, produced no adverse effects on fertility. The highest dose tested was associated with plasma exposures (AUC) approximately 60 and 34 times that in humans at the RHDs of 20 and 25 mg/kg/day, respectively.

## 14 CLINICAL STUDIES

### 14.1 Lennox–Gastaut Syndrome

The effectiveness of EPIDIOLEX for the treatment of seizures associated with LGS was established in two randomized, double-blind, placebo-controlled trials in patients aged 2 to 55 years (Study 1, NCT02224690; and Study 2, NCT02224560).

Study 1 (N=171) compared a dose of EPIDIOLEX 20 mg/kg/day with placebo. Study 2 (N=225) compared a 10 mg/kg/day dose and a 20 mg/kg/day dose of EPIDIOLEX with placebo. In both studies, patients had a diagnosis of LGS and were inadequately controlled on at least one AED, with or without vagal nerve stimulation and/or ketogenic diet. Both trials had a 4-week baseline period, during which patients were required to have a minimum of 8 drop seizures ( $\geq 2$  drop seizures per week). The baseline period was followed by a 2-week titration period and a 12-week maintenance period.

In Study 1, 94% of patients were taking at least 2 concomitant AEDs. The most frequently used concomitant AEDs (greater than 25%) in Study 1 were clobazam (49%), valproate (40%), lamotrigine (37%), levetiracetam (34%), and rufinamide (27%). In Study 2, 94% of patients were taking at least 2 concomitant AEDs. The most frequently used concomitant AEDs (greater than 25%) in Study 2, were clobazam (49%), valproate (38%), levetiracetam (31%), lamotrigine (30%), and rufinamide (29%).

The primary efficacy measure in both studies was the percent change from baseline in the frequency (per 28 days) of drop seizures (atonic, tonic, or tonic-clonic seizures) over the 14-week treatment period. Key secondary endpoints in both studies included analyses of change in total seizure frequency and changes from baseline in the Subject/Caregiver Global Impression of Change (S/CGIC) score at the last visit. For the S/CGIC, the following question was rated on a 7-point scale: "Since [you/your child] started treatment, please assess the status of [your/your child's] overall condition (comparing [your/their] condition now to [your/their] condition before treatment) using the scale below." The 7-point scale was as follows: "Very Much Improved" (1); "Much Improved" (2); "Slightly Improved" (3); "No Change" (4); "Slightly Worse" (5); "Much Worse" (6); "Very Much Worse" (7).

In Studies 1 and 2, the median percent change from baseline (reduction) in the frequency of drop seizures was significantly greater for both dosage groups of EPIDIOLEX than for placebo (Table 5). A reduction in drop seizures was observed within 4 weeks of initiating treatment with EPIDIOLEX, and the effect remained generally consistent over the 14-week treatment period.

**Table 5: Change in Drop Seizure Frequency in Lennox–Gastaut Syndrome during the Treatment Period (Studies 1 and 2)**

Drop Seizure Frequency (per 28 Days)	Placebo	EPIDIOLEX 10 mg/kg/day	EPIDIOLEX 20 mg/kg/day
<b>Study 1</b>	<b>N=85</b>	—	<b>N=86</b>
Baseline Period Median Seizure Frequency	75	—	71
Median Percentage Change from Baseline During Treatment	-22	—	-44
p-value compared to placebo <sup>a</sup>			0.01
<b>Study 2</b>	<b>N=76</b>	<b>N=73</b>	<b>N=76</b>
Baseline Period Median Seizure Frequency	80	87	86
Median Percentage Change from Baseline During Treatment	-17	-37	-42
p-value compared to placebo <sup>a</sup>		<0.01	<0.01

<sup>a</sup>Obtained from a Wilcoxon rank-sum test.

Figure 1 displays the percentage of patients by category of reduction from baseline in drop seizure frequency per 28 days during the treatment period in Study 1.

**Figure 1: Proportion of Patients by Category of Seizure Response for EPIDIOLEX and Placebo in Patients with Lennox–Gastaut Syndrome (Study 1)**

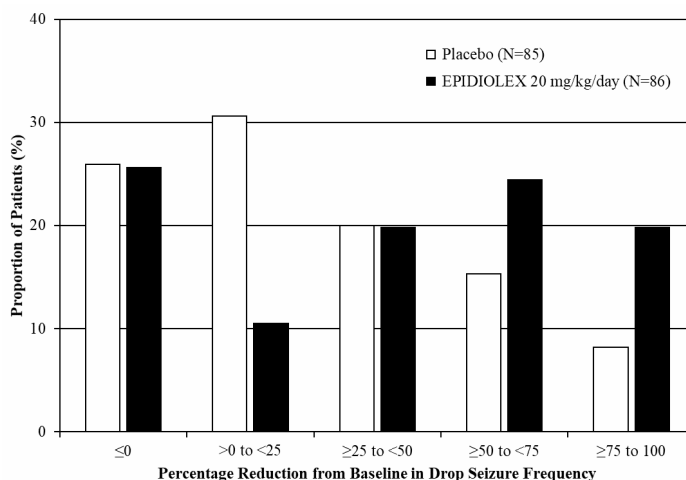
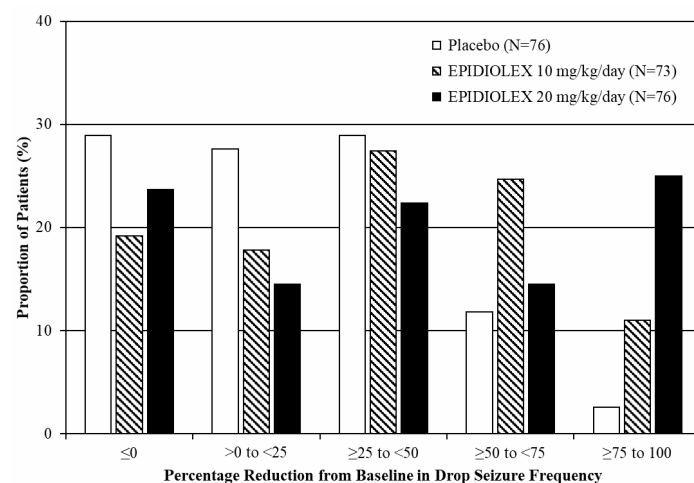


Figure 2 displays the percentage of patients by category of reduction from baseline in drop seizure frequency (per 28 days) during the treatment period in Study 2.

**Figure 2: Proportion of Patients by Category of Seizure Response for EPIDIOLEX and Placebo in Patients with Lennox–Gastaut Syndrome (Study 2)**



In Study 1, 3 of 85 (4%) patients in the EPIDIOLEX 20 mg/kg/day group reported no drop seizures during the maintenance period, compared to 0 patients in the placebo group. In Study 2, 3 of 73 (4%) patients in the EPIDIOLEX 10 mg/kg/day group, 5 of 76 (7%) patients in the EPIDIOLEX 20 mg/kg/day group, and 1 of 76 (1%) patients in the placebo group reported no drop seizures during the maintenance period.

In LGS patients, EPIDIOLEX was associated with significant reductions in total seizure frequency (drop and non-drop seizures) versus placebo. During the treatment period in Study 1, the median percent reduction in total seizure frequency (per 28 days) was 41% in patients taking EPIDIOLEX 20 mg/kg/day compared to 14% in patients taking placebo (p<0.01). In Study 2, the median percent reduction in total seizure frequency (per 28 days) was 36% in the 10 mg/kg/day group, 38% in the 20 mg/kg/day group, and 18% in the placebo group (p<0.01 for both groups).

A greater improvement on the Subject/Caregiver Global Impression of Change (S/CGIC) was reported in patients treated with EPIDIOLEX compared with placebo in Studies 1 and 2. In Study 1, the mean S/CGIC score at last visit was 3.0 in the 20 mg/kg/day EPIDIOLEX group (corresponding to “slightly improved”) compared with 3.7 (most closely associated with “no change”) in the placebo group (p<0.01). In Study 2, the mean S/CGIC score at last visit was 3.0 and 3.2 in the 10 mg/kg/day and 20 mg/kg/day EPIDIOLEX groups, respectively (“slightly improved”), compared with 3.6 (“no change”) in the placebo group (p<0.01 and p=0.04, respectively).

#### 14.2 Dravet Syndrome

The effectiveness of EPIDIOLEX for the treatment of seizures associated with DS was demonstrated in a single randomized, double-blind, placebo-controlled trial in 120 patients aged 2 to 18 years (Study 3, NCT02091375). Study 3 compared a dose of EPIDIOLEX 20 mg/kg/day with placebo. Patients had a diagnosis of treatment-resistant DS and were inadequately controlled with at least one concomitant AED, with or without vagal nerve stimulation or ketogenic diet. During the 4-week baseline period, patients were required to have at least 4 convulsive seizures while on stable AED therapy. The baseline period was followed by a 2-week titration period and a 12-week maintenance period. The primary efficacy measure was the percent change from baseline in the frequency (per 28 days) of convulsive seizures (all countable atonic, tonic, clonic, and tonic-clonic seizures) over the 14-week treatment period.

In Study 3, 93% of patients were taking at least 2 concomitant AEDs during the trial. The most commonly used concomitant AEDs (greater than 25%) in Study 3 were clobazam (65%), valproate (57%), stiripentol (43%), levetiracetam (28%), and topiramate (26%).

The median percent change from baseline (reduction) in the frequency of convulsive seizures was significantly greater for EPIDIOLEX 20 mg/kg/day than for placebo (Table 6). A reduction in convulsive seizures was observed within 4 weeks of initiating treatment with EPIDIOLEX and the effect remained generally consistent over the 14-week treatment period.

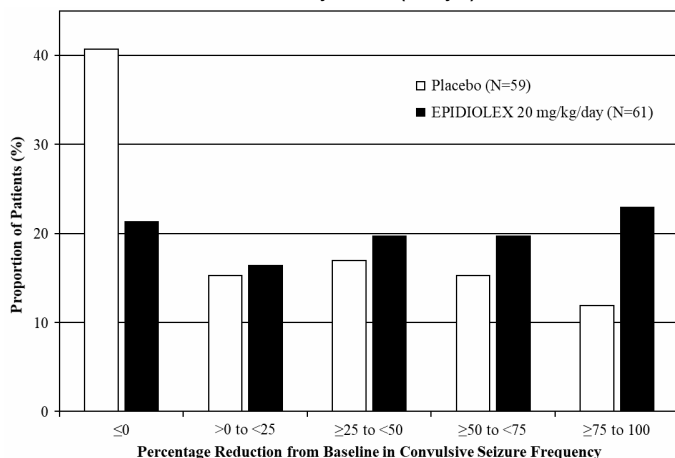
**Table 6: Change in Convulsive Seizure Frequency in Dravet Syndrome during the Treatment Period (Study 3)**

Total Convulsive Seizures (per 28 Days)	Placebo	EPIDIOLEX 20 mg/kg/day
Study 3	N=59	N=61
Baseline Period Median Seizure Frequency	15	12
Median Percentage Change from Baseline During Treatment	-13	-39
p-value compared to placebo <sup>a</sup>		0.01

<sup>a</sup>Obtained from a Wilcoxon rank-sum test.

Figure 3 displays the percentage of patients by category of reduction from baseline in convulsive seizure frequency (per 28 days) during the treatment period in Study 3.

**Figure 3: Proportion of Patients by Category of Seizure Response for EPIDIOLEX and Placebo in Patients with Dravet Syndrome (Study 3)**



In Study 3, 4 of 60 (7%) patients treated with EPIDIOLEX 20 mg/kg/day reported no convulsive seizures during the maintenance period, compared to 0 patients in the placebo group.

#### 14.3 Tuberous Sclerosis Complex

The effectiveness of EPIDIOLEX for the treatment of seizures associated with TSC was demonstrated in a randomized, double-blind, placebo-controlled trial in 224 patients aged 1 to 65 years (Study 4; NCT02544763).

Study 4 (N=224) compared doses of EPIDIOLEX 25 mg/kg/day and 50 mg/kg/day (2 times the recommended maintenance dosage) with placebo. Patients had a diagnosis of TSC and seizures inadequately controlled with at least one concomitant AED, with or without vagal nerve stimulation or ketogenic diet. During the 4-week baseline period, patients had at least 8 seizures, with at least 1 seizure occurring in at least 3 of the 4 weeks (focal motor seizures without impairment of consciousness or awareness; focal seizures with impairment of consciousness or awareness; focal seizures evolving to bilateral generalized convulsive seizures and generalized seizures [tonic-clonic, tonic, clonic or atonic seizures]). The baseline period was followed by a 4-week titration period and a 12-week maintenance period.

In Study 4, all patients but 1 (in EPIDIOLEX 25 mg/kg/day group) were taking 1-5 concomitant AEDs during the trial. The most commonly used concomitant AEDs (greater than 25%) were valproate (45%), vigabatrin (33%), levetiracetam (29%), and clobazam (27%). The baseline median TSC-associated seizure frequency was 57 per 28 days for the combined groups. The primary efficacy measure was the change in seizure frequency of TSC-associated seizures over the 16-week treatment period compared with baseline.

In Study 4, the percentage change from baseline (reduction) in the frequency of TSC-associated seizures was significantly greater for patients treated with EPIDIOLEX than for placebo (Table 7). A reduction in TSC-associated seizures was observed within 4 weeks of initiating treatment with EPIDIOLEX and the effect remained generally consistent over the 12-week maintenance period.

**Table 7: Change in TSC-Associated Seizure Frequency during the Treatment Period (Study 4)**

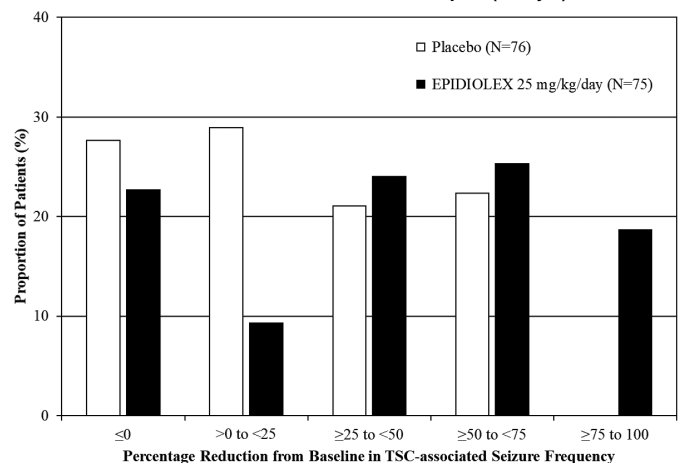
Total TSC-Associated Seizures (per 28 Days)	Placebo	EPIDIOLEX 25 mg/kg/day
Study 4	N=76	N=75
Baseline Period Median Seizure Frequency	54	56
Median Percentage Change from Baseline During Treatment	-20	-43
p-value compared to placebo <sup>a</sup>		<0.01
Percentage Change from Baseline During Treatment in Estimated Mean Seizure Frequency <sup>b</sup>	-24	-48
p-value compared to placebo <sup>b</sup>		<0.01

<sup>a</sup>Obtained from a Wilcoxon rank-sum test.

<sup>b</sup>Obtained from a log-transformed ANCOVA.

Figure 4 displays the percentage of patients by category of reduction from baseline in TSC-associated seizure frequency (per 28 days) during the treatment period in Study 4.

**Figure 4: Proportion of Patients by Category of Seizure Response for EPIDIOLEX and Placebo in Patients with Tuberous Sclerosis Complex (Study 4)**



In Study 4, 4 of 75 (5%) patients treated with EPIDIOLEX 25 mg/kg/day reported no TSC-associated seizures during the maintenance period, compared to 0 patients in the placebo group.



## 16 HOW SUPPLIED/STORAGE AND HANDLING

### 16.1 How Supplied

EPIDIOLEX is a strawberry flavored clear, colorless to yellow solution supplied in a 105 mL amber glass bottle with a child-resistant closure containing 100 mL of oral solution (NDC 70127-100-01). Each mL contains 100 mg of cannabidiol. EPIDIOLEX is packaged in a carton with two 5 mL calibrated oral dosing syringes and a bottle adapter (NDC 70127-100-10). The pharmacy will provide 1 mL calibrated oral dosing syringes when doses less than 1 mL are required.

### 16.2 Storage and Handling

Store EPIDIOLEX in an upright position at 20°C to 25°C (68°F to 77°F); excursions are permitted between 15°C to 30°C (59°F to 86°F) [see USP Controlled Room Temperature]. Do not freeze. Keep the cap tightly closed. Use within 12 weeks of first opening the bottle, then discard any remainder.

## 17 PATIENT COUNSELING INFORMATION

Advise the caregiver or patient to read the FDA-approved patient labeling (Medication Guide and Instructions for Use).

### Administration Information

Advise patients who are prescribed EPIDIOLEX to use the adapter and oral dosing syringes provided [see Dosage and Administration (2.4) and Instructions for Use].

Instruct patients to discard any unused EPIDIOLEX oral solution after 12 weeks of first opening the bottle [see Dosage and Administration (2.4)].

### Hepatocellular Injury

Inform patients about the potential for elevations of liver enzymes. Discuss with the patient the importance of measuring hepatic laboratory values and having them evaluated by the healthcare provider before treatment with EPIDIOLEX and periodically during treatment [see Warnings and Precautions (5.1)]. Advise patients of the clinical signs or symptoms suggestive of hepatic dysfunction (e.g., unexplained nausea, vomiting, right upper quadrant abdominal pain, fatigue, anorexia, or jaundice and/or dark urine) and to contact a healthcare provider promptly if these signs or symptoms occur.

### Somnolence and Sedation

Caution patients about operating hazardous machinery, including motor vehicles, until they are reasonably certain that EPIDIOLEX does not affect them adversely (e.g., impair judgment, thinking or motor skills) [see Warnings and Precautions (5.2)].

### Suicidal Thinking and Behavior

Counsel patients, their caregivers, and their families that antiepileptic drugs, including EPIDIOLEX, may increase the risk of suicidal thoughts and behavior and advise them to be alert for the emergence or worsening of symptoms of depression, any unusual changes in mood or behavior, or the emergence of suicidal thoughts, behavior, or thoughts of self-harm. Instruct patients, caregivers, and families to report behaviors of concern immediately to healthcare providers [see Warnings and Precautions (5.3)].

### Withdrawal of Antiepileptic Drugs (AEDs)

Advise patients not to discontinue use of EPIDIOLEX without consulting with their healthcare provider. EPIDIOLEX should normally be gradually withdrawn to reduce the potential for increased seizure frequency and status epilepticus [see Dosage and Administration (2.5), Warnings and Precautions (5.5)].

### Pregnancy Registry

Advise patients to notify their healthcare provider if they become pregnant or intend to become pregnant during EPIDIOLEX therapy. Encourage women who are taking EPIDIOLEX to enroll in the North American Antiepileptic Drug (NAAED) Pregnancy Registry if they become pregnant. This registry is collecting information about the safety of antiepileptic drugs during pregnancy [see Use in Specific Populations (8.1)].

### Drug Testing

Advise patients of the potential for positive cannabis drug screens.

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## MEDICATION GUIDE EPIDIOLEX® (EH-peh-DYE-oh-lex) (cannabidiol) oral solution

Read this Medication Guide before you start taking EPIDIOLEX and each time you get a refill. There may be new information. This information does not take the place of talking to your healthcare provider about your medical condition or treatment.

### What is the most important information I should know about EPIDIOLEX?

#### EPIDIOLEX can cause serious side effects, including:

1. EPIDIOLEX may cause liver problems. Your healthcare provider may order blood tests to check your liver before you start taking EPIDIOLEX and during treatment. In some cases, EPIDIOLEX treatment may need to be stopped. Call your healthcare provider right away if you develop any of these signs and symptoms of liver problems during treatment with EPIDIOLEX:
  - loss of appetite, nausea, vomiting
  - fever, feeling unwell, unusual tiredness
  - yellowing of the skin or the whites of the eyes (jaundice)
  - itching
  - unusual darkening of the urine
  - right upper stomach area pain or discomfort
2. EPIDIOLEX may cause you to feel sleepy, which may get better over time. Using certain medicines with EPIDIOLEX such as clobazam or alcohol may increase sleepiness. **Do not** drive, operate heavy machinery, or do other dangerous activities until you know how EPIDIOLEX affects you.
3. Like other antiepileptic drugs, EPIDIOLEX may cause suicidal thoughts or actions in a very small number of people, about 1 in 500.

#### Call a healthcare provider right away if you have any of these symptoms, especially if they are new, worse, or worry you:

- thoughts about suicide or dying
- attempt to commit suicide
- new or worse depression
- new or worse anxiety
- feeling agitated or restless
- panic attacks
- trouble sleeping (insomnia)
- new or worse irritability
- acting aggressive, being angry, or violent
- acting on dangerous impulses
- an extreme increase in activity and talking (mania)
- other unusual changes in behavior or mood

#### How can I watch for early symptoms of suicidal thoughts and actions?

- Pay attention to any changes, especially sudden changes in mood, behaviors, thoughts, or feelings.
  - Keep all follow-up visits with your healthcare provider as scheduled.
4. Do not stop taking EPIDIOLEX without first talking to your healthcare provider. Stopping a seizure medicine such as EPIDIOLEX suddenly can cause you to have seizures more often or seizures that do not stop (status epilepticus). Call your healthcare provider between visits as needed, especially if you are worried about symptoms.



### What is EPIDIOLEX?

- EPIDIOLEX is a prescription medicine that is used to treat seizures associated with Lennox-Gastaut syndrome, Dravet syndrome, or tuberous sclerosis complex in people 1 year of age and older.
- It is not known if EPIDIOLEX is safe and effective in children under 1 year of age.

### Who should not take EPIDIOLEX?

Do not take EPIDIOLEX if you are allergic to cannabidiol or any of the ingredients in EPIDIOLEX. See the end of this Medication Guide for a complete list of ingredients in EPIDIOLEX.

### Before taking EPIDIOLEX, tell your healthcare provider about all of your medical conditions, including if you:

- have or have had depression, mood problems or suicidal thoughts or behavior.
- have liver problems.
- have abused or been dependent on prescription medicines, street drugs or alcohol.
- are pregnant or plan to become pregnant. Tell your healthcare provider right away if you become pregnant while taking EPIDIOLEX. You and your healthcare provider will decide if you should take EPIDIOLEX while you are pregnant.
  - If you become pregnant while taking EPIDIOLEX, talk to your healthcare provider about registering with the North American Antiepileptic Drug Pregnancy Registry. You can enroll in this registry by calling 1-888-233-2334. The purpose of this registry is to collect information about the safety of antiepileptic medicines during pregnancy.
- are breastfeeding or plan to breastfeed. It is not known if EPIDIOLEX passes into your breast milk. Talk to your healthcare provider about the best way to feed your baby while taking EPIDIOLEX.

**Tell your healthcare provider about all the medicines you take**, including prescription and over-the-counter medicines, vitamins, herbal supplements, and any cannabis-based products.

EPIDIOLEX may affect the way other medicines work, and other medicines may affect how EPIDIOLEX works. Do not start or stop taking other medicines without talking to your healthcare provider. Know the medicines you take. Keep a list of them to show your healthcare provider and pharmacist when you get a new medicine.

**Tell your healthcare provider if you are planning to have a cannabis drug screen** because EPIDIOLEX may affect your test results. Tell the person giving the drug test that you are taking EPIDIOLEX.

### How should I take EPIDIOLEX?

- Read the **Instructions for Use** at the end of this Medication Guide for information on the right way to use EPIDIOLEX.
- Take EPIDIOLEX exactly as your healthcare provider tells you.
- Your healthcare provider will tell you how much EPIDIOLEX to take and when to take it.
- Measure each dose of EPIDIOLEX using the bottle adapter and 5 mL dosing syringes that come with EPIDIOLEX. If your dose of EPIDIOLEX is less than 1 mL, your pharmacist will provide you with 1 mL syringes to take your medicine.
- Use a dry syringe each time you take EPIDIOLEX. If water is inside the syringe, it could cause the oil-based medicine to look cloudy.

### What should I avoid while taking EPIDIOLEX?

- **Do not** drive, operate heavy machinery, or do other dangerous activities until you know how EPIDIOLEX affects you. EPIDIOLEX may cause you to feel sleepy.

### What are the possible side effects of EPIDIOLEX?

**EPIDIOLEX can cause serious side effects, including:**

- See “**What is the most important information I should know about EPIDIOLEX?**”

**The most common side effects of EPIDIOLEX include:**

- sleepiness
- decreased appetite
- diarrhea
- increase in liver enzymes
- feeling very tired and weak
- rash
- sleep problems
- fever
- vomiting
- infections

These are not all of the possible side effects of EPIDIOLEX. For more information ask your healthcare provider or pharmacist.

Tell your healthcare provider about any side effect that bothers you or that does not go away.

Call your doctor for medical advice about side effects. You may report side effects to FDA at 1-800-FDA-1088.

You may also contact Greenwich Biosciences at 1-833-424-6724 (1-833-GBIOSCI).

### How should I store EPIDIOLEX?

- Store EPIDIOLEX at room temperature between 68°F to 77°F (20°C to 25°C).
- Always store EPIDIOLEX in an upright position.
- **Do not** freeze.
- Keep the child-resistant cap tightly closed.
- Use EPIDIOLEX within 12 weeks of first opening the bottle. Throw away (dispose of) any unused medicine after 12 weeks.

**Keep EPIDIOLEX and all medicines out of the reach of children.**

### General Information about the safe and effective use of EPIDIOLEX.

Medicines are sometimes prescribed for purposes other than those listed in a Medication Guide. Do not use EPIDIOLEX for a condition for which it was not prescribed. Do not give EPIDIOLEX to other people, even if they have the same symptoms that you have. It may harm them.

You can ask your pharmacist or healthcare provider for information about EPIDIOLEX that is written for health professionals.

### What are the ingredients in EPIDIOLEX?

**Active ingredient:** cannabidiol

**Inactive ingredients:** dehydrated alcohol, sesame seed oil, strawberry flavor, and sucralose  
EPIDIOLEX does not contain gluten (wheat, barley or rye).

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For more information, go to [www.EPIDIOLEX.com](http://www.EPIDIOLEX.com) or call 1-833-424-6724 (1-833-GBIOSCI).

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**INSTRUCTIONS FOR USE**  
**EPIDIOLEX® (EH-peh-DYE-oh-lex)**  
**(cannabidiol)**  
**oral solution**  
**100 mg/mL**

Be sure that you read, understand and follow these instructions carefully to ensure proper dosing of the oral solution.

**Important:**

- Follow your healthcare provider’s instructions for the dose of EPIDIOLEX to take or give.
- Ask your healthcare provider or pharmacist if you are not sure how to prepare, take, or give the prescribed dose of EPIDIOLEX.
- Always use the oral syringe provided with EPIDIOLEX to make sure you measure the right amount of EPIDIOLEX.
- Do not use EPIDIOLEX after the expiration date on the package and each bottle.
- Use EPIDIOLEX within 12 weeks of first opening the bottle.
- After 12 weeks, safely throw away (dispose of) any EPIDIOLEX that has not been used.

**Each package contains:**

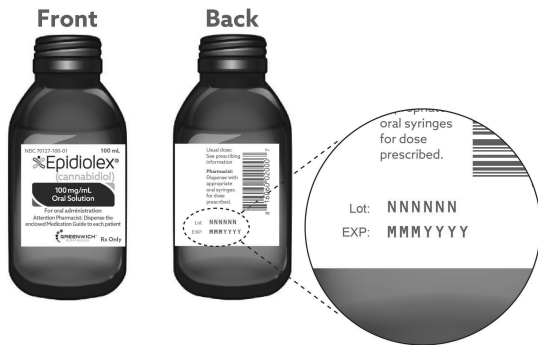
Child-resistant cap



Bottle adapter

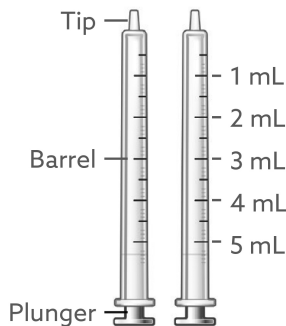


1 bottle of EPIDIOLEX oral solution (100 mg/mL)



2 reusable 5 mL oral syringes:

- 1 syringe to take or give the dose of EPIDIOLEX
- 1 extra syringe (included as a spare if needed)



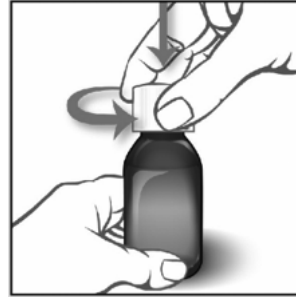
Supplies not included in the package:

- **If your dose of EPIDIOLEX is less than 1 mL**, your pharmacist will provide you with 1 mL syringes to take your medicine.
- Call your pharmacist right away if your dose of EPIDIOLEX is less than 1 mL and you do not receive 1 mL syringes with your medicine.

**Note: If you lose or damage an oral syringe, or cannot read the markings, use the spare syringe.**

**Prepare The Bottle- to use EPIDIOLEX for the first time**

1. Remove the child-resistant cap by pushing down while turning the cap to the left (counter-clockwise).



2. Push the bottle adapter firmly into the bottle. **Make sure the bottle adapter is fully inserted.** If not fully inserted, small parts such as the bottle adapter may become a choking hazard for children and pets.

**Note: Do not** remove the bottle adapter from the bottle after it is inserted.



**Prepare The Dose**

**Your healthcare provider will tell you how much EPIDIOLEX to take or give.**

3. Use this table to measure the total dose of EPIDIOLEX to be given.

**Dose**

5 mL or less  
 More than 5 mL

**How to measure**

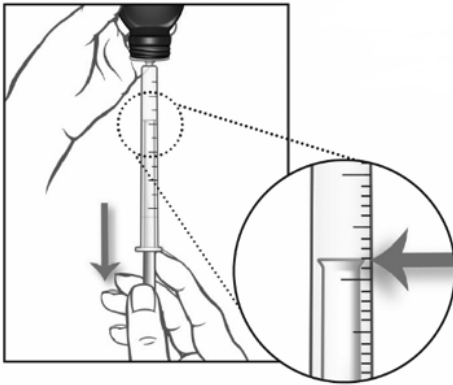
Use the oral syringe **1 time**  
 Use the oral syringe more than 1 time

4. Push the plunger all the way down and insert the tip of the oral syringe fully into the bottle adapter. With the oral syringe in place, turn the bottle upside down.



5. Slowly pull the plunger of the oral syringe to withdraw the dose of EPIDIOLEX needed. See **Step 3** for how to measure the total dose of EPIDIOLEX.

**Line up** the end of the plunger with the marking for your dose of EPIDIOLEX.



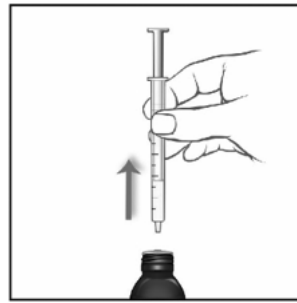
**What to do if you see air bubbles:**

If there are air bubbles in the oral syringe, keep the bottle upside down and push the plunger so that all of the liquid flows back into the bottle. Repeat **Step 5** until the air bubbles are gone.

6. When you have measured the correct dose of EPIDIOLEX, leave the oral syringe in the bottle adapter and turn the bottle right side up.

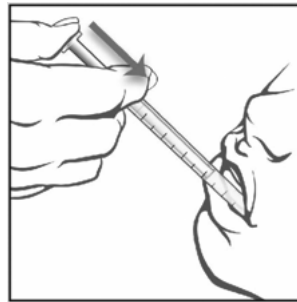


7. Carefully remove the oral syringe from the bottle adapter.



**Give EPIDIOLEX**

8. Place the tip of the oral syringe against the inside of the cheek and gently push the plunger until all the EPIDIOLEX in the syringe is given.



**Do not** forcefully push on the plunger.

**Do not** direct the medicine to the back of the mouth or throat. This may cause choking.

**If the dose of EPIDIOLEX prescribed by the healthcare provider is more than 5 mL**, repeat **steps 4 through 8** to complete the dose.

For example:

If your dose of EPIDIOLEX is 8 mL, withdraw 5 mL of medicine into the syringe and give the medicine. Insert the tip of the oral syringe back into the bottle adapter and withdraw 3 mL of medicine. Give the medicine to receive a total dose of 8 mL.

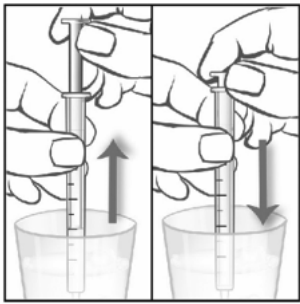
**Clean Up**

9. Screw the child-resistant cap back on the bottle tightly by turning the cap to the right (clockwise).

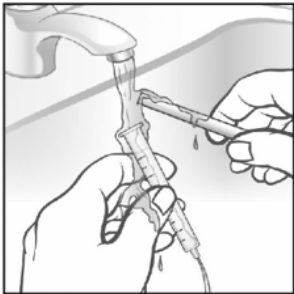


**Do not** remove the bottle adapter. The cap will fit over it.

10. Fill a cup with warm soapy water and clean the oral syringe by drawing water in and out of the syringe using the plunger.

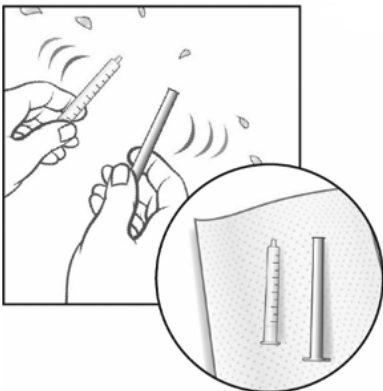


11. Remove the plunger from the barrel of the oral syringe and rinse both parts under tap water.



**Do not** wash the oral syringe in the dishwasher.

12. Shake off any extra water from the plunger and oral syringe barrel, and allow them to air dry until next use.



**Make sure** the oral syringe is completely dry before the next use. If water is inside the syringe, it could cause the oil-based medicine to look cloudy.

**Do not throw away the oral syringe.**

#### How should I store EPIDIOLEX?

- Store EPIDIOLEX at room temperature between 68°F to 77°F (20°C to 25°C).
- Always store EPIDIOLEX in an upright position.
- **Do not** freeze.
- Keep the child-resistant cap tightly closed.
- Use EPIDIOLEX within 12 weeks of first opening the bottle. Dispose of any unused EPIDIOLEX after 12 weeks.
- **Keep EPIDIOLEX and all medicines out of the reach of children.**

#### Helpline Details

For additional assistance, call the toll-free helpline at 1-833-426-4243 (1-833-GBNGAGE).

Hours:

Monday-Friday 08:00am – 08:00pm EST

#### Frequently Asked Questions

**Q: What if there are air bubbles in the oral syringe?**

A: Push the liquid back into the bottle and repeat **Step 5** until the air bubbles are gone.

**Q: What should I do if the liquid in the bottle has turned cloudy?**

A: The liquid in the bottle may turn cloudy if water gets in the bottle. This does not change the safety or how well the medicine works. Continue to use the cloudy liquid as prescribed by your healthcare provider.

Always make sure the oral syringes are completely dry before each use.

**Q: What should I do if the oral syringe is not completely dry before use?**

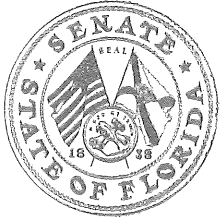
A: If the oral syringe is not completely dry, use the spare syringe provided in the pack.

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This Instructions for Use has been approved by the U.S. Food and Drug Administration.

Revised: 04/2020



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR JASON BRODEUR**

9th District

**COMMITTEES:**

Environment and Natural Resources, *Chair*  
Health Policy, *Vice Chair*  
Appropriations Subcommittee on Agriculture,  
Environment, and General Government  
Appropriations Subcommittee on Health and  
Human Services  
Children, Families, and Elder Affairs  
Community Affairs

**SELECT COMMITTEE:**

Select Committee on Pandemic  
Preparedness and Response

**JOINT COMMITTEE:**

Joint Administrative Procedures Committee

March 3, 2021

Honorable Jason W. B. Pizzo  
405 Senate Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Pizzo,

I am writing to request that SB 1476, Controlled Substances, be placed on the agenda to be heard in the Criminal Justice Committee.

I appreciate your consideration in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Jason Brodeur".

Jason Brodeur

Cc: Lauren Jones, Staff Director  
Sue Arnold, Administrative Assistant

REPLY TO:

☐ 311 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5009

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

**WILTON SIMPSON**  
President of the Senate

**AARON BEAN**  
President Pro Tempore

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

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

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

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BILL: CS/SB 1508

INTRODUCER: Criminal Justice Committee and Senator Book

SUBJECT: Public Records

DATE: March 23, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	Fav/CS
2.			JU	
3.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1508, which names the act “Serena’s Law,” requires that each county recorder or clerk of the court make the identity of each defendant or respondent against whom a protective injunction is entered as well as the fact that a protective injunction has been entered against that defendant or respondent publicly available on an Internet website for general public display, unless the defendant or respondent is a minor.

If this previously-described information is not on the website by a specified date, it must be made available to the general public on the website if the affected party identifies the information and requests it be made publicly available. The bill provides a process for this request and for noticing an affected party’s right to make this request. Further, an affected party may petition the circuit court for an order directing compliance with the previously-described requirements.

Finally, the bill requires that final judgments for injunctions for protection be recorded in official records.

The Florida Court Clerks and Comptrollers states that clerks of the court anticipate an increase in labor costs on the court side to track the status of petitions for protective injunctions to post notices of injunctions on their publicly available websites. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2021.

## II. Present Situation:

### Background Information Regarding “Serena”

According to information provided to legislative staff telephonically and via e-mail<sup>1</sup> from an attorney for the law firm representing “Serena,” the person for whom the act is named, Serena was sexually assaulted as a child. The case was not prosecuted but a protective injunction against sexual violence was obtained against the perpetrator (i.e., the “respondent” subject to the injunction). The attorney further states that he is aware of two other injunctions against this individual for the protection of minors. One of those other injunctions was issued in Florida.

The attorney details the difficulties in obtaining information electronically on the protective injunction against the respondent in Serena’s case:

The first was a volunteer effort with a youth focused charity the offender pursued through his place of employment. The volunteer organization was notified of the injunction. The volunteer organization was unable to find ... and verify the injunction, including through the use of a background check. The second was also a volunteer effort the offender pursued through his place of employment with a different youth focused charity. This charity was also unable to find and verify the injunction. The third was also a volunteer effort the offender pursued through his place of employment with a different youth focused charity. This final charity ... was able to find the injunction because the background search tool it used had access to a law enforcement database.<sup>2</sup>

As an additional note, our firm has a Lexis Nexis public records searching tool and that tool does not show any of the injunctions discussed above, or any other ones that may be out there.<sup>3</sup>

It is unclear why the information regarding these injunctions was not electronically available on the clerk of the court’s website.

### Injunctions for Protection

Section 741.30, F.S., authorizes a family or household member who is either the victim of domestic violence<sup>4</sup> or has reasonable cause to believe he or she is in imminent danger of becoming the victim of any act of domestic violence to file in the circuit court a petition for an injunction against domestic violence.

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<sup>1</sup> E-mail from Zachary W. Lombardo, Esq., attorney with Woodward, Pires & Lombardo, P.A., Naples, Florida, to staff of the Senate Committee on Criminal Justice, dated March 18, 2021 (on file with the Senate Committee on Criminal Justice).

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

<sup>3</sup> The attorney did not indicate that the information was unobtainable pursuant to a written request or by appearing in person at the clerk’s office to request the information.

<sup>4</sup> “Domestic violence” is an assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. Section 741.28(2), F.S.

Section 784.046, F.S., provides that:

- A petition for an injunction for protection against repeat violence may be filed in the circuit court by a person who is the victim of repeat violence<sup>5</sup> or the parent or legal guardian of any minor child who is living at home.
- A petition for an injunction for protection against dating violence may be filed in the circuit court by:
  - A person who is the victim of dating violence<sup>6</sup> and has reasonable cause to believe he or she is in imminent danger of becoming the victim of another act of dating violence;
  - A person who has reasonable cause to believe he or she is in imminent danger of becoming the victim of an act of dating violence; or
  - The parent or legal guardian of any minor child who is living at home and who seeks an injunction for protection against dating violence on behalf of that minor child.
- A petition for an injunction for protection against sexual violence may be filed in the circuit court by a person who is the victim of sexual violence<sup>7</sup> or the parent or legal guardian of a minor child who is living at home who is the victim of sexual violence on his or her own behalf or on behalf of the minor child if:
  - The person has reported the sexual violence to a law enforcement agency and is cooperating in any criminal proceeding against the respondent, regardless of whether criminal charges based on the sexual violence have been filed, reduced, or dismissed by the state attorney; or
  - The respondent who committed the sexual violence against the victim or minor child was sentenced to a term of imprisonment in state prison for the sexual violence and the respondent's term of imprisonment has expired or is due to expire within 90 days following the date the petition is filed.

Section 784.0485, F.S., authorizes a person who is the victim of stalking<sup>8</sup> or the parent or legal guardian of a minor child who is living at home who seeks an injunction for protection against stalking on behalf of the minor child to file in the circuit court a petition for an injunction for protection against stalking. For the purposes of injunctions for protection against stalking, the offense of stalking includes the offense of cyberstalking.<sup>9</sup>

---

<sup>5</sup> "Repeat violence" means two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member. Section 784.046(1)(b), F.S.

<sup>6</sup> "Dating violence" is violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. This relationship is determined based on specified factors. Section 784.046(1)(d), F.S.

<sup>7</sup> "Sexual violence" means any one incident of sexual battery; a lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child; sexual performance by a child; or any other forcible felony wherein a sexual act is committed or attempted, regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney. Section 784.046(1)(c), F.S.

<sup>8</sup> The offense of stalking is committed by a person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person. Section 784.048(2), F.S.

<sup>9</sup> "Cyberstalk" means: (1) to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person; or (2) to access, or attempt to access, the online accounts or Internet-connected home electronic systems of another person without that person's permission, causing substantial emotional distress to that person and serving no legitimate purpose. Section 784.048(1)(d), F.S.



## Protective Injunctions and the Florida Family Law Rules of Procedure

Rule 12.010 of the Florida Family Law Rules of Procedure states that these rules generally apply to all actions concerning family matters, including injunctions for protection against domestic, repeat, dating, and sexual violence, and stalking.<sup>10</sup> Rule 12.610 of the Florida Family Law Rules of Procedure addresses procedures for injunctions for protection against domestic, repeat, dating, and sexual violence, and stalking.

### Exempt Information in Courts Records (ss. 119.0714 and 92.56, F.S.)

Sections 119.0714 and 92.56, F.S., provide that certain information made exempt or confidential and exempt from public disclosure retains that status when the information appears in court records, though the judicial branch ultimately decides what information in court records is exempt or confidential and exempt (see discussion, *infra*). Several current public records exemptions are relevant to victims of sexual violence and/or protective injunctions.

Section 119.0714(1)(h), F.S., in part, applies to criminal intelligence information or criminal investigative information that is confidential and exempt as provided in s. 119.071(2)(h), F.S.<sup>11</sup> Section 119.071(2)(h), 1. F.S., provides that the following criminal intelligence information or criminal investigative information is confidential and exempt:

- Any information that reveals the identity of the victim of the crime of child abuse as defined by ch. 827, F.S., or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), F.S. (commercial sex trafficking), or ch. 794, F.S. (sexual battery), ch. 796, F.S. (prostitution), ch. 800, F.S., (lewd or lascivious acts), ch. 827, F.S. (sexual performance by a child), or ch. 847 (child pornography, materials harmful to minors, etc.), F.S.; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), F.S., or chs. 794, 796, 800, 827, or 847, F.S.

Section 92.56(1)(a), F.S., also provides that the confidential and exempt status of criminal intelligence information or criminal investigative information made confidential and exempt pursuant to s. 119.071(2)(h), F.S., must be maintained in court records pursuant to s. 119.0714(1)(h), F.S., and in court proceedings, including testimony from witnesses.

Section 119.0714(1)(k), F.S., applies to protective injunctions against domestic violence, repeat violence, dating violence, sexual violence, stalking, and cyberstalking:

- A petition, and the contents thereof, for an injunction for protection that is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued on or after July 1, 2017, is exempt.

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<sup>10</sup> See Florida Family Law Rules of Procedure (Dec. 31, 2020), available at <https://www-media.floridabar.org/uploads/2020/12/Family-Law-Rules-of-Procedure-12-2020.pdf> (last visited March 18, 2021).

<sup>11</sup> Section 119.071(2)(c)1., F.S., contains a public records exemption for active criminal intelligence information and active criminal investigative information. See s. 119.011(3)(a) and (b), (4), and (d) 1. and 2., F.S., for definitions of terms relevant to this exemption.

- A petition, and the contents thereof, for an injunction for protection that is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued before July 1, 2017, is exempt only upon request by an individual named in the petition as a respondent. The request must be in the form of a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, or electronic transmission or in person to the clerk of the court. A fee may not be charged for such request.
- Any information that can be used to identify a petitioner or respondent in a petition for an injunction, and any affidavits, notice of hearing, and temporary injunction, is confidential and exempt until the respondent has been personally served with a copy of the petition for injunction, affidavits, notice of hearing, and temporary injunction.

### Confidentiality of Certain Judicial Records

The Public Records Act does not apply to judicial records.<sup>12</sup> As a coequal branch of government, the judicial branch “is not an ‘agency’ subject to the supervision or control by another coequal branch of government.”<sup>13</sup> Therefore, even though ss. 119.0714 and 92.56, F.S., direct that certain information made exempt or confidential and exempt retains that status when the information appears in court records, the judicial branch ultimately decides what information in court records is exempt or confidential and exempt.

However, the judicial branch is required to maintain access to public records and court proceedings pursuant to Article 1, s. 24 of the State Constitution.<sup>14</sup> To meet its constitutional obligation, the judicial branch has adopted Florida Rule of Judicial Administration 2.420 entitled “Public Access to and Protection of Judicial Branch Records.”<sup>15</sup> Rule 2.420(a) provides that this rule “shall govern public access to the records of the judicial branch of government.” Rule 2.420(a) further provides that the “public shall have access to all records of the judicial branch of government” with exceptions provided in the rule.<sup>16</sup> The “judicial branch” is defined to include the clerks of the court when acting as an arm of the court. The clerks of the court designate and maintain the confidentiality of information contained within a court record that is described in the rule.<sup>17</sup>

Pertinent to this bill analysis, the following records of the judicial branch are made confidential under Rule 2.420:

- All records made confidential under the Florida and United States Constitutions and Florida and federal law;<sup>18</sup>

<sup>12</sup> *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992).

<sup>13</sup> *Times Pub. Co. v. Ake*, 645 So. 2d 1003, 1004 (Fla. 2d DCA 1994), *approved*, 660 So. 2d 255 (Fla. 1995).

<sup>14</sup> See *Government in the Sunshine Manual* (2020), Office of the Attorney General, pp. 63-66, available at [http://myfloridalegal.com/webfiles.nsf/WF/MNOS-B9QQ79/\\$file/SunshineManual.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MNOS-B9QQ79/$file/SunshineManual.pdf) (last viewed March 18, 2021). Article V, s. 2 of the State Constitution grants rulemaking power to the Florida Supreme Court.

<sup>15</sup> See Fla. R. Jud. Adm. 2.420 (July 1, 2020), available at <https://www-media.floridabar.org/uploads/2021/03/Florida-Rules-of-Judicial-Administration-7-31-2020-bkmarks.pdf> (last visited March 18, 2021).

<sup>16</sup> *Id.*

<sup>17</sup> Fla. R. Jud. Adm. 2.420(d)(1).

<sup>18</sup> Fla. R. Jud. Adm. 2.420(c)(7).

- All records presently deemed to be confidential by court rule;<sup>19</sup> and
- Any court record determined to be confidential in case decision or court rule on the grounds that confidentiality is required to:
  - Prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
  - Protect trade secrets;
  - Protect a compelling governmental interest;
  - Obtain evidence to determine legal issues in a case;
  - Avoid substantial injury to innocent third parties;
  - Avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of proceeding sought to be closed; or
  - Comply with established public policy set forth in the Florida or United States Constitution or statutes or Florida rules or case law.<sup>20</sup>

Rule 2.420(d)(1) requires the clerk of the court to designate and maintain the confidentiality of certain information contained within a court record, including but not limited to, the previously described confidential information and:

- The victim’s address in a domestic violence action on petitioner’s request (s. 741.30(3)(b), F.S.);<sup>21</sup>
- Protected information regarding victims of child abuse or sexual offenses (ss. 119.071(2)(h) and 119.0714(1)(h), F.S.);<sup>22</sup> and
- Information that can be used to identify a petitioner or respondent in a petition for an injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking, and any affidavits, notice of hearing, and temporary injunction until the respondent has been personally served with a copy of the petition for injunction, affidavits, notice of hearing, and temporary injunction (s. 119.0714(1)(k)3., F.S.).<sup>23</sup>

### **Florida Supreme Court Administrative Order on Access to Electronic Court Records**

Through administrative rule, the Florida Supreme Court adopted standards for access to electronic court records and an access security matrix.<sup>24</sup> There are different levels of permissible access depending on “the user’s role and applicable statutes, court rules, and applicable administrative policy. Access may be restricted to certain user roles based on case type, document type, or information contained within court records.”<sup>25</sup>

<sup>19</sup> Fla. R. Jud. Adm. 2.420(c)(8).

<sup>20</sup> Fla. R. Jud. Adm. 2.420(c)(9)(A). Rule 2.40(c)(9)(B) and (C) provide that the degree, duration, and manner of confidentiality ordered by the court shall be no broader than necessary to protect the interests set forth in subdivision (c)(9)(A) and no less restrictive measures are available to protect the interests set forth in Rule 2.40(c)(9)(A).

<sup>21</sup> Fla. R. Jud. Adm. 2.420(d)(1)(B)(xii).

<sup>22</sup> Fla. R. Jud. Adm. 2.420(d)(1)(B)(xiii).

<sup>23</sup> Fla. R. Jud. Adm. 2.420(d)(1)(B)(xxiii).

<sup>24</sup> *In Re: Access to Electronic Court Records* (Administrative Order), No. 20-108 (Nov. 20, 2020) and *Standards for Access to Electronic Court Records* (Nov. 2020), Florida Supreme Court, available at <https://www.floridasupremecourt.org/content/download/693366/7743882> (last visited March 18, 2021).

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

Permitted access for the general public (without registration agreement) includes:

- All records except those that are expunged or sealed, automatically confidential under Rule 2.420(d)(1), Fla. R. Jud. Admin., or made confidential by court order.
- No remote access to images of records in cases governed by the Florida Family Law Rules of Procedure, Florida Rules of Juvenile Procedure, or Florida Probate Rules, pursuant to s. 28.2221(5)(a), F.S.<sup>26</sup>

There are no user security requirements. Anonymous web-based access is permitted.<sup>27</sup>

### **Clerks of the Court**

The Florida Court Clerks and Comptrollers states that a clerk of the court is “designated as the county recorder of all instruments that he or she may be required or authorized by law to record in the county where he or she is the Clerk. The Clerk is required to record all such instruments in one general series called ‘Official Records,’ which must be open to the public for the purpose of inspecting and making extracts of the instruments, under the Clerk’s supervision.”<sup>28</sup>

### **Recording of Orders and Judgments (s. 28.29, F.S.)**

Section 28.29, F.S., which relates to recording of orders and judgments, in part, requires that orders of dismissal and final judgments of the courts in civil actions be recorded in official records. Other orders must be recorded only on written direction of the court. The direction may be by incorporation in the order of the words “To be recorded” or words to that effect. Failure to record an order or judgment does not affect its validity.

The statute does not specifically refer to final judgments for injunctions for protection.

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

### **“Serena’s Law”**

The bill provides that the act shall be known as “Serena’s Law.”

### **Requirement that County Recorders or Clerks of the Court Provide Certain Information on Protective Injunctions**

The bill amends s. 28.2221, F.S., relating to electronic access to official records, to require that each county recorder or clerk of the court make the identity of each defendant or respondent against whom a protective injunction under ss. 741.30, 784.046, or 784.0485, F.S., is entered as well as the fact that such protective injunction has been entered against that defendant or respondent publicly available on an Internet website for general public display, unless the defendant or respondent is a minor.

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

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

<sup>28</sup> *FCCC Bill Analysis* (SB 1508) (citations omitted), Florida Court Clerks & Comptrollers (on file with the Senate Committee on Criminal Justice).

Information previously described that is not made available by the county recorder or the clerk of the court on a publicly available Internet website for general public display prior to July 1, 2021, must be made publicly available if the affected party identifies the information and requests that it be made publicly available. This request must be in writing and delivered by mail, facsimile, or electronic transmission, or in person to the county recorder or clerk of the court. The request must specify the case number assigned to the protective injunction. No fee may be charged for the addition of information pursuant to this request.

No later than 30 days after July 1, 2021, notice of the right of any affected party to request the addition of information as previously described must be conspicuously and clearly displayed by the county recorder or clerk of the court on the publicly available Internet website on which images or copies of the county's public records are placed and in the office of each county recorder or clerk of the court.

This notice must contain appropriate instructions for making the addition request in person, by mail, by facsimile, or by electronic transmission. The notice must state, in substantially similar form, that any person has a right to request that a county recorder or clerk of the court add information to a publicly available Internet website if that information involves the identity of a defendant or respondent against whom a protective injunction is entered, unless the defendant or respondent is a minor. This request must be made in writing and delivered by mail, facsimile, or electronic transmission, or in person to the county recorder or clerk of the court. The request must specify the case number assigned to the protective injunction. No fee will be charged for the addition of a document pursuant to this request.

The bill further provides that any affected person may petition the circuit court for an order directing compliance with this subsection. The recorder or clerk, as applicable, must conspicuously and clearly display on its publicly available website and its office notice of the right of the minor, or his or her representative, to request the addition of such information to the publicly available website.

### **Recording of Final Judgments for Injunctions for Protection**

The bill amends s. 28.29, F.S., relating to recording of orders and judgments to require that final judgments for injunctions for protection as defined in chs. 741 and 784, F.S., be recorded in official records.

The bill also provides that direction regarding recording of orders of dismissals and final judgments referenced in the statute may be by incorporation in the order of the words "To be recorded in official records" or words to that effect.

### **Effective Date**

The bill takes effect July 1, 2021.

**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 Florida Clerk of Court Association states that it anticipates “an increase in labor costs on the court side, as it would be necessary to track the status of petition filings to post notices of injunctions on the Clerks’ publicly available websites.”<sup>29</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>29</sup> *FCCC Bill Analysis* (SB 1508) (citations omitted), Florida Court Clerks & Comptrollers (on file with the Senate Committee on Criminal Justice).

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 28.2221 and 28.29.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Criminal Justice on March 23, 2021:**

The committee substitute:

- Removes a provision of the original bill that specified that a public records exemption for certain active criminal intelligence information and active criminal investigative information involving certain victims does not apply to the identity of a person, other than a minor, who is charged with or found guilty of any offense specified in the exemption (most of which are sexual offenses).
- Requires that each county recorder or clerk of the court make the identity of each defendant or respondent against whom a protective injunction is entered as well as the fact that a protective injunction has been entered against that defendant or respondent publicly available on an Internet website for general public display, unless the defendant or respondent is a minor.
- Removes a provision of the bill that required newspaper publication of notices.
- Requires that final judgments for injunctions for protection be recorded in official records.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2021	.	
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The Committee on Criminal Justice (Book) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. This law shall be called "Serena's Law."

Section 2. Subsection (6) is added to section 28.2221,  
Florida Statutes, to read:

28.2221 Electronic access to official records.—

(6) (a) Each county recorder or clerk of the court must make  
the identity of each defendant or respondent against whom a





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11 protective injunction under s. 741.30, s. 784.046, or s.  
12 784.0485 is entered as well as the fact that a protective  
13 injunction under s. 741.30, s. 784.046, or s. 784.0485 has been  
14 entered against that defendant or respondent publicly available  
15 on an Internet website for general public display, unless the  
16 defendant or respondent is a minor.

17 (b) Any information specified in this subsection not made  
18 available by the county recorder or clerk of the court on a  
19 publicly available Internet website for general public display  
20 prior to July 1, 2021, must be made publicly available if the  
21 affected party identifies the information and requests that it  
22 be made publicly available. Such request must be in writing and  
23 delivered by mail, facsimile, or electronic transmission, or in  
24 person to the county recorder or clerk of the court. The request  
25 must specify the case number assigned to the protective  
26 injunction. No fee may be charged for the addition of  
27 information pursuant to such request.

28 (c) No later than 30 days after July 1, 2021, notice of the  
29 right of any affected party to request the addition of  
30 information pursuant to this subsection shall be conspicuously  
31 and clearly displayed by the county recorder or clerk of the  
32 court on the publicly available Internet website on which images  
33 or copies of the county's public records are placed and in the  
34 office of each county recorder or clerk of the court. Such  
35 notice must contain appropriate instructions for making the  
36 addition request in person, by mail, by facsimile, or by  
37 electronic transmission. The notice shall state, in  
38 substantially similar form, that any person has a right to  
39 request that a county recorder or clerk of the court add



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40 information to a publicly available Internet website if that  
41 information involves the identity of a defendant or respondent  
42 against whom a protective injunction is entered, unless the  
43 defendant or respondent is a minor. Such request must be made in  
44 writing and delivered by mail, facsimile, or electronic  
45 transmission, or in person to the county recorder or clerk of  
46 the court. The request must specify the case number assigned to  
47 the protective injunction. No fee will be charged for the  
48 addition of a document pursuant to such request.

49 (d) Any affected person may petition the circuit court for  
50 an order directing compliance with this subsection.

51 Section 3. Section 28.29, Florida Statutes, is amended to  
52 read:

53 28.29 Recording of orders and judgments.—Orders of  
54 dismissal and final judgments of the courts in civil actions,  
55 including final judgments for injunctions for protection as  
56 defined in chapters 781 and 784, must ~~shall~~ be recorded in  
57 official records. Other orders must ~~shall~~ be recorded only on  
58 written direction of the court. The direction may be by  
59 incorporation in the order of the words “To be recorded in  
60 official records” or words to that effect. Failure to record an  
61 order or judgment shall not affect its validity. The certified  
62 copy of a judgment, required under s. 55.10 to become a lien on  
63 real property, shall be recorded only when presented for  
64 recording with the statutory service charge.

65 Section 4. This act shall take effect July 1, 2021.

66  
67 ===== T I T L E A M E N D M E N T =====

68 And the title is amended as follows:



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69 Delete everything before the enacting clause  
70 and insert:

71 A bill to be entitled  
72 An act relating to public records; providing a short  
73 title; amending s. 28.2221, F.S.; requiring each  
74 county recorder or clerk of the court to make publicly  
75 available on an Internet website the identity of a  
76 defendant or respondent against whom a protective  
77 injunction is entered as well as the fact the  
78 injunction has been entered; providing for certain  
79 persons to request that such information be made  
80 available on the public website; requiring county  
81 recorders or clerks of court to post such notices on  
82 the website; specifying what must be included in  
83 notices; authorizing certain persons to petition for  
84 compliance in the circuit court; amending s. 28.29,  
85 F.S.; requiring that final judgments for injunctions  
86 for protection be recorded in official records;  
87 providing an effective date.

By Senator Book

32-00433B-21

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A bill to be entitled

An act relating to public records; providing a short title; amending s. 119.071, F.S.; specifying that a public records exemption for criminal intelligence information and criminal investigative information does not apply to the identity of certain persons charged with, or found guilty of, specified crimes; amending s. 28.2221, F.S.; requiring county recorders and clerks of court to post identifying information for offenders in cases where protective injunctions were entered for the protection of minors; providing for certain persons to request that such information be made available on the public website; requiring county recorders or clerks of court to post such notices on the website; authorizing certain persons to petition for compliance in the circuit court; providing an effective date.

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

Section 1. This act shall be known as "Serena's Law."

Section 2. Paragraph (h) of subsection (2) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(2) AGENCY INVESTIGATIONS.—

(h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State

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

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Constitution:

a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).

b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.

c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.

2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:

a. In the furtherance of its official duties and responsibilities.

b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

c. To another governmental agency in the furtherance of its

Page 2 of 4

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59 official duties and responsibilities.

60 3. This exemption applies to such confidential and exempt  
61 criminal intelligence information or criminal investigative  
62 information held by a law enforcement agency before, on, or  
63 after the effective date of the exemption.

64 4. This exemption does not apply to the identity of a  
65 person, other than a minor, who is charged with or found guilty  
66 of any of the offenses identified in subparagraph 1.

67 Section 3. Subsection (6) is added to section 28.2221,  
68 Florida Statutes, to read:

69 28.2221 Electronic access to official records.—

70 (6) (a) Each county recorder or clerk of the court, as  
71 applicable, shall post on its publicly available website all  
72 notices of entry of an injunction for the protection of a minor  
73 which includes the identity of each adult defendant or  
74 respondent against whom the injunction is entered.

75 (b) Information specified in this subsection that is not  
76 available on a publicly available website by December 31, 2021,  
77 must be made available to the general public on the website if  
78 the minor, or his or her representative, identifies the  
79 information and requests that it be made publicly available.  
80 Such request must be made in writing and must identify the case  
81 number assigned to the protective injunction and be personally  
82 delivered or delivered by mail, facsimile, or electronic  
83 transmission to the county recorder or clerk of the court. A fee  
84 may not be charged for the addition of information pursuant to  
85 such request.

86 (c) No later than December 31, 2021, notice of the right of  
87 the minor, or his or her representative, to request the addition

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88 of such information to the publicly available website must be  
89 conspicuously and clearly displayed by the county recorder or  
90 the clerk of the court, as applicable, on its publicly available  
91 website and in the office of each county recorder or clerk of  
92 the court. In addition, no later than December 31, 2021, the  
93 county recorder or the clerk of the court must have twice  
94 published, on separate dates, a notice of such right in a  
95 newspaper of general circulation in the county where the county  
96 recorder's or clerk of court's offices are located as provided  
97 in chapter 50. Such notice must include instructions for making  
98 the request. The notice must state that the minor or his or her  
99 representative has a right to request that a county recorder or  
100 clerk of court add such information to a publicly available  
101 website as provided in paragraph (b). A fee will not be charged  
102 for the addition of a document pursuant to such request.

103 (d) Any minor or his or her representative may petition the  
104 circuit court for an order directing compliance with this  
105 subsection.

106 Section 4. This act shall take effect July 1, 2021.

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**From:** Zach Lombardo <zlombardo@wpl-legal.com>  
**Sent:** Thursday, March 18, 2021 11:15 AM  
**To:** Erickson, Mike <ERICKSON.MIKE@flsenate.gov>  
**Subject:** RE: Serena's Law

Mike,

Here are some edits:

1. I spoke with my clients and, per my earlier emails, there are two other injunctions against this individual for the protection of minors that I am aware of, not three. I am aware of them because our firm was involved, in various capacities, in all three of the injunctions (this includes the one for protection of Serena). As previously stated, Serena's injunction was the first of the three. After further discussion, it appears that the third and most recent injunction was issued by the state of Alabama and while no Florida legislative change would affect its searchability, part of the goal here is to make it known that this individual has a problem and should not be allowed to be unsupervised around children.
2. Regarding the records searches, there were three incidents. The first was a volunteer effort with a youth focused charity the offender pursued through his place of employment. The volunteer organization was notified of the injunction. The volunteer organization was unable to find the and verify the injunction, including through the use of a background check. The second was also a volunteer effort the offender pursued through his place of employment with a different youth focused charity. This charity was also unable to find and verify the injunction. The third was also a volunteer effort the offender pursued through his place of employment with a different youth focused charity. This final charity, was able to find the injunction because the background search tool it used had access to a law enforcement database.
3. As an additional note, our firm has a Lexis Nexis public records searching tool and that tool does not show any of the injunctions discussed above, or any other ones that may be out there.

- Zachary W. Lombardo, Esq.



FCCC | 3544 Maclay Blvd | Tallahassee, Florida 32312 | (850) 921-0808

## FCCC BILL ANALYSIS

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<b>BILL NUMBER:</b>	SB 1508
<b>SUBJECT:</b>	Public Records
<b>SPONSOR:</b>	Senator Book
<b>COMMITTEE REFERENCE:</b>	Criminal Justice Committee; Judiciary Committee; Appropriations Committee
<b>SIMILAR/IDENTICAL BILL:</b>	HB 1229
<b>LEAD STAFF:</b>	Jason Harrell, Director of Legislative & Public Affairs

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### BILL SUMMARY:

The bill creates an act to be known as “Serena’s Law.”

The bill amends s. 119.071, F.S., to specify that the public records exemption relating to criminal intelligence information and criminal investigative information does not apply to the identity of a person, other than a minor, who is charged or found guilty of certain delineated crimes, including child abuse, human trafficking, and sexual offenses.

The bill amends s. 28.2221, F.S., to require county recorders or Clerks of Court, as applicable, to post on its publicly available website all notices of entry of an injunction for the protection of a minor which includes the identity of each adult defendant or respondent against whom the injunction is entered. If such information is not available on a publicly available website by December 31, 2021, the bill requires such information to be made available on the website to the general public if the minor, or his or her representative, identifies the information and requests that it be made publicly available. A fee may not be charged for the addition of information pursuant to such request. The bill provides that the request to make such information publicly available must:

- Be made in writing;
- Identify the case number assigned to the protective injunction; and
- Be personally delivered or delivered by mail, facsimile, or electronic transmission to the county recorder or Clerk of Court.

Tara S. Green  
Clay County  
*President*

Angelina “Angel” Colonnese, Esq.  
Manatee County  
*President-Elect*

Carolyn Timmann  
Martin County  
*Vice President*

Barry Baker  
Suwannee County  
*Treasurer*

Tiffany Moore Russell, Esq.  
Orange County  
*Secretary*

Chris Hart IV  
*Chief Executive Officer*

The bill further amends s. 28.2221, F.S., to provide that, no later than December 31, 2021, notice of the right of the minor, or his or her representative, to request the addition of the aforementioned information to the publicly available website must be conspicuously and clearly displayed by the county recorder or the Clerk of Court, as applicable, on its publicly available website and in the office of each county recorder or Clerk of Court.

Finally, the bill amends s. 28.2221, F.S., to require the county recorder or the Clerk of Court, no later than December 31, 2021, to have published twice, on separate dates, a notice of the right of the minor in a newspaper of general circulation in the county where the county recorder's or Clerk's offices are located, as provided in Ch. 50, F.S. The bill requires notice of such right to include instructions for making the request and to also state that the minor, or his or her representative, has a right to request that a county recorder or Clerk of Court add the aforementioned information to a publicly available website. A fee will not be charged for the addition of a document pursuant to such a request.

Any minor, or his or her representative, may petition the circuit court for an order directing compliance with the proposed requirements provided in s. 28.2221, F.S.

The bill has an effective date of July 1, 2021.

#### **CURRENT SITUATION:**

Article I, s. 24(a) of the Florida Constitution provides every person the right to inspect or copy any record made or received in connection with official government business, which includes all three branches of government and the official business of each constitutional officer.<sup>1</sup> The Public Records Act, Ch. 119, F.S., establishes a state policy that government records, with specific exceptions, should be open at all times to the public.<sup>2</sup>

Florida Rule of Judicial Administration 2.420 governs public access to records of the judicial branch and requires that the public have access to all such records unless otherwise provided.<sup>3</sup>

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<sup>1</sup> Art. I, s. 24(a), Fla. Const.; see art. V, s. 16, Fla. Const. (Clerks are considered constitutional officers).

<sup>2</sup> See ss. 119.01–.15, F.S.

<sup>3</sup> Fla. R. Jud. Admin. 2.420(a); see Fla. R. Jud. Admin. 2.420(b)(1) ("Records of the judicial branch" are all records, regardless of physical form, characteristics, or means of transmission, made or received in connection with the transaction of official business by any judicial branch entity and consist of: (A) "court records," which are the contents of the court file, including the progress docket and other similar records generated to document activity in a case, transcripts filed with the clerk, documentary exhibits in the custody of the clerk, and electronic records, videotapes, or stenographic tapes of depositions or other proceedings filed with the clerk and electronic records, videotapes, or stenographic tapes of court proceedings; and (B) "administrative records," which are all other records made or received pursuant to court rule, law, or ordinance or in connection with the transaction of official business by any judicial branch entity); see *State v. Wooten*, 260 So. 3d 1060, 1069–70 (Fla. 4th DCA 2018).



Rule 2.420 is a codification of a recognized common law right of access to court records.<sup>4</sup> As such, the Florida Supreme Court has established a strong presumption in favor of public access to court proceedings and their records, “[s]ubject to certain narrowly defined exceptions.”<sup>5</sup> While the Clerk is an arm of the judicial branch and designated as the custodian of all court records, public access to judicial records is governed by the rules and decisions of the Florida Supreme Court, not the Public Records Act.<sup>6</sup>

Section 119.071, F.S., provides general exemptions from inspection or copying of certain categories of public records.<sup>7</sup> Information relating to the following categories is exempted: agency administration; agency investigations; security and firesafety; agency personnel information; and other personal information.<sup>8</sup> In addition, s. 119.0714(1), F.S., provides public records exemptions for various types of personal information contained in a court file. Information currently exempt from public records requirements includes petitions, and the contents thereof, for injunctions for protection against domestic violence, repeat violence, dating violence, sexual violence, and stalking or cyberstalking, that are dismissed as insufficient.<sup>9</sup> Any information that can be used to identify a petitioner or respondent in such a petition and any affidavits, notice of hearing, and temporary injunction, is confidential and exempt until the respondent has been personally served.<sup>10</sup>

The Clerk of Court is designated as the county recorder of all instruments that he or she may be required or authorized by law to record in the county where he or she is the Clerk.<sup>11</sup> The Clerk is required to record all such instruments in one general series called “Official Records,”<sup>12</sup> which must be open to the public for the purpose of inspecting and making extracts of the instruments, under the Clerk’s supervision.<sup>13</sup>

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<sup>4</sup> *Wooten*, 260 So. 3d at 1071.

<sup>5</sup> *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113, 114 (Fla. 1988).

<sup>6</sup> s. 28.24(e)1., F.S.; see *Wooten*, 260 So. 3d at 1069–70 (further stating that Rule 2.420 “contains specific references to chapter 119 when exemptions under that chapter apply”); see Fla. R. Jud. Admin. 2.420(c)(7) (providing that confidential and exempt records include “all records made confidential under the Florida and United States Constitutions and Florida and federal law”).

<sup>7</sup> See generally s. 119.071(1)–(5), F.S.; see also s. 119.071(2)(h)1. (delineating the types of criminal intelligence information or criminal investigative information that is confidential and exempt, which includes the identity of a victim).

<sup>8</sup> See generally s. 119.071(1)–(5), F.S.

<sup>9</sup> s. 119.0714(1)(k)1.–2., F.S.

<sup>10</sup> s. 119.0714(1)(k)3., F.S.

<sup>11</sup> s. 28.222(1), F.S.; see s. 28.222(3)(a)–(h), F.S. (listing the kinds of instruments that the Clerk is required to record as the county recorder).

<sup>12</sup> s. 28.222(2), F.S.; see s. 28.001(2), F.S. (providing that the term “public records” includes each official record).

<sup>13</sup> s. 28.222(7), F.S. (providing that the Clerk “shall not be required to perform any service in connection with such inspection or making of extracts without payment of service charges as provided in s. 28.24”).

Section 28.2221, F.S., governs electronic access to official records, providing the public with access to public records and information on the Internet.<sup>14</sup> The Legislature has found that a proper and legitimate state purpose is also served by preventing disclosure of records and information made exempt by law from public disclosure.<sup>15</sup> Under current law, no county recorder or Clerk of Court may place an image or copy of a public record on a publicly available website for general public display if that image or copy is of a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules.<sup>16</sup>

In Florida, five different types of protective injunctions are available: (1) domestic violence; (2) sexual violence; (3) dating violence; (4) repeat violence; and (5) stalking or cyberstalking.<sup>17</sup> Currently, the Florida Rules of Family Law are applicable to all actions concerning the five types of protective injunctions.<sup>18</sup>

#### **EFFECT OF BILL:**

To the different types of protective injunctions currently available in the state, this bill would create an injunction for the protection of a minor, under the proposed addition of subsection (6) to s. 28.2221, F.S. Regarding petition filing requirements, it is unclear as to whether a minor child, or the parent or guardian of a minor child, may seek to file a petition.

In addition, the bill would require the creation of a notice of injunction, that each county recorder or Clerk of Court must post on its publicly available website for general public display, and which must include the identity of each adult defendant or respondent against whom the injunction is entered.<sup>19</sup> As drafted, the bill provides such a requirement in Ch. 28, F.S., and from a technical standpoint, a specific reference to Ch. 119, F.S., may be required for a notice of injunction.

#### **OPERATIONAL IMPACT:**

The bill would require Clerks of Court to ensure that a new notice space is added to the Clerks' publicly available websites. Overall, Clerks of Court do not anticipate any significant operational impact.

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<sup>14</sup> s. 28.2221(1), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> s. 28.2221(5)(a), F.S.

<sup>17</sup> *Injunctions*, Florida Courts, <https://www.flcourts.org/Resources-Services/Court-Improvement/Family-Courts/Domestic-Violence/Injunctions> (last visited Mar. 11, 2021).

<sup>18</sup> *See* Fla. Fam. L. R. P. 12.010(a)(1).

<sup>19</sup> *But see* s. 28.2221(5)(a), F.S.

**FISCAL IMPACT:**

Clerks do anticipate an increase in labor costs on the court side, as it would be necessary to track the status of petition filings to post notices of injunctions on the Clerks' publicly available websites.

The bill requires Clerks to publish twice, on separate dates, a notice of the right of the minor in a newspaper of general circulation in the county where the county recorder's or Clerk's offices are located, as provided in Ch. 50, F.S., which may have an indeterminate negative fiscal impact for Clerks of Court.

**ADDITIONAL INFORMATION:**

As drafted, the bill provides for a publication requirement in Ch. 28, F.S., and from a technical standpoint, a specific reference to Ch. 119, F.S., may be required for a notice of the right of the minor.



# 2021 FDLE LEGISLATIVE BILL ANALYSIS



BILL INFORMATION	
<b>BILL NUMBER:</b>	SB 1508
<b>BILL TITLE:</b>	Public Records
<b>BILL SPONSOR:</b>	Senator Book
<b>EFFECTIVE DATE:</b>	July 1, 2021

COMMITTEES OF REFERENCE
1) Criminal Justice
2) Judiciary
3) Appropriation
4)
5)

CURRENT COMMITTEE
Criminal Justice

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

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

IDENTICAL BILLS	
<b>BILL NUMBER:</b>	HB 1229
<b>SPONSOR:</b>	Bartleman

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
<b>DATE OF ANALYSIS:</b>	March 10, 2021
<b>LEAD AGENCY ANALYST:</b>	Chris Bufano
<b>ADDITIONAL ANALYST(S):</b>	Becky Bezemek
<b>LEGAL ANALYST:</b>	Jim Martin, Kate Holmes
<b>FISCAL ANALYST:</b>	Cynthia Barr

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**POLICY ANALYSIS**

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**1. EXECUTIVE SUMMARY**

Amends ss. 119.071 and 28.2221, FS, providing a public records exemption for criminal intelligence information and criminal investigative information does not apply to the identity of certain persons charged with, or found guilty of, specified crimes; requires county recorders and clerks of court to post identifying information for offenders in cases where protective injunctions were entered for the protection of minors; requires county recorders or clerks of court to post such notices on the website; authorizes certain persons to petition for compliance in the circuit court.

**2. SUBSTANTIVE BILL ANALYSIS**

1. **PRESENT SITUATION:** There is no current exception to the public records exemption contained the bill. Currently county recorders and clerks of court are not required to publicly post on their websites notices of entry of injunctions for protection.
2. **EFFECT OF THE BILL:** Removes public records exemption contained in s. 119.071(2)(h), FS, the identity of a person, other than a minor, who is charged with or found guilty of human trafficking and certain sexual offenses. County recorders and clerks of court will be required to post on their public websites all notices of entry of an injunction for the protection of a minor including the identity of each adult defendant or respondent against whom the injunction is entered. By December 31, 2021, county recorders and clerks of court must provide notice on their public website of the right of the minor or representative to request such information be posted. Minors or their representatives may petition the circuit court for enforcement of these provisions.
3. **DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES OR PROCEDURES?** Y  N

If yes, explain:	
What is the expected impact to 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?**

List any known proponents and opponents:	
Provide a summary of the proponents' and opponents' positions:	

**5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?** Y  N 

If yes, provide a description:	
Date Due:	
Bill Section Number:	

**6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL?** Y  N 

Board:	
Board Purpose:	

Who Appointments:	
Appointee Term:	
Changes:	
Bill Section Number(s):	

**FISCAL ANALYSIS**

**1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y  N**

Revenues:	
Expenditures:	
Does the legislation increase local taxes or fees?	
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:	
Expenditures:	
Does the legislation contain a State Government appropriation?	
If yes, was this appropriated last year?	

**3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y  N**

Revenues:	
Expenditures:	
Other:	

**4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y  N**

Does the bill increase taxes, fees or fines?	
Does the bill decrease taxes, fees or fines?	

What is the impact of the increase or decrease?	
Bill Section Number:	

**TECHNOLOGY IMPACT**

**1. DOES THE LEGISLATION 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.	
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**FEDERAL IMPACT**

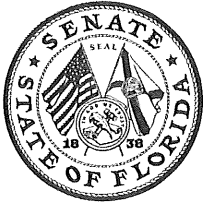
**1. DOES THE LEGISLATION HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y  N**

If yes, describe the anticipated impact including any fiscal impact.	
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**LEGAL - GENERAL COUNSEL’S OFFICE REVIEW**

<p>Issues/concerns/comments and recommended action:</p>	<ul style="list-style-type: none"> <li>• Lines 64-66 may not be necessary, as public records related to a charge or conviction of a crime would not be exempt after criminal discovery. Additionally, the name of a person charged with a crime is already not considered exempt as active criminal intelligence information or active criminal investigative information.</li> <li>• Regarding a juvenile charged with specified offenses, a juvenile’s name, address or photo who is charged with a felony is currently not confidential or exempt (s. 985.04(2)(a)1., FS). As a result, this amendment to Ch. 119, FS, would directly conflict with this provision of statute where if it was a juvenile charged with sexual battery (a felony), the child’s name would/could be released.</li> </ul>
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**ADDITIONAL COMMENTS**



The Florida Senate

## Committee Agenda Request

**To:** Senator Jason Pizzo, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** March 5, 2021

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I respectfully request that **Senate Bill 1508**, relating to Public Records, be placed on the:

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

Thank you for your consideration.

A handwritten signature in cursive script that reads "Lauren Book".

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Senator Lauren Book  
Florida Senate, District 32



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

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

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

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BILL: CS/SB 1530

INTRODUCER: Criminal Justice Committee and Senator Book

SUBJECT: Victims of Sexual Offenses

DATE: March 24, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	<b>Fav/CS</b>
2.			ACJ	
3.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1530 amends s. 27.14, F.S., to provide that a victim of a sexual battery or cyberstalking may petition the Governor for an executive order to disqualify a state attorney and appoint a different state attorney if the victim presents sufficient evidence to show:

- A willful disregard of the evidence; and
- Repeated failure of a state attorney to prosecute a particular crime.

The bill sets forth that the purpose of a Sexual Assault Response Team (SART) is to ensure a coordinated multidisciplinary response to sexual violence. The bill requires all county health departments, or a designee for the department, to participate in the local SART if one exists. If no local SART exists, the certified rape crisis center serving the county may coordinate with community partners to establish a local or a regional team.

The bill provides that local SARTs will be coordinated by the certified rape crisis center serving the county, who will select the SART membership in collaboration with community partners. The SARTs membership should include the members listed in the bill, at a minimum, who must meet at least quarterly. Each SART must create written protocols to govern the SARTs response to sexual assault.

The bill requires each SART to promote and support the use of sexual assault forensic examiners who have received a minimum of 40 hours of specialized training in the provision of trauma-informed medical care and in the collection of evidence for sexual assault victims. The Florida

Council Against Sexual Violence (FCASV) will provide technical assistance relating to the development and implementation of the SARTs. The SARTs will send an annual report to the FCASV that will publish the report on its website.

The bill becomes effective July 1, 2021.

## II. Present Situation:

### The Offenses of Sexual Battery and Cyberstalking

Sexual battery is defined in s. 794.011(1)(h), F.S., as oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

Generally, it is a second degree felony<sup>1</sup> for a person to commit one of the acts described in s. 794.011(1)(h), F.S., without the victim's consent, where:

- The perpetrator is 18 years of age or older;
- The victim is 18 years of age or older, and
- In the process the perpetrator does not use physical force and violence likely to cause serious personal injury.<sup>2</sup>

The penalties for committing a sexual battery increase as the circumstances of the criminal act change. For example, a person commits a first degree felony<sup>3</sup> when a person 18 years of age or older commits sexual battery upon:

- A person 12 years of age or older but younger than 18 years of age, without that person's consent, and
- In the process does not use physical force and violence likely to cause serious personal injury.<sup>4</sup>

A person commits cyberstalking when he or she engages in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose. A person also commits the offense of cyberstalking if he or she accesses, or attempts to access, the online accounts or Internet-connected home electronic systems of another person without that person's permission, which causes substantial emotional distress to that person and serves no legitimate purpose.<sup>5</sup>

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<sup>1</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>2</sup> Section 775.011(5)(b), F.S.

<sup>3</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>4</sup> Section 794.011(5)(a), F.S.

<sup>5</sup> Section 784.048(1)(d), F.S. Depending on the particular circumstances, cyberstalking ranges from a first degree misdemeanor [See s. 784.048(2), F.S.], punishable by up to 1 year in the county jail and a \$1,000 fine, to a third degree felony [See s. 784.048(3), (4), (5), and (7), F.S.], punishable by up to 5 years imprisonment and a \$5,000 fine [See s. 784.048(3), (4), (5), and (7), F.S.]. Sections 775.082, and 775.083, F.S.

## Sexual Battery Victim Services

The Florida Department of Health (DOH) requires that any licensed facility which provides emergency room services shall arrange for the rendering of appropriate medical attention and treatment of victims of sexual assault through:

- Gynecological, psychological, and medical services as are needed by the victim;
- The gathering of forensic medical evidence required for investigation and prosecution from a victim who has reported a sexual battery to a law enforcement agency or who requests that such evidence be gathered for a possible future report; and
- The training of medical support personnel competent to provide the medical services and treatment.<sup>6</sup>

The OAG reimburses medical providers up to \$1,000 for an initial forensic examination.<sup>7</sup> Additionally, relocation assistance for victims of sexual battery can be provided by the OAG up to \$1,500 on any one claim and a lifetime maximum of \$3,000.<sup>8</sup>

Section 794.052, F.S., requires the law enforcement officer investigating the sexual battery to:

- Provide or arrange for transportation of a victim of sexual battery to an appropriate facility for medical treatment or forensic examination;
- Immediately notify sexual battery victims of their legal rights and remedies;
- Assist them in obtaining any necessary medical treatment resulting from the alleged incident, a forensic examination, and crisis-intervention services from a certified rape crisis center;
- Provide for a review of the officer's final report by a victim and an opportunity for a statement about the report by the victim; and
- Advise sexual battery victims that they can contact a certified rape crisis center about services,<sup>9</sup> including the presence of a victim advocate from a certified rape crisis center at any forensic medical examination.<sup>10</sup>

Services in the aftermath of a sexual battery are generally provided locally by certified Rape Crisis Centers and volunteers. A "Rape Crisis Center" is any public or private agency that offers assistance to victims of sexual assault or sexual battery and their families.<sup>11</sup> The Florida Council Against Sexual Violence (FCASV) is a statewide nonprofit organization committed to victims and survivors of sexual violence and the sexual assault crisis programs that serve them. The FCASV certifies Rape Crisis Centers.<sup>12</sup>

## Sexual Assault Response Teams

A sexual assault response team (SART) is a community-based team that convenes regularly and coordinates the local response to sexual assault victims. SARTs are often comprised of sexual assault nurse examiners (SANEs), sexual assault victim advocates, law enforcement officials,

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<sup>6</sup> Section 395.1021, F.S.

<sup>7</sup> Section 960.28(2), F.S.

<sup>8</sup> Section 960.199(1), F.S.

<sup>9</sup> Section 794.052, F.S.

<sup>10</sup> See s. 960.001(1)(u), F.S.

<sup>11</sup> Section 90.5035(1)(a), F.S.

<sup>12</sup> FCASV, *About FCASV*, available at <https://www.fcasv.org/about-fcasv> (last visited March 16, 2021).

and prosecutors. These teams work to develop a stronger understanding of victimization and the positive effects of trauma-informed training. SARTs support victims, provide expertise for prosecution, and maintain a victim-centered, offender-focused approach to review sexual assault case files.<sup>13</sup> The FCASV currently coordinates the Statewide SART Advisory Committee.<sup>14</sup>

### **State Attorneys**

State Attorneys are constitutional officers. The Florida Constitution provides that “In each judicial circuit a state attorney shall be elected for a term of four years. Except as otherwise provided in this constitution, the state attorney shall be the prosecuting officer of all trial courts in that circuit and shall perform other duties prescribed by general law.”<sup>15</sup>

State attorneys are quasi-judicial officers<sup>16</sup> but the decision to prosecute is an executive function.<sup>17</sup> “Under Florida’s constitution, the decision to charge and prosecute [for a criminal offense] is an executive responsibility, and the state attorney has complete discretion in deciding whether and how to prosecute.”<sup>18</sup>

State attorneys have subpoena powers to summon witnesses before him or her to testify about matters under investigation.<sup>19</sup> Whenever required by the grand jury, the state attorney must assist them for the purpose of examining witnesses in their presence, or of giving legal advice in any matter before them, and he or she shall prepare bills of indictment.<sup>20</sup>

### **The Governor’s Ability to Disqualify a State Attorney**

Section 27.14, F.S., provides that if any state attorney is “disqualified” to represent the State in any investigation, case, or matter pending in the courts, or if for “any other good and sufficient reason” the Governor determines that “the ends of justice would be best served” the Governor can either:

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<sup>13</sup> Sexual Assault Kit Initiative and RTI International, *A Multidisciplinary Approach to Cold Case Sexual Assault: Guidance for Establishing an MDT or a SART*, available at <https://www.sakitta.org/toolkit/docs/A-Multidisciplinary-Approach-to-Cold-Case-Sexual-Assault-Guidance-for-Establishing-an-MDT-or-a-SART.pdf> (last visited March 16, 2021).

<sup>14</sup> The Statewide SART Advisory Committee is a statewide group coordinated by the FCASV and comprised of representatives from a broad range of disciplines whose work brings them into contact with rape survivors. The committee works to assess and improve Florida’s response to survivors of sexual violence at the state and local level. FCASV, SART, available at <https://www.fcasv.org/new-statewide-sart-advisory-committee> (last visited March 16, 2021).

<sup>15</sup> Fla. Const. Art. V, Section 17.

<sup>16</sup> See *Office of the State Attorney, Fourth Judicial Circuit of Florida v. Parrotino*, 628 So.2d 1097 (Fla. 1993), discussing prosecutorial immunity, judicial immunity, and separation of powers.

<sup>17</sup> “A state attorney, while being a quasi-judicial officer, also shares some attributes of the executive. A judicial attempt to interfere with the decision whether and how to prosecute violates the executive component of the state attorney’s office. Immunity from suit, on the other hand, arises from the quasi-judicial nature of the office.” *Id.*, note 2.

<sup>18</sup> *State v. Bloom*, 497 So.2d 2, 3 (Fla. 1986); However, “[i]t is not the duty of a State Attorney merely to secure convictions; the State Attorney is required to represent the State, it is his duty to present all of the material facts known to him to the jury; and it is as much his duty to present facts within his knowledge which would be favorable to the defendant as it is to present those facts which are favorable to the State; being an arm of the Court he is charged with the duty of assisting the Court to see that justice is done, and not to assume the role of persecutor.” *Smith v. State*, 95 So.2d 525, 527 (Fla. 1957).

<sup>19</sup> Section 27.04, F.S.

<sup>20</sup> Section 27.03, F.S.

- Order an exchange of circuits or of courts between such state attorney and any other state attorney; or
- Order an assignment of any state attorney to discharge the duties of the state attorney with respect to one or more specified investigations, cases, or matters.<sup>21</sup>

The Governor exercises this authority by signing an executive order and filing it with the Department of State.<sup>22</sup>

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

#### **Sexual Assault Response Teams**

The bill sets forth that the purpose of the SART is to ensure a coordinated multidisciplinary response to sexual violence. The bill requires county health departments, or a designee for the department, to participate in a local SART if one exists. It specifies that SARTs will be coordinated by the local certified rape crisis center. If no local SART exists, the local certified rape crisis center serving the county may coordinate with community partners to establish a local or regional team. The FCASV must provide technical assistance relating to the development and implementation of the SARTs.

SART membership shall be determined by the certified rape crisis center in collaboration with community partners. Membership may consist of the following members or their designees, at a minimum:

- The director of the local certified rape crisis center;
- A representative from the local county health department;
- The state attorney;
- The chief of police;
- The county sheriff;
- Forensic sexual assault nurse examiners; and
- A representative from local hospital emergency departments.

The SART must develop a written protocol to govern the team's response to sexual assault that includes:

- The role and responsibilities of each team member;
- Procedural issues regarding the immediate crisis and health care and law enforcement responses and follow-up services provided to a victim;
- Procedures for the preservation, secure storage, and destruction of evidence from a sexual assault evidence kit, including length of storage, site of storage, and chain of custody; and
- Procedures for maintaining the confidentiality of the victim regarding the forensic medical examination.

Each SART must meet at least quarterly, or more often if necessary, to ensure a coordinated multidisciplinary response to sexual violence. The SART must also produce an annual report for the jurisdictions covered by the team that includes local statistics on the number of forensic

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<sup>21</sup> See *Austin v. State ex rel. Christian*, 310 So.2d 289 (Fla. 1975). See also *Ayala v. Scott*, 224 So.3d 755 (Fla. 2017).

<sup>22</sup> Section 27.14(1), F.S.

medical examinations performed, the number of criminal sexual assaults reported to law enforcement, and the number of criminal sexual assaults prosecuted and the outcome of the prosecutions. The FCASV will publish the reports on its website.

The bill requires each SART to promote and support the use of sexual assault forensic examiners who have received a minimum of 40 hours of specialized training in the provision of trauma-informed medical care and in the collection of evidence for sexual assault victims.

### **Disqualification of State Attorney**

The bill amends s. 27.14, F.S., to provide that a victim of a sexual battery or cyberstalking may petition the Governor for an executive order to disqualify a state attorney and appoint a different state attorney if the victim presents sufficient evidence to show:

- A willful disregard of the evidence and
- Repeated failure of a state attorney to prosecute a particular crime.

The bill is effective July 1, 2021.

## **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, Section 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:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 27.14 of the Florida Statutes.

This bill creates section 154.012 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Criminal Justice on March 23, 2021:**

The committee substitute:

- Deletes current Section 1 of the bill related to the AG, replacing it with an amendment to s. 27.14, F.S., which creates a mechanism by which the Governor can disqualify a state attorney (and appoint a different state attorney by executive order) if the victim of a sexual battery or cyberstalking petitions the Governor and presents sufficient evidence to show:
  - A willful disregard of the evidence and
  - The repeated failure of a state attorney to prosecute a particular crime.
- Changes a requirement in the bill that every county health department *establish* a local sexual assault response team (SART). The amendment requires the county health departments to *participate* if one (a local SART) exists.
- Specifies that SARTs will be coordinated by the certified rape crisis center serving the county, who will select the SART membership in collaboration with community partners.
- Specifies that if there is no SART in existence, the local certified rape crisis center may coordinate with community partners to establish a local or a regional team.
- Alters SART membership in the bill to include:
  - The director of the local certified rape crisis center;
  - A representative (not necessarily from physician or nursing leadership) from a local hospital emergency department;

- Forensic sexual assault nurse examiners (rather than a forensic sexual assault nurse examiner or a designated health care provider who performs forensic medical examinations and collects evidence); and
- A representative of the local county health department.
- Requires that SARTs submit their annual reports to the FCASV to be published on FCASV's website.
- Deletes Section 3 of the bill related to payment of insurance claims.
- Deletes the sections of the bill related to training of law enforcement training.

**B. Amendments:**

None.





905096

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/23/2021	.	
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The Committee on Criminal Justice (Book) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsections (2) and (3) of section 27.14,  
Florida Statutes, are renumbered as subsections (3) and (4),  
respectively, and subsection (2) is added to that section, to  
read:

27.14 Assigning state attorneys to other circuits.—

(2) A victim of a sexual battery or cyberstalking may



905096

11 petition the Governor to disqualify a state attorney pursuant to  
12 subsection (1) if sufficient evidence is presented that shows a  
13 willful disregard of the evidence and repeated failure of a  
14 state attorney to prosecute a particular crime.

15 Section 2. Section 154.012, Florida Statutes, is created to  
16 read:

17 154.012 Sexual assault response teams; membership; duties.-

18 (1) The health department in every county in this state, or  
19 its designee, shall participate in the local sexual assault  
20 response team coordinated by the certified rape crisis center  
21 serving the county if such a team exists. If a local sexual  
22 assault response team does not exist, the certified rape crisis  
23 center serving the county may coordinate with community partners  
24 to establish a local or a regional team. The purpose of the  
25 sexual assault response team is to ensure a coordinated  
26 multidisciplinary response to sexual violence.

27 (2) Each team shall develop a written protocol to govern  
28 the team's response to sexual assault that includes:

29 (a) The role and responsibilities of each team member.

30 (b) Procedural issues regarding the immediate crisis and  
31 health care and law enforcement responses and follow-up services  
32 provided to a victim.

33 (c) Procedures for the preservation, secure storage, and  
34 destruction of evidence from a sexual assault evidence kit,  
35 including length of storage, site of storage, and chain of  
36 custody.

37 (d) Procedures for maintaining the confidentiality of the  
38 victim regarding the forensic medical examination.

39 (3) Membership of each team shall be determined by the



40 certified rape crisis center in collaboration with community  
41 partners. At a minimum, membership should include the following  
42 persons or their designees:

- 43 (a) The director of the local certified rape crisis center;
- 44 (b) A representative from the county health department;
- 45 (c) The state attorney;
- 46 (d) The chief of police;
- 47 (e) The county sheriff.
- 48 (f) Forensic sexual assault nurse examiners; and
- 49 (g) A representative from local hospital emergency  
50 departments;

51 (4) The Florida Council Against Sexual Violence shall  
52 provide technical assistance relating to the development and  
53 implementation of the teams.

54 (5) Each team shall promote and support the use of  
55 qualified sexual assault forensic examiners who have  
56 successfully completed a minimum of 40 hours of specialized  
57 training in the provision of trauma-informed medical care and in  
58 the collection of evidence for sexual assault victims.

59 (6) Each team shall meet at least quarterly, or more often  
60 as determined by the team's membership, to ensure a coordinated  
61 multidisciplinary response to sexual violence and shall produce  
62 an annual report for the jurisdictions covered by the team that  
63 includes local statistics on the number of forensic medical  
64 examinations performed, the number of criminal sexual assaults  
65 reported to law enforcement, the number of cases referred by law  
66 enforcement for prosecution, the number of criminal sexual  
67 assaults prosecuted and the outcome of the prosecutions. The  
68 annual report shall be submitted to the Florida Council Against



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69 Sexual Violence. The Florida Council Against Sexual Violence  
70 shall publish the annual report on its website.

71 Section 3. Subsection (7) is added to section 943.17,  
72 Florida Statutes, to read:

73 943.17 Basic recruit, advanced, and career development  
74 training programs; participation; cost; evaluation.—The  
75 commission shall, by rule, design, implement, maintain,  
76 evaluate, and revise entry requirements and job-related  
77 curricula and performance standards for basic recruit, advanced,  
78 and career development training programs and courses. The rules  
79 shall include, but are not limited to, a methodology to assess  
80 relevance of the subject matter to the job, student performance,  
81 and instructor competency.

82 (7) The commission, in consultation with the Florida  
83 Council Against Sexual Violence, shall establish minimum  
84 standards for basic and advanced career development training  
85 programs for law enforcement officers that include a culturally  
86 responsive trauma-informed response to sexual assault. After  
87 July 1, 2022, every basic skills course required for law  
88 enforcement officers to obtain initial and continuing education  
89 certification must include training on culturally responsive  
90 trauma-informed interviewing of sexual assault victims and  
91 investigations.

92 Section 4. Section 943.1724, Florida Statutes, is created  
93 to read:

94 943.1724 Training on sexual assault.—

95 (1) The commission shall incorporate a culturally  
96 responsive trauma-informed response to sexual assault into the  
97 course curriculum required for a law enforcement officer to



98 obtain initial certification.

99 (2) Each law enforcement officer must successfully complete  
100 training on sexual violence and interviewing of sexual assault  
101 victims and investigations, with an emphasis on culturally  
102 responsive trauma-informed interviewing of sexual assault  
103 victims and investigations as a part of the basic recruit  
104 training, as required under s. 943.13(9), training required  
105 under s. 943.131(4) (a), or as a part of continuing training or  
106 education required under s. 943.135(1), before July 1, 2024. If  
107 an officer fails to complete the required training, his or her  
108 certification must be placed on inactive status until the  
109 employing agency notifies the commission that the officer has  
110 completed the training.

111 Section 5. This act shall take effect July 1, 2021.

112  
113 ===== T I T L E A M E N D M E N T =====

114 And the title is amended as follows:

115 Delete everything before the enacting clause  
116 and insert:

117 A bill to be entitled  
118 An act relating to victims of sexual offenses;  
119 amending s. 27.14, F.S.; providing for a victim of  
120 sexual battery or cyberstalking to petition the  
121 Governor to disqualify a state attorney under limited  
122 circumstances; creating s. 154.012, F.S.; requiring  
123 county health departments to participate in local  
124 sexual assault response teams coordinated by local  
125 certified rape crisis centers, if such a team exists;  
126 providing for establishment of regional sexual assault



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127 response teams; providing for duties, membership,  
128 meetings, technical assistance, and an annual report;  
129 requiring teams to promote and support the use of  
130 sexual assault forensic examiners meeting certain  
131 requirements; amending s. 943.17, F.S.; requiring the  
132 Criminal Justice Standards and Training Commission, in  
133 consultation with the Florida Council Against Sexual  
134 Violence, to establish minimum standards for basic and  
135 advanced career development training programs for law  
136 enforcement officers that include a culturally  
137 responsive trauma-informed response to sexual assault;  
138 requiring every basic skills course for law  
139 enforcement officers to include certain training by a  
140 specified date; creating s. 943.1724, F.S.; requiring  
141 the Criminal Justice Standards and Training Commission  
142 to incorporate a culturally responsive trauma-informed  
143 response to sexual assault into a certain course  
144 curriculum; requiring each law enforcement officer to  
145 successfully complete training on sexual violence and  
146 interviewing of sexual assault victims and  
147 investigations within a within a specified timeframe;  
148 providing requirements for current law enforcement  
149 officers; providing an effective date.



730446

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2021	.	
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The Committee on Criminal Justice (Book) recommended the following:

1           **Senate Substitute for Amendment (905096) (with title**  
2 **amendment)**

3  
4           Delete everything after the enacting clause  
5 and insert:

6           Section 1. Subsections (2) and (3) of section 27.14,  
7 Florida Statutes, are renumbered as subsections (3) and (4),  
8 respectively, and subsection (2) is added to that section, to  
9 read:

10           27.14 Assigning state attorneys to other circuits.—



11 (2) A victim of a sexual battery or cyberstalking may  
12 petition the Governor to disqualify a state attorney pursuant to  
13 subsection (1) if sufficient evidence is presented that shows a  
14 willful disregard of the evidence and repeated failure of a  
15 state attorney to prosecute a particular crime.

16 Section 2. Section 154.012, Florida Statutes, is created to  
17 read:

18 154.012 Sexual assault response teams; membership; duties.-

19 (1) The health department in every county in this state, or  
20 its designee, shall participate in the local sexual assault  
21 response team coordinated by the certified rape crisis center  
22 serving the county if such a team exists. If a local sexual  
23 assault response team does not exist, the certified rape crisis  
24 center serving the county may coordinate with community partners  
25 to establish a local or a regional team. The purpose of the  
26 sexual assault response team is to ensure a coordinated  
27 multidisciplinary response to sexual violence.

28 (2) Each team shall develop a written protocol to govern  
29 the team's response to sexual assault that includes:

30 (a) The role and responsibilities of each team member.

31 (b) Procedural issues regarding the immediate crisis and  
32 health care and law enforcement responses and follow-up services  
33 provided to a victim.

34 (c) Procedures for the preservation, secure storage, and  
35 destruction of evidence from a sexual assault evidence kit,  
36 including length of storage, site of storage, and chain of  
37 custody.

38 (d) Procedures for maintaining the confidentiality of the  
39 victim regarding the forensic medical examination.





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40           (3) Membership of each team shall be determined by the  
41 certified rape crisis center in collaboration with community  
42 partners. At a minimum, membership should include the following  
43 persons or their designees:

44           (a) The director of the local certified rape crisis center;

45           (b) A representative from the county health department;

46           (c) The state attorney;

47           (d) The chief of police;

48           (e) The county sheriff.

49           (f) Forensic sexual assault nurse examiners; and

50           (g) A representative from local hospital emergency

51 departments;

52           (4) The Florida Council Against Sexual Violence shall  
53 provide technical assistance relating to the development and  
54 implementation of the teams.

55           (5) Each team shall promote and support the use of  
56 qualified sexual assault forensic examiners who have  
57 successfully completed a minimum of 40 hours of specialized  
58 training in the provision of trauma-informed medical care and in  
59 the collection of evidence for sexual assault victims.

60           (6) Each team shall meet at least quarterly, or more often  
61 as determined by the team's membership, to ensure a coordinated  
62 multidisciplinary response to sexual violence and shall produce  
63 an annual report for the jurisdictions covered by the team that  
64 includes local statistics on the number of forensic medical  
65 examinations performed, the number of criminal sexual assaults  
66 reported to law enforcement, the number of cases referred by law  
67 enforcement for prosecution, the number of criminal sexual  
68 assaults prosecuted and the outcome of the prosecutions. The



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69 annual report shall be submitted to the Florida Council Against  
70 Sexual Violence. The Florida Council Against Sexual Violence  
71 shall publish the annual report on its website.

72 Section 3. This act shall take effect July 1, 2021.  
73

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

75 And the title is amended as follows:

76 Delete everything before the enacting clause  
77 and insert:

78 A bill to be entitled  
79 An act relating to victims of sexual offenses;  
80 amending s. 27.14, F.S.; providing for a victim of  
81 sexual battery or cyberstalking to petition the  
82 Governor to disqualify a state attorney under limited  
83 circumstances; creating s. 154.012, F.S.; requiring  
84 county health departments to participate in local  
85 sexual assault response teams coordinated by local  
86 certified rape crisis centers, if such a team exists;  
87 providing for establishment of regional sexual assault  
88 response teams; providing for duties, membership,  
89 meetings, technical assistance, and an annual report;  
90 requiring teams to promote and support the use of  
91 sexual assault forensic examiners meeting certain  
92 requirements; providing an effective date.

By Senator Book

32-01176A-21

20211530\_\_

1 A bill to be entitled  
 2 An act relating to victims of sexual offenses;  
 3 amending s. 16.01, F.S.; authorizing the Attorney  
 4 General to review the evidence in alleged cases of  
 5 sexual battery or cyberstalking upon the written  
 6 request of specified persons; authorizing the Attorney  
 7 General to prosecute such cases; providing  
 8 requirements for attorneys assigned to such cases;  
 9 creating s. 154.012, F.S.; requiring counties to  
 10 establish sexual assault response teams; providing for  
 11 duties, membership, meetings, technical assistance,  
 12 and an annual report; requiring teams to promote the  
 13 use of sexual assault forensic examiners meeting  
 14 certain requirements; amending s. 627.6131, F.S.;  
 15 requiring health insurers to establish certain  
 16 alternative methods of delivery of explanation of  
 17 benefits in certain circumstances; amending s. 943.17,  
 18 F.S.; requiring the Criminal Justice Standards and  
 19 Training Commission, in consultation with the Florida  
 20 Council Against Sexual Violence, to establish minimum  
 21 standards for basic and advanced career development  
 22 training programs for law enforcement officers that  
 23 include a culturally responsive trauma-informed  
 24 response to sexual assault; requiring every basic  
 25 skills course for law enforcement officers to include  
 26 certain training by a specified date; creating s.  
 27 943.1724, F.S.; requiring the Criminal Justice  
 28 Standards and Training Commission to incorporate a  
 29 culturally responsive trauma-informed response to

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30 sexual assault into a certain course curriculum;  
 31 requiring each certified law enforcement officer to  
 32 successfully complete a specified number of hours of  
 33 training on sexual violence and interviewing and  
 34 investigations of sexual assault victims within a  
 35 specified timeframe; providing requirements for  
 36 current law enforcement officers; providing an  
 37 effective date.

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

40  
 41 Section 1. Present subsections (4) through (9) of section  
 42 16.01, Florida Statutes, are renumbered as subsections (5)  
 43 through (10), respectively, and a new subsection (4) is added to  
 44 that section, to read:

45 16.01 Residence, office, and duties of Attorney General.—  
 46 The Attorney General:

47 (4) Shall review the evidence in an investigation upon a  
 48 written request by a victim of an alleged sexual battery or  
 49 cyberstalking offense, by the state attorney of the judicial  
 50 circuit in which the alleged sexual battery or cyberstalking  
 51 offense occurred, or by the law enforcement agency that  
 52 investigated the alleged sexual battery or cyberstalking  
 53 offense, to determine whether a charge or charges should be  
 54 filed. If the Attorney General determines that filing a charge  
 55 or charges is appropriate, the Office of the Attorney General  
 56 shall prosecute such case in the judicial circuit in which it  
 57 occurred. The attorney assigned to prosecute the case shall have  
 58 the training and experience required to effectively prosecute

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59 the type of offense in the case to which he or she is assigned.  
 60 Section 2. Section 154.012, Florida Statutes, is created to  
 61 read:  
 62 154.012 Sexual assault response teams; membership; duties.—  
 63 (1) The health department in every county in this state, or  
 64 its designee, shall establish a local sexual assault response  
 65 team or enter into a collaborative agreement with another  
 66 jurisdiction to establish a regional sexual assault response  
 67 team. The purpose of the team is to ensure a coordinated  
 68 multidisciplinary response to sexual violence.  
 69 (2) Each team shall develop a written protocol to govern  
 70 the team's response to sexual assault that includes:  
 71 (a) The role and responsibilities of each team member.  
 72 (b) Procedural issues regarding the immediate crisis and  
 73 health care and law enforcement responses and follow-up services  
 74 provided to a victim.  
 75 (c) Procedures for the preservation, secure storage, and  
 76 destruction of evidence from a sexual assault evidence kit,  
 77 including length of storage, site of storage, and chain of  
 78 custody.  
 79 (d) Procedures for maintaining the confidentiality of the  
 80 victim regarding the forensic medical examination.  
 81 (3) Membership of each team shall consist of the following  
 82 persons or their designees:  
 83 (a) The state attorney.  
 84 (b) The director of the local sexual assault crisis center.  
 85 (c) The chief of police.  
 86 (d) The county sheriff.  
 87 (e) A forensic sexual assault nurse examiner or a

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88 designated health care provider who performs forensic medical  
 89 examinations and collects evidence.  
 90 (f) A representative from hospital emergency room nursing  
 91 or physician leadership.  
 92 (g) The director or administrator of the local county  
 93 health department.  
 94 (h) The director of the local victim or witness program.  
 95 (4) The Florida Council Against Sexual Violence shall  
 96 provide technical assistance relating to the development and  
 97 implementation of the teams.  
 98 (5) Each team shall promote the use of sexual assault  
 99 forensic examiners who have received a minimum of 40 hours of  
 100 specialized training in the provision of trauma-informed medical  
 101 care and in the collection of evidence for sexual assault  
 102 victims.  
 103 (6) Each team shall meet at least quarterly, or more often  
 104 if necessary, to ensure a coordinated multidisciplinary response  
 105 to sexual violence and shall publish an annual report for the  
 106 jurisdictions covered by the team that includes local statistics  
 107 on the number of forensic medical examinations performed, the  
 108 number of criminal sexual assaults reported to law enforcement,  
 109 and the number of criminal sexual assaults prosecuted and the  
 110 outcome of the prosecutions.  
 111 Section 3. Subsection (20) is added to section 627.6131,  
 112 Florida Statutes, to read:  
 113 627.6131 Payment of claims.—  
 114 (20) For claims involving a sexual assault victim, a health  
 115 insurer shall establish alternative methods of delivery of the  
 116 explanation of benefits that permit:

32-01176A-21

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117 (a) A subscriber who is legally authorized to consent to  
 118 care for a covered person or recipient;  
 119 (b) A covered person or recipient who is legally authorized  
 120 to consent to that covered person's or recipient's own care; or  
 121 (c) Another party who has the exclusive legal authorization  
 122 to consent to care for the covered person or recipient  
 123  
 124 to receive the explanation of benefits by an alternative method,  
 125 provided that each such alternative method is in compliance with  
 126 45 C.F.R. s. 164.522 regarding the right to request privacy  
 127 protection for protected health information.  
 128 Section 4. Subsection (7) is added to section 943.17,  
 129 Florida Statutes, to read:  
 130 943.17 Basic recruit, advanced, and career development  
 131 training programs; participation; cost; evaluation.—The  
 132 commission shall, by rule, design, implement, maintain,  
 133 evaluate, and revise entry requirements and job-related  
 134 curricula and performance standards for basic recruit, advanced,  
 135 and career development training programs and courses. The rules  
 136 shall include, but are not limited to, a methodology to assess  
 137 relevance of the subject matter to the job, student performance,  
 138 and instructor competency.  
 139 (7) The commission, in consultation with the Florida  
 140 Council Against Sexual Violence, shall establish minimum  
 141 standards for basic and advanced career development training  
 142 programs for law enforcement officers that include a culturally  
 143 responsive trauma-informed response to sexual assault. After  
 144 January 1, 2022, every basic skills course required for law  
 145 enforcement officers to obtain initial and continuing education

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20211530\_\_

146 certification must include training on culturally responsive  
 147 trauma-informed interviewing and investigations of sexual  
 148 assault victims.  
 149 Section 5. Section 943.1724, Florida Statutes, is created  
 150 to read:  
 151 943.1724 Training on sexual assault.—  
 152 (1) The commission shall incorporate a culturally  
 153 responsive trauma-informed response to sexual assault into the  
 154 course curriculum required for a law enforcement officer to  
 155 obtain initial certification.  
 156 (2) Within 1 year after beginning employment, each  
 157 certified law enforcement officer must successfully complete 8  
 158 hours of training on sexual violence and interviewing and  
 159 investigations of sexual assault victims, with an emphasis on  
 160 culturally responsive trauma-informed interviewing and  
 161 investigations of sexual assault victims. Completion of the  
 162 training may count toward the 40 hours of instruction for  
 163 continued employment or appointment as a law enforcement officer  
 164 required under s. 943.135. The training must be completed by  
 165 current law enforcement officers by July 1, 2024. If an officer  
 166 fails to complete the required training, his or her  
 167 certification must be placed on inactive status until the  
 168 employing agency notifies the commission that the officer has  
 169 completed the training.  
 170 Section 6. This act shall take effect July 1, 2021.

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

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**From:** Daniel Olson <[Daniel.Olson@myfloridalegal.com](mailto:Daniel.Olson@myfloridalegal.com)>  
**Sent:** Tuesday, March 16, 2021 11:44 AM  
**To:** Cellon, Connie <[CELLON.CONNIE@flsenate.gov](mailto:CELLON.CONNIE@flsenate.gov)>  
**Subject:** RE: SB 1530 Victims of Sexual Offenses

Barring any other constitutional issues we would have to create a whole new division similar to the Medicaid Fraud division. The fiscal should be substantially similar as seen below.

---

**From:** Cellon, Connie <[CELLON.CONNIE@flsenate.gov](mailto:CELLON.CONNIE@flsenate.gov)>  
**Sent:** Tuesday, March 16, 2021 11:28 AM  
**To:** Daniel Olson <[Daniel.Olson@myfloridalegal.com](mailto:Daniel.Olson@myfloridalegal.com)>  
**Subject:** RE: SB 1530 Victims of Sexual Offenses

But I don't think the Constitution **allows** them to do it unless its multi-jurisdictional...?

---

**From:** Daniel Olson <[Daniel.Olson@myfloridalegal.com](mailto:Daniel.Olson@myfloridalegal.com)>  
**Sent:** Tuesday, March 16, 2021 11:26 AM  
**To:** Cellon, Connie <[CELLON.CONNIE@flsenate.gov](mailto:CELLON.CONNIE@flsenate.gov)>  
**Subject:** RE: SB 1530 Victims of Sexual Offenses

It's the only section of DLA that would be proficient enough to do it. But you are correct, SWP usually handles multi circuit cases.

---

**From:** Cellon, Connie <[CELLON.CONNIE@flsenate.gov](mailto:CELLON.CONNIE@flsenate.gov)>  
**Sent:** Tuesday, March 16, 2021 10:57 AM  
**To:** Daniel Olson <[Daniel.Olson@myfloridalegal.com](mailto:Daniel.Olson@myfloridalegal.com)>  
**Subject:** RE: SB 1530 Victims of Sexual Offenses

Can't be SWP can it? Constitution limits authority?

---

**From:** Daniel Olson <[Daniel.Olson@myfloridalegal.com](mailto:Daniel.Olson@myfloridalegal.com)>  
**Sent:** Tuesday, March 16, 2021 10:44 AM  
**To:** Cellon, Connie <[CELLON.CONNIE@flsenate.gov](mailto:CELLON.CONNIE@flsenate.gov)>; Elizabeth Guzzo <[Elizabeth.Guzzo@myfloridalegal.com](mailto:Elizabeth.Guzzo@myfloridalegal.com)>  
**Subject:** RE: SB 1530 Victims of Sexual Offenses

Revised Draft Fiscal Impact of SB 1530.

After speaking with prosecutors and gathering information on cases declined in the Second Judicial Circuit specifically Leon County, it is estimated that the Office of the Attorney General could see approximately 800 cases a year statewide from SB 1530. The Office of Statewide Prosecution would need 20 Senior Assistant Statewide Prosecutors and 5 support staff to handle 800 cases a year, 40 cases per attorney.

20 Senior Assistant Statewide Prosecutors	\$1,980,000 Salaries & Benefits
5 Executive Secretaries	\$ 198,000 Salaries & Benefits
HR Assessment	\$ 8,256
Expense	\$ 347,500
Total	\$2,533,756

The Office of Statewide Prosecution is funded through General Revenue Appropriations. The total above does not factor in the possible need for the Office of the Attorney General to rent additional office space to house staff.

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**From:** Cellon, Connie <[CELLON.CONNIE@flsenate.gov](mailto:CELLON.CONNIE@flsenate.gov)>  
**Sent:** Tuesday, March 16, 2021 8:09 AM  
**To:** Elizabeth Guzzo <[Elizabeth.Guzzo@myfloridalegal.com](mailto:Elizabeth.Guzzo@myfloridalegal.com)>  
**Cc:** Daniel Olson <[Daniel.Olson@myfloridalegal.com](mailto:Daniel.Olson@myfloridalegal.com)>  
**Subject:** RE: SB 1530 Victims of Sexual Offenses

Hey, Libby!

We need the ABAR (\$) analysis, and I need your thoughts on my questions in an e-mail if possible (so I don't get all mixed up!). Please get it all together as soon as you can. We appreciate your help on this!

---

**From:** Elizabeth Guzzo <[Elizabeth.Guzzo@myfloridalegal.com](mailto:Elizabeth.Guzzo@myfloridalegal.com)>  
**Sent:** Monday, March 15, 2021 9:06 PM  
**To:** Cellon, Connie <[CELLON.CONNIE@flsenate.gov](mailto:CELLON.CONNIE@flsenate.gov)>  
**Subject:** Re: SB 1530 Victims of Sexual Offenses

Connie- sorry for the delay. I wasn't sure if Dan connected with you or not. I know we were still waiting on one last piece of information. We will make sure to call you tomorrow morning and go through everything else with you.

Thanks!

Libby Guzzo

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**From:** Cellon, Connie <[CELLON.CONNIE@flsenate.gov](mailto:CELLON.CONNIE@flsenate.gov)>  
**Sent:** Thursday, March 11, 2021 8:48:50 AM  
**To:** Daniel Olson <[Daniel.Olson@myfloridalegal.com](mailto:Daniel.Olson@myfloridalegal.com)>; Elizabeth Guzzo <[Elizabeth.Guzzo@myfloridalegal.com](mailto:Elizabeth.Guzzo@myfloridalegal.com)>

**Subject:** SB 1530 Victims of Sexual Offenses

The Senate requested a Bill Analysis from the DLA through the ABAR LASPBS portal (? You know what I mean!?) on SB 1530 some time back. If you think that can be uploaded by Monday that'd be great, otherwise I need a little help from you by **Monday** (response to my questions below to me in an e-mail will be much appreciated). These are the potential DLA issues that I see in the bill:

- I am fairly certain DLA is looking at a fiscal impact related to this bill....thoughts?
- I need to know what DLA's approach from a staffing and implementing standpoint would be and, last but not least...
- Does DLA have any concerns with "reviewing" law enforcement investigations and State Attorney's charging decisions (and perhaps "overriding" the SAO's charging decision)?
  - DLA's thinking on the authority issue, and just the logistics of this as well.

I'm in a bit of a time crunch and I really appreciate your help!

**Connie Cellon**  
**Senate Criminal Justice**  
**850-487-5192**





# 2021 FDLE LEGISLATIVE BILL ANALYSIS



BILL INFORMATION	
<b>BILL NUMBER:</b>	SB 1530
<b>BILL TITLE:</b>	Victims of Sexual Offenses
<b>BILL SPONSOR:</b>	Senator Book
<b>EFFECTIVE DATE:</b>	July 1, 2021

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

CURRENT COMMITTEE
Criminal Justice

SIMILAR BILLS	
<b>BILL NUMBER:</b>	HB 1189
<b>SPONSOR:</b>	Fine

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

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

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
<b>DATE OF ANALYSIS:</b>	February 26, 2021
<b>LEAD AGENCY ANALYST:</b>	Dean Register
<b>ADDITIONAL ANALYST(S):</b>	Ashley Pennington, Glen Hopkins, Becky Bezemek
<b>LEGAL ANALYST:</b>	Jim Martin, Chris Bufano
<b>FISCAL ANALYST:</b>	Cynthia Barr

POLICY ANALYSIS

**1. EXECUTIVE SUMMARY**

Requires the Criminal Justice Standards & Training Commission to establish minimum standards for training programs that include culturally responsive trauma-informed response to sexual assault. The bill also requires certified law enforcement officers to complete a specified number of hours of training on sexual violence and interviewing and investigations of sexual assault victims.

**2. SUBSTANTIVE BILL ANALYSIS**

1. **PRESENT SITUATION:** In compliance with s. 943.13, F.S., applicants must complete the 770-hour law enforcement basic recruit training program to meet the qualifications for becoming a certified law enforcement officer. In order to maintain their certification, law enforcement officers must satisfy the continuing training and education requirements of s. 943.135, F.S. This statute requires officers, as a condition of continued employment or appointment, to receive continuing training or education at the rate of 40 hours every 4 years. The employing agency must document that the continuing training or education is job-related and consistent with the needs of the employing agency, and report completion of the training to the Criminal Justice Standards and Training Commission (CJSTC or Commission) through the Automated Training Management System (ATMS).

Currently, s. 943.17295, FS, requires the Commission to incorporate the subject of sexual abuse and assault investigations, with an emphasis on cases involving child victims or juvenile offenders, into the curriculum required for continuous employment or appointment as a law enforcement officer. FDLE developed an on-line course that satisfies this requirement and is available at no cost to law enforcement officers or the employing agencies. CJSTC has authorized an advanced training course related to sexual crime investigations since July 1985. In 2017, the Commission approved adult and child sex crimes investigations advanced training courses (#1170 and #1171, respectively). These courses include information produced by the Florida Council Against Sexual Violence. As of February 2021, 581 law enforcement officers have completed #1170 and 429 law enforcement officers have completed #1171.

2. **EFFECT OF THE BILL:** Requires CJSTC to incorporate training on a culturally responsive trauma-informed response to sexual assault into the law enforcement basic recruit training program (LE BRTP). Although this is already included in basic, the training was not developed in consultation with the Florida Council Against Sexual Violence (FCASV).

Requires all certified officers, within one year of employment, to complete eight hours of training on sexual violence and interviewing and investigations of sexual assault victims, with an emphasis on culturally responsive trauma-informed interviewing and investigations of sexual assault victims. Completion of the training may count toward the 40 hours of instruction for continued employment or appointment as a law enforcement officer required under s. 943.135, FS. The training must be completed by current law enforcement officers by July 1, 2024. If an officer fails to complete the required training, his or her certification must be placed on inactive status until the employing agency notifies the commission that the officer has completed the training.

To develop basic and post-basic training curricula to meet the need, staff will conduct curriculum development workshops, incorporate the relevant content into the basic curriculum and update the current post-basic courses or develop a separate course on the topic, pending the final bill language. Staff will also amend ATMS and follow-up with agencies to document completions.

Requires incorporation of training into the LE BRTP by January 1, 2022. Due to the workshops and development required, in addition to required approval by the CJSTC, this timeline is not possible. All basic training is approved by CJSTC with an effective date of July 1. Because of this, the basic training would not go into effect until July 1, 2022. There is no concern about the post-basic training date as the post-basic course can be approved and in place for all current officers to complete the training by July 1, 2024.

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

If yes, explain:	Section 943.17, F.S. directs the Commission to implement job-related curricula and performance standards for basic recruit, advanced, and career development training programs and courses.
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	CJSTC will have to amend Rule 11B-27.00212, F.A.C., Maintenance of Officer Certification.
What is the expected impact to the agency's core mission?	Y <input type="checkbox"/> N <input checked="" type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	11B-27.00212, F.A.C.

**4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

List any known proponents and opponents:	
Provide a summary of the proponents' and opponents' positions:	

**5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y  N**

If yes, provide a description:	
Date Due:	
Bill Section Number:	

**6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL? Y  N**

Board:	
Board Purpose:	
Who Appointments:	
Appointee Term:	
Changes:	
Bill Section Number(s):	

**FISCAL ANALYSIS**

**1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y  N**

Revenues:	
Expenditures:	Unknown. This bill will require officers to complete additional training presumably with any costs borne by the employing agency.
Does the legislation increase local taxes or fees?	
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:	None
Expenditures:	<ul style="list-style-type: none"> <li>Requires CJSTC to develop instruction on sexual violence and interviewing and investigations of sexual assault victims, with an emphasis on culturally responsive trauma-informed interviewing and investigations of sexual assault victims, estimated to cost \$8,779. (see Additional Comments)</li> <li>Necessary modifications to ATMS will total \$37,000 in non-recurring funds (see Technology Impact)</li> </ul> <p><b>Total FDLE Fiscal: \$45,779 (non-recurring)</b></p>
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:	
Expenditures:	
Other:	

**4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y  N** 

Does the bill increase taxes, fees or fines?	
Does the bill decrease taxes, fees or fines?	
What is the impact of the increase or decrease?	
Bill Section Number:	

### TECHNOLOGY IMPACT

**1. DOES THE LEGISLATION 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.	Required changes to ATMS (analysis, design, programming and testing) will take 3 months to complete and total approximately \$37,000.
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### FEDERAL IMPACT

**1. DOES THE LEGISLATION 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.	
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**LEGAL - GENERAL COUNSEL'S OFFICE REVIEW**

Issues/concerns/comments and recommended action:	
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**ADDITIONAL COMMENTS**

- FDLE recommends an effective date of July 1, 2022.
- Lines 156 – 169: Specifies each certified law enforcement officer complete eight hours of training within one year of employment. The objective of the training is defined in the bill language. Designating hours prior to conducting research, consulting with invested entities including the Florida Council Against Sexual Violence, and subject matter experts typically hinders the development of the training. The objective of the bill language will likely better be met if the focus is on the content rather than designated hours. The bill language is ambiguous as an officer may not be certified by CJSTC at the time of employment if the employing agency hires the officer pursuant to s. 943.131(1), FS. Additionally, this is also ambiguous as to if an officer has to complete the eight hours of training for each new employment if the officer leaves one criminal justice employing agency and gains employment with another agency. FDLE recommends the following:

Lines 156-165: ~~Within 1 year after beginning employment, Each certified law enforcement officer must successfully complete 8 hours of training on sexual violence and interviewing and investigations of sexual assault victims, with an emphasis on culturally responsive trauma-informed interviewing and investigations of sexual assault victims. Completion of the training may count toward the 40 hours of instruction for continued employment or appointment as a law enforcement officer as required under s. 943.135. The training must be completed by current law enforcement officers by July 1, 2024, as a part of the basic recruit training, as required under s. 943.13(9), training required under s. 943.131(4)(a), or as a part of continuing training or education required under s. 943.135(1), before July 1, 2024. If an officer...~~

- Create/update CJSTC basic and post basic curricula to include training on a culturally responsive trauma-informed response to sexual assault into the law would include the following costs:

Tasks	Hours	Cost
<b>Analysis</b>		
Identify SMEs	40	\$ 744
Research existing material	40	\$ 744
SME Workshop–Instructional Analysis	40	\$ 744
<b>Design/Development</b>		
Develop course content	240	\$ 4,464
<b>Review/Revisions</b>	80	\$ 1,488
<b>Implementation</b>		
Course edit	32	\$ 595
<b>Total cost to update Basic and Post-Basic Programs</b>		<b>\$ 8,779</b>

*C. Justice*

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-23-21  
Meeting Date

1530  
Bill Number (if applicable)

Topic Victims of Sexual Abuse  
Name Barbara DePore

Amendment Barcode (if applicable)

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

Address 625 E Bernard  
Street  
Fall 08  
City State Zip

Phone 257-4280  
Email barbade@icloud.com

Speaking:  For  Against  Information

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

Representing FLA NOW

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.**

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

03/23/2021

Meeting Date

1530

Bill Number (if applicable)

Topic Victims of Sexual Offenses

Amendment Barcode (if applicable)

Name Jennifer L. Dritt

Job Title Executive Director

Address 1820 E. Park Ave., Suite 100

Phone (850) 297-2000

Street

Tallahassee

FL

32301

Email jdritt@fcasv.org

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Council Against Sexual Violence

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)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

03-23-2021

Meeting Date

SB1530

Bill Number (if applicable)

Topic Trauma Informed Training for Law Enforcement

Amendment Barcode (if applicable)

Name Mike Schentrup

Job Title Captain

Address 545 NW 8th Ave

Phone 352-393-7667

Street

Gainesville

FL

32601

Email schentrupr@cityofgainesville.org

City

State

Zip

Speaking:  For  Against  Information

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

Representing Gainesville Police Department

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 Jason Pizzo, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** March 4, 2021

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I respectfully request that **Senate Bill 1530**, relating to Victims of Sexual Offenses, be placed on the:

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

Thank you for your consideration.

A handwritten signature in cursive script that reads "Lauren Book".

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Senator Lauren Book  
Florida Senate, District 32

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

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

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

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BILL: CS/SB 1802

INTRODUCER: Criminal Justice Committee and Senator Pizzo

SUBJECT: Interception of Wire, Oral, or Electronic Communications Made in Violation of Protective Orders

DATE: March 23, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	<u>Favorable</u>
2.	<u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1802 provides that it is lawful for a person who is protected by an injunction for repeat violence, sexual violence, dating violence, domestic violence, stalking, or any other court-imposed prohibition of conduct toward the person, to intercept and record a wire, oral, or electronic communication received in violation of the injunction or order. Therefore, the bill creates an exception to the general prohibition against interceptions of wire, oral, or electronic communications without the consent of all parties.

The bill allows a person to provide such a recording only to law enforcement or a court for the limited purpose of proving a violation of an injunction or court order.

The bill will have a positive insignificant fiscal impact on the Department of Corrections. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

## II. Present Situation:

### Wiretapping

In Florida, intentionally intercepting<sup>1</sup> an oral communication,<sup>2</sup> commonly known as wiretapping, is generally a third degree felony,<sup>3</sup> with limited exceptions. For example, it is not a crime for a person to intercept an oral communication if:

- All parties to the communication consent to the interception;<sup>4</sup> or
- The person is a law enforcement officer or a person acting under the direction of a law enforcement officer and:
  - He or she is a party to the communication;
  - One of the parties to the communication has given prior consent to such interception and the purpose of such interception is to obtain evidence of a criminal act;<sup>5</sup>
- The person is a child under 18 years of age and:
  - He or she is a party to the communication; and
  - Has reasonable grounds to believe the recording will capture a statement by another party to the communication that the other party intends to commit, is committing, or has committed an unlawful sexual act or act of physical force or violence against the child.<sup>6</sup>

An oral communication that is intercepted illegally cannot be used as evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority or political subdivision of the state.<sup>7</sup> When a communication has been unlawfully intercepted, an aggrieved party may move to suppress the contents of the interception or any evidence derived from it.<sup>8</sup>

However, not all wiretapping is subject to exclusion. Florida only protects oral communications by a person exhibiting an expectation of privacy under circumstances reasonably justifying the person's expectation of privacy.<sup>9</sup>

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<sup>1</sup> "Intercept" means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device. Section 934.02, F.S.

<sup>2</sup> "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation and does not mean any public oral communication uttered at a public meeting or any electronic communication. Section 934.02, F.S.

<sup>3</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>4</sup> Section 934.03(2)(d), F.S.

<sup>5</sup> Section 934.03(2)(c), F.S.

<sup>6</sup> Section 934.03(2)(k), F.S. This particular exception to the prohibition on recording another's communication was passed by the Legislature in 2015 after the Florida Supreme Court ruled in 2014 that surreptitious recordings by a sixteen year old girl who was "essentially conducting her own investigation, hoping to prompt [her stepfather] into making incriminating statements...as evidence of [sexual] abuse" were inadmissible at trial. The Court explained that the recordings did not fall under any exception in s. 934.03(2), F.S., but the Court noted, "[i]t may well be that a compelling case can be made for an exception...[b]ut the adoption of such an exception is a matter for the Legislature." *McDade v. State*, 154 So.3d 292 (Fla. 2014).

<sup>7</sup> Section 934.06, F.S.

<sup>8</sup> Sections 934.06 and 934.09(10)(a), F.S.

<sup>9</sup> *State v. Inciarrano*, 473 So.2d 1272, 1275 (Fla. 1985).

## Protective Injunctions

A court may prohibit a person from contacting another person by granting a petition for an injunction or entering a no contact order in a criminal case. Protective injunctions are available under Florida law for victims of the following:

- Domestic violence;<sup>10</sup>
- Repeat violence;<sup>11</sup>
- Sexual violence;<sup>12</sup>
- Dating violence;<sup>13</sup> and
- Stalking.<sup>14</sup>

As soon as possible after the petition is filed, a court must set a hearing to determine:

- Whether the petitioner is a victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence;<sup>15</sup>
- Whether an immediate and present danger of repeat, sexual, or dating violence exists;<sup>16</sup> or
- Whether stalking exists.<sup>17</sup>

The court may grant an ex parte temporary injunction for 15 days.<sup>18</sup> A court must then set a hearing with notice to the respondent, and after the hearing with notice, may grant protective injunctive relief as it deems proper, including a permanent injunction.<sup>19</sup>

Protective injunctions may prohibit:

- The respondent from committing any additional acts of violence, stalking, or cyberstalking;<sup>20</sup>
- The respondent from going to, or being within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;<sup>21</sup> or
- The respondent from knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied.<sup>22</sup>

Additionally, a court may order the respondent to vacate the dwelling that the parties share,<sup>23</sup> to participate in treatment, intervention, or counseling services to be paid for by the respondent,<sup>24</sup> and order any other such relief as the court deems necessary to protect a victim.<sup>25</sup>

<sup>10</sup> Section 741.30, F.S.

<sup>11</sup> Section 784.046, F.S.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> For the purposes of protective injunctions, stalking includes cyberstalking. Section 784.0485, F.S.

<sup>15</sup> Section 741.30(6)(a), F.S.

<sup>16</sup> Section 784.046(6)(a), F.S.

<sup>17</sup> Section 784.0485(5)(a), F.S.

<sup>18</sup> Sections 741.30(5)(a), (c), 784.046(6)(a), (c), and 784.0485(5)(a) and (c), F.S.

<sup>19</sup> Sections 741.30(6)(a), 784.046, and 784.0485, F.S.

<sup>20</sup> Sections 741.30(6)(a)1., 784.046(7)(a), and 784.0485(6)(a)1., F.S.

<sup>21</sup> Sections 741.31(4)(a)2., 784.047(1)(b), and 784.0487(4)(a)1., F.S.

<sup>22</sup> Sections 741.31(4)(a)6., 784.047(1)(f), and 784.0487(4)(a)5., F.S.

<sup>23</sup> Sections 741.31(4)(a)1., and 784.047(1)(a), F.S.

<sup>24</sup> Sections 741.30(6)(a)2., and 784.047(1)(a)

<sup>25</sup> Sections 741.30(6)(a)8., 784.046(7)(b), and 784.0485(6)(a)4., F.S.

Violation of a protective injunction is generally a first degree misdemeanor, however, a person with two or more prior convictions for violating an injunction who subsequently commits another violation against the same victim, commits a third degree felony.<sup>26</sup>

### **No Contact Order**

When a court has jurisdiction over a defendant in criminal court, the court may order no contact with the victim in the case as a condition of pretrial release or as part of a defendant's sentence. Unlike the process of the victim seeking an injunction, a no contact order does not require that the victim ask the court to enter the order. A defendant's violation of a no contact order may result in revocation of bond, contempt of court charges, violation of probation, or, in the case of domestic violence, additional criminal charges.<sup>27</sup> A no contact order only remains in effect, as long as the pretrial release condition or postsentencing period of supervision applies to the defendant. Once the case is closed and the defendant is no longer subject to any terms and conditions of his or her sentence, the no contact order no longer has effect.

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

The bill creates a new exception in s. 934.03, F.S., to the general prohibition in that statute against interception of wire, oral, or electronic communications. The bill provides that it is lawful for a person who is protected under an active temporary or final injunction for repeat violence, sexual violence, or dating violence under s. 784.046, F.S.; stalking under s. 784.0485, F.S.; domestic violence under s. 741.30, F.S.; or any other court-imposed prohibition of conduct toward the person to intercept and record a wire, oral, or electronic communication received in violation of such injunction or court order.

The bill allows a person to provide such a recording only to law enforcement or a court for the limited purpose of proving a violation of an injunction or court order.

The bill is effective July 1, 2021.

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

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

None.

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

None.

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

None.

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<sup>26</sup> Sections 741.31, 784.047, and 784.0487, F.S. A first degree misdemeanor is punishable by up to a year in the county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>27</sup> Section 741.31, F.S.

**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 considered SB 1802 and the identical<sup>28</sup> House bill, HB 583, on March 8, 2021. The Conference determined that the bill will have a positive insignificant fiscal impact on the prison bed population of the Department of Corrections. This means that there will be an increase of 10 or fewer prison beds.<sup>29</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 934.03 of the Florida Statutes.

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<sup>28</sup> Since March 8, 2021, the Senate bill (CS/SB 1802) and House bill (HB 583) are no longer identical. The Senate bill has added victims of stalking who have an active temporary or final injunction to the list of persons who may lawfully intercept and record a wire, oral, or electronic communication received in violation of such injunction or court order. However, this is not likely to change the prison bed impact.

<sup>29</sup> Economic and Demographic Research, Criminal Justice Impact Conference (March 8, 2021), available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB583.pdf> (last visited March 15, 2021).

**IX. Additional Information:**

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

**CS by Criminal Justice on March 23, 2021:**

The committee substitute adds victims of stalking who have an active temporary or final injunction to the list of persons who may lawfully intercept and record a wire, oral, or electronic communication received in violation of such injunction or court order.

- B. **Amendments:**

None.



508250

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2021	.	
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The Committee on Criminal Justice (Pizzo) recommended the following:

**Senate Amendment**

Delete line 23  
and insert:  
violence under s. 784.046; stalking under s. 784.0485; domestic  
violence under s. 741.30; or



By Senator Pizzo

38-01762-21

20211802\_\_

1 A bill to be entitled  
 2 An act relating to interception of wire, oral, or  
 3 electronic communications made in violation of  
 4 protective orders; amending s. 934.03, F.S.; providing  
 5 an exception to prohibitions on interception and  
 6 recording of communications when the communication is  
 7 received in violation of a specified injunction or  
 8 order; limiting the use of the intercepted  
 9 communication to evidencing a violation of the  
 10 specified injunction or order; providing an effective  
 11 date.

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

15 Section 1. Paragraph (1) is added to subsection (2) of  
 16 section 934.03, Florida Statutes, to read:

17 934.03 Interception and disclosure of wire, oral, or  
 18 electronic communications prohibited.—

19 (2)

20 (1) It is lawful under this section and ss. 934.04-934.09  
 21 for a person who is protected under an active temporary or final  
 22 injunction for repeat violence, sexual violence, or dating  
 23 violence under s. 784.046; domestic violence under s. 741.30; or  
 24 any other court-imposed prohibition of conduct toward the person  
 25 to intercept and record a wire, oral, or electronic  
 26 communication received in violation of such injunction or court  
 27 order. A recording authorized under this paragraph may be  
 28 provided to a law enforcement agency or a court for the purpose  
 29 of evidencing a violation of an injunction or court order and

Page 1 of 2

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

38-01762-21

20211802\_\_

30 may not be otherwise disseminated or shared.

31 Section 2. This act shall take effect July 1, 2021.

Page 2 of 2

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

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

03/23/2021

Meeting Date

1802

Bill Number (if applicable)

Topic Interception of Wire, Oral, or Electronic Communications

Amendment Barcode (if applicable)

Name Jennifer L. Dritt

Job Title Executive Director

Address 1820 E. Park Ave., Suite 100

Phone (850) 297-2000

Street

Tallahassee

FL

32301

Email jdritt@fcasv.org

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Council Against Sexual Violence

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.)

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

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BILL: CS/SB 1826

INTRODUCER: Criminal Justice Committee and Senator Diaz

SUBJECT: Human Trafficking

DATE: March 24, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Moody</u>	<u>Cox</u>	<u>CF</u>	<b>Favorable</b>
2.	<u>Stokes</u>	<u>Jones</u>	<u>CJ</u>	<b>Fav/CS</b>
3.	_____	_____	<u>RC</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1826 creates s. 90.5034, F.S., establishing a privilege for communication between victims and human trafficking advocates or trained volunteers. The bill provides that communication between a human trafficking victim advocate or trained volunteer and a victim is “confidential,” if it is not intended to be disclosed to third persons, except to specified persons. A victim has a privilege to refuse to disclose, and prevent any other person from disclosing such confidential communication or record made in the course of advising, counseling, or providing services to the victim. Additionally, the bill defines the terms “anti-trafficking organization,” “human trafficking victim advocate,” “trained volunteer,” and “victim,” and provides training requirements for human trafficking victim advocates and trained volunteers.

The bill amends s. 787.06, F.S., to expand the definition of “human trafficking,” to include the “purchasing, patronizing, [or] procuring” another person for the purpose of exploitation of that person. Additionally, the definition of “obtain,” is amended to mean “in relation to labor, commercial sexual activity, or services, to receive, take possession of, or take custody of another person or secure performance thereof.” The bill expands the scope of provisions relating to children under 18 years of age to include an adult believed to be under 18 years of age.

For purposes of incorporating the amendments made in the bill, ss. 39.01305, 464.013, 775.21, 943.0435, 943.0583, and 944.606, F.S., are reenacted.

To the extent that the amended definition of human trafficking in the bill results in persons being convicted and sentenced to prison, the bill may result in a positive indeterminate prison bed impact (i.e. an unquantifiable increase of prison beds). See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

## II. Present Situation:

### Human Trafficking

Human trafficking is a form of modern-day slavery.<sup>1</sup> Human trafficking victims are young children, teenagers, and adults who may be citizens that are trafficked domestically within the borders of the United States or smuggled across international borders worldwide.<sup>2</sup> Many human trafficking victims are induced with false promises of financial or emotional security, but are forced or coerced into commercial sex, domestic servitude, or other types of forced labor.<sup>3</sup> Any minor who is younger than 18 years old and who is induced to perform a commercial sex act is a human trafficking victim even if there is no forced fraud or coercion.<sup>4</sup> Increasingly, criminal organizations, such as gangs, are enticing local school children into commercial sexual exploitation or trafficking.<sup>5</sup> The average ages of youth who are trafficked are 11-13 years old.<sup>6</sup>

Congress passed the Victims of Trafficking and Violence Protection Act (Act) of 2000 to combat human trafficking by establishing several methods of prosecuting traffickers, preventing trafficking, and protecting victims.<sup>7</sup> The Act contains severe penalties and mandates restitution for victims of human trafficking.<sup>8</sup>

The U.S. Department of Justice reports that every two minutes a child is trafficked for the purpose of sexual exploitation in the United States.<sup>9</sup> Approximately 24.9 million people are human trafficking victims in the world.<sup>10</sup> There are approximately 2.5 million victims of human trafficking in the United States.<sup>11</sup> The U.S. National Human Trafficking Hotline (NHTH) has received 276,654 reports of human trafficking between 2007 and 2019.<sup>12</sup>

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<sup>1</sup> Section 787.06(1)(a), F.S.

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

<sup>3</sup> The Department of Education (the DOE), *Healthy Schools – Human Trafficking*, available at <http://www.fldoe.org/schools/healthy-schools/human-trafficking.stml> (last visited March 17, 2021) (hereinafter cited as “DOE Human Trafficking”).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> The DOE, Presentation to the State Board of Education, *Child Trafficking Prevention Education*, p. 3, September 20, 2019, available at <http://www.fldoe.org/core/fileparse.php/5575/urlt/ChildTraffickingPres.pdf> (last visited March 17, 2021) (hereinafter cited as “DOE Trafficking Prevention”).

<sup>7</sup> Pub. L. No. 106-386 (2000).

<sup>8</sup> *Id.*

<sup>9</sup> DOE Human Trafficking.

<sup>10</sup> National Human Trafficking Hotline, *What is Human Trafficking?*, available at <https://humantraffickinghotline.org/what-human-trafficking> (last visited March 17, 2021).

<sup>11</sup> DOE Human Trafficking.

<sup>12</sup> NHTH, *Hotline Statistics*, available at <https://humantraffickinghotline.org/states> (last visited March 17, 2021).

The number of human trafficking cases listed in reports may not accurately reflect the number of actual cases of human trafficking because many traffickers are prosecuted for other crimes.<sup>13</sup> Additionally, prosecutors often have difficulty proving the relationship at issue is one of human trafficking or a victim may be unwilling to testify against his or her trafficker in court.<sup>14</sup>

### *Human Trafficking in Florida*

Florida law defines “human trafficking” as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining,<sup>15</sup> or obtaining<sup>16</sup> another person for the purpose of exploitation of that person.<sup>17</sup> In Florida, any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for labor or services, or commercial sexual activity, commits a crime.<sup>18</sup> Florida law sets out several circumstances which give rise to specified penalties including, in part:

- Labor<sup>19</sup> or services<sup>20</sup> of any child under the age of 18 commits a first degree felony;<sup>21</sup>
- Labor or services of any child under the age of 18 who is an unauthorized alien<sup>22</sup> commits a first degree felony;<sup>23</sup>
- Labor or services who does so by the transfer or transport of any child under the age of 18 from outside of Florida to within Florida commits a first degree felony;<sup>24</sup>
- Commercial sexual activity<sup>25</sup> who does so by the transfer or transport of any child under the age of 18 from outside of Florida to within Florida commits a first degree felony;<sup>26</sup> or

<sup>13</sup> Nada Hassanein, *Preying on the vulnerable: Human trafficking prevalent yet elusive in the Big Bend*, Tallahassee Democrat, June 27, 2018, available at <https://www.tallahassee.com/story/news/2019/01/27/preying-vulnerable-human-trafficking-alive-and-well-big-bend/2648630002/> (last visited March 17, 2021).

<sup>14</sup> *Id.*

<sup>15</sup> Section 787.06(2)(f), F.S., provides “maintain” means, in relation to labor or services, to secure or make possible continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type service. Section 787.06(2)(h), F.S., defines “services” as any act committed at the behest of, under the supervision of, or for the benefit of another, including forced marriage, servitude, or the removal of organs.

<sup>16</sup> Section 787.06(2)(g), F.S., provides “obtain” means, in relation to labor or services, to secure performance thereof.

<sup>17</sup> Section 787.06(2)(d), F.S.

<sup>18</sup> Section 787.06(3), F.S.

<sup>19</sup> Section 787.06(2)(e), F.S., provides “labor” means work of economic or financial value.

<sup>20</sup> Section 787.06(2)(h), F.S., provides “services” means any act committed at the behest of, under the supervision of, or for the benefit of another. The term includes, but is not limited to, forced marriage, servitude, or the removal of organs.

<sup>21</sup> Section 787.06(3)(a)1., F.S. A first degree felony is punishable by a state prison term not exceeding 30 years, a fine not exceeding \$10,000, or both. Sections 775.082 and 775.083, F.S.

<sup>22</sup> Section 787.06(2)(j), F.S., defines “unauthorized alien” as an alien who is not authorized under federal law to be employed in the United States, as provided in 8 U.S.C. s. 1324a(h)(3).

<sup>23</sup> Section 787.06(3)(c)1., F.S.

<sup>24</sup> Section 787.06(3)(e)1., F.S.

<sup>25</sup> Section 787.06(2)(b), F.S., defines “commercial sexual activity” as any violation of ch. 796, F.S., or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(i), F.S., defines “sexual explicit performance” as an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.

<sup>26</sup> Section 787.06(3)(f)1., F.S., provides that an offense committed under these circumstances is punishable by a term of imprisonment not exceeding life or as provided in ss. 775.082, 775.083, or 775.084, F.S.

- Commercial sexual activity<sup>27</sup> in which any child under the age of 18, or in which any person who is mentally defective<sup>28</sup> or mentally incapacitated<sup>29</sup> is involved commits a life felony.<sup>30</sup>

The above-mentioned first degree felonies are reclassified as a life felony if a person causes great bodily harm, permanent disability, or permanent disfigurement to another person during the commission of the offense.<sup>31</sup> Ignorance of the victim's age, the victim's misrepresentation of his or her age, or a bona fide belief of the victim's age cannot be raised as a defense by a defendant.<sup>32</sup>

Florida is ranked the third highest state of reported human trafficking cases in the United States.<sup>33</sup> In 2018, Florida received 767 reports of human trafficking cases of which 149 were minors.<sup>34</sup> In November 2018, an investigation in Polk County led to the arrest of 103 people for charges including prostitution and human trafficking.<sup>35</sup> Similarly, in January 2019, a two month-long investigation led to the arrest of a 36-year-old male in Tallahassee on prostitution and sex trafficking charges involving a 14-year old girl. At the time of his arrest, the male was already facing charges for sex trafficking a child in 2014.<sup>36</sup>

### **Privileged Communications in the Evidence Code**

The Florida Evidence Code (Code) specifies what types of evidence and testimony are admissible in court.<sup>37</sup> The Code makes certain communications privileged, meaning their disclosure generally cannot be compelled, even in legal proceedings.<sup>38</sup> Privileged communication is an interaction between two parties in which the law recognizes a private, protected relationship.<sup>39</sup> Some examples of generally privileged communications include communications

<sup>27</sup> Section 787.06(2)(b), F.S., defines "commercial sexual activity" as any violation of ch. 796, F.S., or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(i), F.S., defines "sexual explicit performance" as an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.

<sup>28</sup> Section 794.011(1)(b), F.S., defines "mentally defective" as a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

<sup>29</sup> Section 794.011(1)(c), F.S., defines "mental incapacitated" as temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.

<sup>30</sup> A life felony is punishable by a term of life imprisonment, \$15,000 fine, or both as provided in ss. 775.082(3)(a)6., 775.083, or 775.084, F.S.

<sup>31</sup> Section 787.06(8)(b), F.S.

<sup>32</sup> Section 787.06(9), F.S.

<sup>33</sup> DOE Trafficking Prevention at p. 3.

<sup>34</sup> DOE Trafficking Prevention.

<sup>35</sup> Daniel Dahm and Brianna Volz, *Orlando-area doctor among 103 arrested in Polk County sex sting, sheriff says*, ClickOrlando.com, December 3, 2018, available at <https://www.clickorlando.com/news/103-arrested-in-polk-county-sex-sting> (last visited March 17, 2021).

<sup>36</sup> WTXL, *Human trafficking suspect accused of sex-trafficking child in Tallahassee*, January 26, 2019, available at [http://www.wtxl.com/news/human-trafficking-suspect-accused-of-sex-trafficking-child-in-tallahassee/article\\_9748879c-21a4-11e9-b768-5bb68f906ecc.html](http://www.wtxl.com/news/human-trafficking-suspect-accused-of-sex-trafficking-child-in-tallahassee/article_9748879c-21a4-11e9-b768-5bb68f906ecc.html) (last visited March 17, 2021).

<sup>37</sup> Chapter 90, F.S.

<sup>38</sup> See ss. 90.5035, 90.5036, and 90.502, F.S.; U.S. Legal, *Privileged Communications Law and Legal Definition*, available at <https://definitions.uslegal.com/p/privileged-communications/> (last visited March 17, 2021).

<sup>39</sup> Will Kenton, Investopedia, *Privileged Communication*, February 21, 2018, available at <https://www.investopedia.com/terms/p/privileged-communication.asp> (last visited March 17, 2021).

between a sexual assault counselor and victim,<sup>40</sup> domestic violence advocate and victim,<sup>41</sup> a lawyer and client,<sup>42</sup> and a husband and wife.<sup>43</sup>

Typically, such communication only loses its privileged status if the person who made the original disclosure of such information waives the privilege, thus permitting the communication to be subject to general rules of evidence. A person is deemed to have waived the privilege if he or she voluntarily discloses the communication, makes it when he or she does not have a reasonable expectation of privacy, or consents to the disclosure of, any significant part of the communication.<sup>44</sup>

### ***Sexual Assault Counselor and Victim***

A victim<sup>45</sup> has a privilege to refuse to disclose, and to prevent anyone else from disclosing, a confidential communication made by the victim to a sexual assault counselor<sup>46</sup> or trained volunteer<sup>47</sup> or any record made in the course of advising, counseling, or assisting the victim.<sup>48</sup> This includes any advice given by the sexual assault counselor or trained volunteer to the victim during the course of their relationship.<sup>49</sup> Communication is “confidential” if it is not intended to be disclosed to third persons other than:

- Persons present to further the interest of the victim in the consultation, examination, or interview;
- Persons necessary for the transmission of the communication; or
- Persons to whom disclosure is reasonably necessary to accomplish the purposes for which the sexual assault counselor or the trained volunteer is consulted.<sup>50</sup>

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<sup>40</sup> Section 90.5035, F.S.

<sup>41</sup> Section 90.5036, F.S.

<sup>42</sup> Section 90.502, F.S.

<sup>43</sup> Section 90.504, F.S.; Florida law provides for privileged communication amongst several other groups of individuals, including journalists under s. 90.5015, F.S., lawyer and client under s. 90.502, F.S., fiduciary lawyer and client under s. 90.5021, F.S., psychotherapist and patient under s. 90.503, F.S., husband and wife under s. 90.504, F.S., clergy under s. 90.505, F.S., accountant and client under s. 90.5055, F.S., and trade secrets under s. 90.506, F.S.

<sup>44</sup> Section 90.507, F.S.

<sup>45</sup> Section 90.5035(1)(d), F.S., defines “victim” as a person who consults a sexual assault counselor or a trained volunteer for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by a sexual assault or sexual battery, an alleged sexual assault or sexual battery, or an attempted sexual assault or sexual battery.

<sup>46</sup> Section 90.5035(1)(b), F.S., defines “sexual assault counselor” as any employee of a rape crisis center whose primary purpose is the rendering of advice, counseling, or assistance to victims of sexual assault or sexual battery. Section 90.5035(1)(a), F.S., defines “rape crisis center” as any public or private agency that offers assistance to victims of sexual assault or sexual battery and their families.

<sup>47</sup> Section 90.5035(1)(c), F.S., defines “trained volunteer” as a person who volunteers at a rape crises center, has completed 30 hours of training in assisting victims of sexual violence and related topics provided by the rape crisis center, is supervised by members of the staff of the rape crisis center, and is included on a list of volunteers that is maintained by the rape crisis center.

<sup>48</sup> Section 90.5035(2), F.S.

<sup>49</sup> *Id.*

<sup>50</sup> Section 90.5035(1)(e), F.S.

Communication and records which are confidential as provided for under this section may only be disclosed with prior written consent of the victim.<sup>51</sup> The privilege may be claimed by:

- The victim or the victim’s attorney on his or her behalf;
- A guardian or conservator of the victim;
- The personal representative of a deceased victim;
- The sexual assault counselor or trained volunteer, but only on behalf of the victim.<sup>52</sup>

A sexual assault counselor’s or trained volunteer’s authority to claim the privilege is presumed unless there is evidence to the contrary.<sup>53</sup>

### ***Domestic Violence Advocate and Victim***

Similar to communication with a sexual abuse counselor, a victim<sup>54</sup> may refuse to disclose, and prevent anyone else from disclosing, a confidential communication made by the victim to a domestic violence advocate<sup>55</sup> or any record made in the course of advising, counseling, or assisting the victim.<sup>56</sup> This privilege applies only if the advocate is registered under s. 39.905, F.S., at the time the communication is made, and includes any advice given by the domestic violence advocate to the victim during the course of their relationship.<sup>57</sup> Communication is “confidential” if it relates to the incident of domestic violence for which assistance is sought and if it is not intended to be disclosed to third persons other than:

- Persons present to further the interest of the victim in the consultation, assessment, or interview; or
- Persons to whom disclosure is reasonably necessary to accomplish the purpose for which the domestic violence advocate is consulted.<sup>58</sup>

The privilege may be claimed by:

- The victim or the victim’s attorney on behalf of the victim;
- A guardian or conservator of the victim;
- The personal representative of a deceased victim;
- The domestic violence advocate, but only on behalf of the victim.<sup>59</sup>

A domestic violence advocate’s authority to claim the privilege is presumed unless there is evidence to the contrary.<sup>60</sup>

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<sup>51</sup> Section 90.5035(2), F.S.

<sup>52</sup> Section 90.5035(3), F.S.

<sup>53</sup> Section 90.5035(3)(d), F.S.

<sup>54</sup> Section 90.5036(1)(c), F.S., defines “victim” as a person who consults a domestic violence advocate for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by an act of domestic violence, an alleged act of domestic violence, or an attempted act of domestic violence.

<sup>55</sup> Section 90.5036(1)(b), F.S., defines “domestic violence advocate” as any employee or volunteer who has 30 hours of training in assisting victims of domestic violence whose primary purpose is the rendering of advice, counseling, or assistance to victims of domestic violence.

<sup>56</sup> Section 90.5036(2), F.S.

<sup>57</sup> *Id.*

<sup>58</sup> Section 90.5036(1)(d), F.S.

<sup>59</sup> Section 90.5036(3), F.S.

<sup>60</sup> Section 90.5036(3)(d), F.S.



### III. Effect of Proposed Changes:

#### *Privilege*

The bill creates s. 90.5034, F.S., establishing a privilege for communication between victims and human trafficking advocates or trained volunteers. The bill provides that communication between a human trafficking victim advocate or trained volunteer and a victim is “confidential,” if it is not intended to be disclosed to third persons, except to:

- Persons present to further the interest of the victim in the consultation, examination, or interview;
- Persons necessary for the transmission of the communication; or
- Persons to whom disclosure is reasonably necessary to accomplish the purposes for which the sexual assault counselor or the trained volunteer is consulted.

A victim may refuse to disclose, and prevent any other person from disclosing, a confidential communication made by the victim to a human trafficking victim advocate or trained volunteer or any record made in the course of advising, counseling, or providing services to the victim. This includes any advice given by the human trafficking victim advocate or trained volunteer to the victim during the course of their relationship.

Communication and records which are confidential as provided for under this new section may only be disclosed with prior written consent of the victim. The privilege may be claimed by:

- The victim or the victim’s attorney on his or her behalf;
- A guardian or conservator of the victim;
- The personal representative of a deceased victim;
- The human trafficking victim advocate or trained volunteer, but only on behalf of the victim.<sup>61</sup>

A human trafficking victim advocate’s or trained volunteer’s authority to claim the privilege is presumed unless there is evidence to the contrary.

The bill provides that a human trafficking victim advocate or a trained volunteer must complete:

- Twenty-four hours of human trafficking training delivered by the Office of the Attorney General, the Bureau of Criminal Justice Programs and Victim Services, and the Florida Crime Prevention Training Institute; and
- An 8-hour Human Trafficking Update course within 3 years after the date of his or her initial designation in order to maintain his or her designation.

Additionally, the bill defines the following terms:

- “Anti-trafficking organization,” is any public or private agency that offers assistance to victims of human trafficking as defined in s. 787.06, F.S.
- “Human trafficking advocate,” is any employee of an anti-trafficking organization whose primary purpose is the provision of advice, counseling, or services to victims of human trafficking and who complies with the training requirements.

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<sup>61</sup> Section 90.5035(3), F.S.

- “Trained volunteer,” is a person who volunteers with an anti-trafficking organization and who complies with the training requirements provision of the bill.
- “Victim,” is a person who consults a human trafficking victim advocate or a trained volunteer for the purpose of securing advice, counseling, or services concerning any need arising from an experience relating to being a victim of human trafficking.

### ***Human Trafficking***

The bill amends s. 787.06, F.S., to expand the definition of “human trafficking,” to include the “purchasing, patronizing, [or] procuring” another person for the purpose of exploitation of that person. Additionally, the definition of “obtain,” is amended to mean “in relation to labor, commercial sexual activity, or services, to receive, take possession of, or take custody of another person or secure performance thereof.” The bill also expands all of the first degree felony or life felony offenses of human trafficking described above committed against a child under the age of 18 to include an adult believed to be under 18 years of age.

Sections 39.01305(3), 464.013(3)(c), 775.21(4)(a), 943.0435(1)(h), 943.0583(1)(a), and 944.606(1)(f), F.S., are reenacted due to the amended definition of human trafficking.

The bill is effective July 1, 2021.

## **IV. Constitutional Issues:**

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

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida 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 with the Office of Economic and Demographic Research has not yet met and determined the impact of the bill. However, the bill expands certain definitions related to the offense of human trafficking. To the extent that the amended scope of the human trafficking offense in the bill results in persons being convicted and sentenced to imprisonment, the bill may result in a positive indeterminate prison bed impact (i.e. an unquantifiable increase of prison beds).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 787.06 of the Florida Statutes.

This bill creates section 90.5034 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 39.01305, 464.013, 775.21, 943.0435, 943.0583, and 944.606.

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

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

**CS by Criminal Justice on March 23, 2021:**

The committee substitute is a clarifying amendment that replaces the phrase “or another person believed by the person to be a child,” with “or an adult believed by the person to be a child.”

B. Amendments:

None.

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

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557034

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2021	.	
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The Committee on Criminal Justice (Diaz) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 107 - 145

and insert:

years of ~~under the~~ age or an adult believed by the person to be  
a child younger than ~~of~~ 18 years of age commits a felony of the  
first degree, punishable as provided in s. 775.082, s. 775.083,  
or s. 775.084.

2. Using coercion for labor or services of an adult commits  
a felony of the first degree, punishable as provided in s.



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11 775.082, s. 775.083, or s. 775.084.

12 (c)1. For labor or services of any child younger than 18  
13 years of ~~under the~~ age or an adult believed by the person to be  
14 a child younger than ~~of~~ 18 years of age who is an unauthorized  
15 alien commits a felony of the first degree, punishable as  
16 provided in s. 775.082, s. 775.083, or s. 775.084.

17 2. Using coercion for labor or services of an adult who is  
18 an unauthorized alien commits a felony of the first degree,  
19 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

20 (e)1. For labor or services who does so by the transfer or  
21 transport of any child younger than 18 years of ~~under the~~ age or  
22 an adult believed by the person to be a child younger than ~~of~~ 18  
23 years of age from outside this state to within this ~~the~~ state  
24 commits a felony of the first degree, punishable as provided in  
25 s. 775.082, s. 775.083, or s. 775.084.

26 2. Using coercion for labor or services who does so by the  
27 transfer or transport of an adult from outside this state to  
28 within this ~~the~~ state commits a felony of the first degree,  
29 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

30 (f)1. For commercial sexual activity who does so by the  
31 transfer or transport of any child younger than 18 years of  
32 ~~under the~~ age or an adult believed by the person to be a child  
33 younger than ~~of~~ 18 years of age from outside this state to  
34 within this ~~the~~ state commits a felony of the first degree,  
35 punishable by imprisonment for a term of years not exceeding  
36 life, or as provided in s. 775.082, s. 775.083, or s. 775.084.

37 2. Using coercion for commercial sexual activity who does  
38 so by the transfer or transport of an adult from outside this  
39 state to within this ~~the~~ state commits a felony of the first



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40 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
41 775.084.

42 (g) For commercial sexual activity in which any child  
43 younger than 18 years of ~~under the age~~ or an adult

44

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

46 And the title is amended as follows:

47 Delete line 13

48 and insert:

49 with an adult believed to be a child younger

By Senator Diaz

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1 A bill to be entitled  
 2 An act relating to human trafficking; creating s.  
 3 90.5034, F.S.; defining terms; providing the  
 4 circumstances under which certain communications are  
 5 confidential; creating a human trafficking victim  
 6 advocate-victim privilege; specifying who may claim  
 7 such privilege; providing training requirements for  
 8 human trafficking victim advocates and trained  
 9 volunteers; amending s. 787.06, F.S.; revising the  
 10 definitions of the terms "human trafficking" and  
 11 "obtain"; prohibiting a person from engaging in  
 12 specified criminal acts relating to human trafficking  
 13 with another person believed to be a child younger  
 14 than 18 years of age; providing criminal penalties;  
 15 reenacting ss. 39.01305(3), 464.013(3)(c),  
 16 775.21(4)(a), 943.0435(1)(h), 943.0583(1)(a), and  
 17 944.606(1)(f), F.S., relating to appointment of an  
 18 attorney for a dependent child with certain special  
 19 needs, renewal of license or certificate, the Florida  
 20 Sexual Predators Act, sexual offenders required to  
 21 register with the department and penalties, human  
 22 trafficking victim expunction, and sexual offenders  
 23 and notification upon release, respectively, to  
 24 incorporate the amendment made to s. 787.06, F.S., in  
 25 references thereto; providing an effective date.

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

29 Section 1. Section 90.5034, Florida Statutes, is created to

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30 read:

31 90.5034 Human trafficking victim advocate-victim  
 32 privilege.-

33 (1) For purposes of this section:

34 (a) An "anti-trafficking organization" is any public or  
 35 private agency that offers assistance to victims of human  
 36 trafficking as defined in s. 787.06.

37 (b) A "human trafficking victim advocate" is any employee  
 38 of an anti-trafficking organization whose primary purpose is the  
 39 provision of advice, counseling, or services to victims of human  
 40 trafficking and who complies with the training requirements  
 41 under subsection (4).

42 (c) A "trained volunteer" is a person who volunteers with  
 43 an anti-trafficking organization and who complies with the  
 44 training requirements under subsection (4).

45 (d) A "victim" is a person who consults a human trafficking  
 46 victim advocate or a trained volunteer for the purpose of  
 47 securing advice, counseling, or services concerning any need  
 48 arising from an experience relating to being a victim of human  
 49 trafficking.

50 (e) A communication between a human trafficking victim  
 51 advocate or trained volunteer and a victim is "confidential" if  
 52 it is not intended to be disclosed to third persons other than:

53 1. Those persons present to further the interest of the  
 54 victim in the consultation, examination, or interview.

55 2. Those persons necessary for the transmission of the  
 56 communication.

57 3. Those persons to whom disclosure is reasonably necessary  
 58 to accomplish the purposes for which the human trafficking

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59 victim advocate or trained volunteer is consulted.

60 (2) A victim has a privilege to refuse to disclose, and to  
 61 prevent any other person from disclosing, a confidential  
 62 communication made by the victim to a human trafficking victim  
 63 advocate or trained volunteer or any record made in the course  
 64 of advising, counseling, or providing services to the victim.  
 65 Such confidential communication or record may be disclosed only  
 66 with the prior written consent of the victim. This privilege  
 67 includes any advice given by the human trafficking victim  
 68 advocate or trained volunteer in the course of that  
 69 relationship.

70 (3) The privilege under subsection (2) may be claimed by:

71 (a) The victim or the victim's attorney on his or her  
 72 behalf.

73 (b) A guardian or conservator of the victim.

74 (c) The personal representative of a deceased victim.

75 (d) The human trafficking victim advocate or trained  
 76 volunteer, but only if claiming such privilege on behalf of the  
 77 victim. The authority of a human trafficking victim advocate or  
 78 trained volunteer to claim the privilege is presumed in the  
 79 absence of evidence to the contrary.

80 (4) A human trafficking victim advocate or a trained  
 81 volunteer shall:

82 (a) Complete 24 hours of human trafficking training  
 83 delivered by the Office of the Attorney General, the Bureau of  
 84 Criminal Justice Programs and Victim Services, and the Florida  
 85 Crime Prevention Training Institute; and

86 (b) To maintain his or her designation, complete an 8-hour  
 87 Human Trafficking Update course within 3 years after the date of

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88 his or her original designation.

89 Section 2. Paragraphs (d) and (g) of subsection (2) and  
 90 paragraphs (a), (c), (e), (f), and (g) of subsection (3) of  
 91 section 787.06, Florida Statutes, are amended to read:

92 787.06 Human trafficking.—

93 (2) As used in this section, the term:

94 (d) "Human trafficking" means transporting, soliciting,  
 95 recruiting, harboring, providing, enticing, maintaining,  
 96 purchasing, patronizing, procuring, or obtaining another person  
 97 for the purpose of exploitation of that person.

98 (g) "Obtain" means, in relation to labor, commercial sexual  
 99 activity, or services, to receive, take possession of, or take  
 100 custody of another person or secure performance thereof.

101 (3) Any person who knowingly, or in reckless disregard of  
 102 the facts, engages in human trafficking, or attempts to engage  
 103 in human trafficking, or benefits financially by receiving  
 104 anything of value from participation in a venture that has  
 105 subjected a person to human trafficking:

106 (a)1. For labor or services of any child younger than 18  
 107 years of ~~under the~~ age or another person believed by the person  
 108 to be a child younger than ~~of~~ 18 years of age commits a felony  
 109 of the first degree, punishable as provided in s. 775.082, s.  
 110 775.083, or s. 775.084.

111 2. Using coercion for labor or services of an adult commits  
 112 a felony of the first degree, punishable as provided in s.  
 113 775.082, s. 775.083, or s. 775.084.

114 (c)1. For labor or services of any child younger than 18  
 115 years of ~~under the~~ age or another person believed by the person  
 116 to be a child younger than ~~of~~ 18 years of age who is an

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117 unauthorized alien commits a felony of the first degree,  
 118 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

119 2. Using coercion for labor or services of an adult who is  
 120 an unauthorized alien commits a felony of the first degree,  
 121 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

122 (e)1. For labor or services who does so by the transfer or  
 123 transport of any child younger than 18 years of ~~under the age or~~  
 124 another person believed by the person to be a child younger than  
 125 of 18 years of age from outside this state to within this ~~the~~  
 126 state commits a felony of the first degree, punishable as  
 127 provided in s. 775.082, s. 775.083, or s. 775.084.

128 2. Using coercion for labor or services who does so by the  
 129 transfer or transport of an adult from outside this state to  
 130 within this ~~the~~ state commits a felony of the first degree,  
 131 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

132 (f)1. For commercial sexual activity who does so by the  
 133 transfer or transport of any child younger than 18 years of  
 134 under the age or another person believed by the person to be a  
 135 child younger than of 18 years of age from outside this state to  
 136 within this ~~the~~ state commits a felony of the first degree,  
 137 punishable by imprisonment for a term of years not exceeding  
 138 life, or as provided in s. 775.082, s. 775.083, or s. 775.084.

139 2. Using coercion for commercial sexual activity who does  
 140 so by the transfer or transport of an adult from outside this  
 141 state to within this ~~the~~ state commits a felony of the first  
 142 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 143 775.084.

144 (g) For commercial sexual activity in which any child  
 145 younger than 18 years of ~~under the age or another person~~

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146 believed by the person to be a child younger than of 18 years of  
 147 age, or in which any person who is mentally defective or  
 148 mentally incapacitated as those terms are defined in s.  
 149 794.011(1), is involved commits a life felony, punishable as  
 150 provided in s. 775.082(3)(a)6., s. 775.083, or s. 775.084.

151  
 152 For each instance of human trafficking of any individual under  
 153 this subsection, a separate crime is committed and a separate  
 154 punishment is authorized.

155 Section 3. For the purpose of incorporating the amendment  
 156 made by this act to section 787.06, Florida Statutes, in a  
 157 reference thereto, subsection (3) of section 39.01305, Florida  
 158 Statutes, is reenacted to read:

159 39.01305 Appointment of an attorney for a dependent child  
 160 with certain special needs.—

161 (3) An attorney shall be appointed for a dependent child  
 162 who:

163 (a) Resides in a skilled nursing facility or is being  
 164 considered for placement in a skilled nursing home;

165 (b) Is prescribed a psychotropic medication but declines  
 166 assent to the psychotropic medication;

167 (c) Has a diagnosis of a developmental disability as  
 168 defined in s. 393.063;

169 (d) Is being placed in a residential treatment center or  
 170 being considered for placement in a residential treatment  
 171 center; or

172 (e) Is a victim of human trafficking as defined in s.  
 173 787.06(2)(d).

174 Section 4. For the purpose of incorporating the amendment

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175 made by this act to section 787.06, Florida Statutes, in a  
 176 reference thereto, paragraph (c) of subsection (3) of section  
 177 464.013, Florida Statutes, is reenacted to read:  
 178 464.013 Renewal of license or certificate.—  
 179 (3) The board shall by rule prescribe up to 30 hours of  
 180 continuing education biennially as a condition for renewal of a  
 181 license or certificate.

182 (c) Notwithstanding the exemption in paragraph (a), as part  
 183 of the maximum biennial continuing education hours required  
 184 under this subsection, the board shall require each person  
 185 licensed or certified under this chapter to complete a 2-hour  
 186 continuing education course on human trafficking, as defined in  
 187 s. 787.06(2). The continuing education course must consist of  
 188 data and information on the types of human trafficking, such as  
 189 labor and sex, and the extent of human trafficking; factors that  
 190 place a person at greater risk of being a victim of human  
 191 trafficking; public and private social services available for  
 192 rescue, food, clothing, and shelter referrals; hotlines for  
 193 reporting human trafficking which are maintained by the National  
 194 Human Trafficking Resource Center and the United States  
 195 Department of Homeland Security; validated assessment tools for  
 196 identifying a human trafficking victim and general indicators  
 197 that a person may be a victim of human trafficking; procedures  
 198 for sharing information related to human trafficking with a  
 199 patient; and referral options for legal and social services. All  
 200 licensees must complete this course for every biennial licensure  
 201 renewal on or after January 1, 2019.

202 Section 5. For the purpose of incorporating the amendment  
 203 made by this act to section 787.06, Florida Statutes, in a

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204 reference thereto, paragraph (a) of subsection (4) of section  
 205 775.21, Florida Statutes, is reenacted to read:  
 206 775.21 The Florida Sexual Predators Act.—  
 207 (4) SEXUAL PREDATOR CRITERIA.—  
 208 (a) For a current offense committed on or after October 1,  
 209 1993, upon conviction, an offender shall be designated as a  
 210 "sexual predator" under subsection (5), and subject to  
 211 registration under subsection (6) and community and public  
 212 notification under subsection (7) if:  
 213 1. The felony is:  
 214 a. A capital, life, or first degree felony violation, or  
 215 any attempt thereof, of s. 787.01 or s. 787.02, where the victim  
 216 is a minor, or s. 794.011, s. 800.04, or s. 847.0145, or a  
 217 violation of a similar law of another jurisdiction; or  
 218 b. Any felony violation, or any attempt thereof, of s.  
 219 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.  
 220 787.025(2) (c), where the victim is a minor; s. 787.06(3) (b),  
 221 (d), (f), or (g); former s. 787.06(3) (h); s. 794.011, excluding  
 222 s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035;  
 223 s. 800.04; s. 810.145(8) (b); s. 825.1025; s. 827.071; s.  
 224 847.0135, excluding s. 847.0135(6); s. 847.0145; s. 895.03, if  
 225 the court makes a written finding that the racketeering activity  
 226 involved at least one sexual offense listed in this sub-  
 227 subparagraph or at least one offense listed in this sub-  
 228 subparagraph with sexual intent or motive; s. 916.1075(2); or s.  
 229 985.701(1); or a violation of a similar law of another  
 230 jurisdiction, and the offender has previously been convicted of  
 231 or found to have committed, or has pled nolo contendere or  
 232 guilty to, regardless of adjudication, any violation of s.

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233 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.  
 234 787.025(2) (c), where the victim is a minor; s. 787.06(3) (b),  
 235 (d), (f), or (g); former s. 787.06(3) (h); s. 794.011, excluding  
 236 s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035;  
 237 s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,  
 238 excluding s. 847.0135(6); s. 847.0145; s. 895.03, if the court  
 239 makes a written finding that the racketeering activity involved  
 240 at least one sexual offense listed in this sub-subparagraph or  
 241 at least one offense listed in this sub-subparagraph with sexual  
 242 intent or motive; s. 916.1075(2); or s. 985.701(1); or a  
 243 violation of a similar law of another jurisdiction;

244 2. The offender has not received a pardon for any felony or  
 245 similar law of another jurisdiction that is necessary for the  
 246 operation of this paragraph; and

247 3. A conviction of a felony or similar law of another  
 248 jurisdiction necessary to the operation of this paragraph has  
 249 not been set aside in any postconviction proceeding.

250 Section 6. For the purpose of incorporating the amendment  
 251 made by this act to section 787.06, Florida Statutes, in  
 252 references thereto, paragraph (h) of subsection (1) of section  
 253 943.0435, Florida Statutes, is reenacted to read:

254 943.0435 Sexual offenders required to register with the  
 255 department; penalty.—

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

257 (h)1. "Sexual offender" means a person who meets the  
 258 criteria in sub-subparagraph a., sub-subparagraph b., sub-  
 259 subparagraph c., or sub-subparagraph d., as follows:

260 a. (I) Has been convicted of committing, or attempting,  
 261 soliciting, or conspiring to commit, any of the criminal

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262 offenses proscribed in the following statutes in this state or  
 263 similar offenses in another jurisdiction: s. 393.135(2); s.  
 264 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2) (c), where  
 265 the victim is a minor; s. 787.06(3) (b), (d), (f), or (g); former  
 266 s. 787.06(3) (h); s. 794.011, excluding s. 794.011(10); s.  
 267 794.05; former s. 796.03; former s. 796.035; s. 800.04; s.  
 268 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,  
 269 excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;  
 270 s. 895.03, if the court makes a written finding that the  
 271 racketeering activity involved at least one sexual offense  
 272 listed in this sub-sub-subparagraph or at least one offense  
 273 listed in this sub-sub-subparagraph with sexual intent or  
 274 motive; s. 916.1075(2); or s. 985.701(1); or any similar offense  
 275 committed in this state which has been redesignated from a  
 276 former statute number to one of those listed in this sub-sub-  
 277 subparagraph; and

278 (II) Has been released on or after October 1, 1997, from  
 279 the sanction imposed for any conviction of an offense described  
 280 in sub-sub-subparagraph (I). For purposes of sub-sub-  
 281 subparagraph (I), a sanction imposed in this state or in any  
 282 other jurisdiction includes, but is not limited to, a fine,  
 283 probation, community control, parole, conditional release,  
 284 control release, or incarceration in a state prison, federal  
 285 prison, private correctional facility, or local detention  
 286 facility;

287 b. Establishes or maintains a residence in this state and  
 288 who has not been designated as a sexual predator by a court of  
 289 this state but who has been designated as a sexual predator, as  
 290 a sexually violent predator, or by another sexual offender

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291 designation in another state or jurisdiction and was, as a  
 292 result of such designation, subjected to registration or  
 293 community or public notification, or both, or would be if the  
 294 person were a resident of that state or jurisdiction, without  
 295 regard to whether the person otherwise meets the criteria for  
 296 registration as a sexual offender;

297 c. Establishes or maintains a residence in this state who  
 298 is in the custody or control of, or under the supervision of,  
 299 any other state or jurisdiction as a result of a conviction for  
 300 committing, or attempting, soliciting, or conspiring to commit,  
 301 any of the criminal offenses proscribed in the following  
 302 statutes or similar offense in another jurisdiction: s.  
 303 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.  
 304 787.025(2)(c), where the victim is a minor; s. 787.06(3)(b),  
 305 (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding  
 306 s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035;  
 307 s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133;  
 308 s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138;  
 309 s. 847.0145; s. 895.03, if the court makes a written finding  
 310 that the racketeering activity involved at least one sexual  
 311 offense listed in this sub-subparagraph or at least one offense  
 312 listed in this sub-subparagraph with sexual intent or motive; s.  
 313 916.1075(2); or s. 985.701(1); or any similar offense committed  
 314 in this state which has been redesignated from a former statute  
 315 number to one of those listed in this sub-subparagraph; or  
 316 d. On or after July 1, 2007, has been adjudicated  
 317 delinquent for committing, or attempting, soliciting, or  
 318 conspiring to commit, any of the criminal offenses proscribed in  
 319 the following statutes in this state or similar offenses in

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320 another jurisdiction when the juvenile was 14 years of age or  
 321 older at the time of the offense:  
 322 (I) Section 794.011, excluding s. 794.011(10);  
 323 (II) Section 800.04(4)(a)2. where the victim is under 12  
 324 years of age or where the court finds sexual activity by the use  
 325 of force or coercion;  
 326 (III) Section 800.04(5)(c)1. where the court finds  
 327 molestation involving unclothed genitals;  
 328 (IV) Section 800.04(5)(d) where the court finds the use of  
 329 force or coercion and unclothed genitals; or  
 330 (V) Any similar offense committed in this state which has  
 331 been redesignated from a former statute number to one of those  
 332 listed in this sub-subparagraph.

333 2. For all qualifying offenses listed in sub-subparagraph  
 334 1.d., the court shall make a written finding of the age of the  
 335 offender at the time of the offense.

336  
 337 For each violation of a qualifying offense listed in this  
 338 subsection, except for a violation of s. 794.011, the court  
 339 shall make a written finding of the age of the victim at the  
 340 time of the offense. For a violation of s. 800.04(4), the court  
 341 shall also make a written finding indicating whether the offense  
 342 involved sexual activity and indicating whether the offense  
 343 involved force or coercion. For a violation of s. 800.04(5), the  
 344 court shall also make a written finding that the offense did or  
 345 did not involve unclothed genitals or genital area and that the  
 346 offense did or did not involve the use of force or coercion.

347 Section 7. For the purpose of incorporating the amendment  
 348 made by this act to section 787.06, Florida Statutes, in a

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349 reference thereto, paragraph (a) of subsection (1) of section  
 350 943.0583, Florida Statutes, is reenacted to read:  
 351 943.0583 Human trafficking victim expunction.—  
 352 (1) As used in this section, the term:  
 353 (a) "Human trafficking" has the same meaning as provided in  
 354 s. 787.06.

355 Section 8. For the purpose of incorporating the amendment  
 356 made by this act to section 787.06, Florida Statutes, in a  
 357 reference thereto, paragraph (f) of subsection (1) of section  
 358 944.606, Florida Statutes, is reenacted to read:  
 359 944.606 Sexual offenders; notification upon release.—  
 360 (1) As used in this section, the term:  
 361 (f) "Sexual offender" means a person who has been convicted  
 362 of committing, or attempting, soliciting, or conspiring to  
 363 commit, any of the criminal offenses proscribed in the following  
 364 statutes in this state or similar offenses in another  
 365 jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s.  
 366 787.02, or s. 787.025(2) (c), where the victim is a minor; s.  
 367 787.06(3) (b), (d), (f), or (g); former s. 787.06(3) (h); s.  
 368 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;  
 369 former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s.  
 370 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.  
 371 847.0137; s. 847.0138; s. 847.0145; s. 895.03, if the court  
 372 makes a written finding that the racketeering activity involved  
 373 at least one sexual offense listed in this paragraph or at least  
 374 one offense listed in this paragraph with sexual intent or  
 375 motive; s. 916.1075(2); or s. 985.701(1); or any similar offense  
 376 committed in this state which has been redesignated from a  
 377 former statute number to one of those listed in this subsection,

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378 when the department has received verified information regarding  
 379 such conviction; an offender's computerized criminal history  
 380 record is not, in and of itself, verified information.  
 381 Section 9. This act shall take effect July 1, 2021.

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YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/23/21

Meeting Date

1826

Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Edward BRiggs

Job Title Director of Government Relations

Address 235 W. Brandon Blvd. Ste. 640

Phone 8509335994

Street

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FL

33511

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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 Miracles Outreach

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)

3/23/2021  
Meeting Date

SB 1826  
Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Christine Koester

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

Address 3313 SE 3rd Street

Phone 954 708 4168

Street

Pompano Beach FL 33062

Email Christine\_Koester@Yahoo.com

City

State

Zip

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)



YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/23/21

Meeting Date

SB 1826

Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Daniel Olson

Job Title Director of Government Relations

Address 400 South Monroe

Phone \_\_\_\_\_

Street

Tallahassee

FL

32399

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing Office of the Attorney General

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)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/23/21

Meeting Date

SB 1826

Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name John Guard

Job Title Chief Deputy Attorney General

Address 400 South Monroe

Phone \_\_\_\_\_

Street

Tallahassee

FL

32399

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing Office of the Attorney General

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)

3/23/21  
Meeting Date

SB 1826  
Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Amy Maguire

Job Title Principal

Address 101 East Kennedy Blvd.  
Street

Phone 727 666 8413

Tampa FL 33602  
City State Zip

Email amaguire@shumakeradvisors.com

Speaking:  For  Against  Information

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

Representing Shumaker Advisors 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.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/23/21

Meeting Date

SB 1826

Bill Number (if applicable)

Topic HUMAN TRAFFICKING

Amendment Barcode (if applicable)

Name CHRISTIAN MINOR

Job Title EXECUTIVE DIRECTOR

Address 1300 N ADAMS ST.

Phone (321) 223-4232

Street

TALLAHASSEE FL 32303

City

State

Zip

Email cmminor@fjja.org

Speaking:  For  Against  Information

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

Representing FLORIDA JUVENILE JUSTICE 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)

3/23/21  
Meeting Date

1826  
Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Dr. Danielle Thomas

Job Title VP of Education

Address 1747 Orlando Central Pkwy

Phone 407 855 7604

Orlando FL 32809  
City State Zip

Email vp.education@floridapta.org

Speaking:  For  Against  Information

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

Representing Florida PTA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

Ch. Martin

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-23-21

Meeting Date

1826

Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Barbara DeBane

Job Title

Address 625 E. Brevard

Phone 251-4280

Street

Tallahassee 32308

City

State

Zip

Email Barbara.DeBane@fla.gov

Speaking:  For  Against  Information

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

Representing FLNOW

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.



**SENATOR MANNY DIAZ, JR.**  
36th District

**THE FLORIDA  
SENATE**

Tallahassee, Florida 32399-1100

**COMMITTEES:**

Health Policy Chair  
Appropriations Subcommittee on  
Education Vice Chair  
Appropriations  
Appropriations Subcommittee on Health  
and Human Services  
Education  
Commerce and Tourism  
Rules

March 17, 2021

Honorable Senator Jason W. B. Pizzo  
Chair  
Committee on Criminal Justice

Honorable Chair Pizzo,

I respectfully request Senate Bill Number 1826 Human Trafficking be placed on the next committee agenda.

Sincerely appreciate your support.

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

Senator Manny Diaz, Jr.  
Florida Senate, District 36

CC: Lauren Jones, Staff Director  
Sue Arnold, Committee Administrative Assistant  
Margarita Gerson, Legislative Assistant

REPLY TO:

- 10001 Northwest 87th Avenue, Hialeah Gardens, Florida 33016 (305) 364-3073
- 306 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

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

**Wilton Simpson**  
President of the Senate

**Aaron Bean**  
President Pro Tempore

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

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

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

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BILL: CS/SB 1868

INTRODUCER: Criminal Justice Committee and Senator Bean

SUBJECT: Privileged Communications Made to Crime Stoppers Organizations

DATE: March 24, 2021

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

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

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1868 amends s. 16.557, F.S., providing that a person who knowingly and willfully attempts to obtain, obtains or discloses privileged communication, or protected information, or any information concerning a privileged communication or protected information commits a third degree felony. Section 16.557, F.S., currently provides that only the person who discloses such information commits a third degree felony.

Currently, the disclosure of such information doesn't apply to certain people. This bill adds an employee, board member, or volunteer of a crime stoppers organization while acting in the course and scope of the person's duties or functions, and a person complying with criminal discovery rules to the list of persons to whom this section does not apply.

This bill also provides immunity from civil liability for a person who in the course and scope of his or her duties or functions, receives, forwards, or acts on a privileged communication.

The fiscal impact of the bill is unknown. However, to the extent that the felony created in the bill results in persons being convicted, the bill may result in a positive indeterminate prison bed impact (i.e. an unquantifiable increase of prison beds). See Section V. Fiscal Impact Statement.

This bill is effective October 1, 2021.



## II. Present Situation:

### Crime Stoppers

Crime Stoppers programs are non-profit organizations led by citizens against crime, founded on the concept that someone other than the criminal has information that can help solve a crime. These programs offer anonymity to anyone who can provide information about crimes and subsequently pay rewards when such information leads to an arrest.<sup>1</sup>

The idea of providing a reward to someone with information about a crime originated in Albuquerque, New Mexico, when a detective was tasked with solving a homicide with no leads. He thought to make a video re-enactment of the murder and guarantee anonymity for anyone who was willing to call with information about the crime. After receiving calls following the re-enactment, one of which allowed police to solve a different crime, the detective persuaded the Albuquerque Police Department to permit citizens to establish the first Crime Stoppers program. Today, there are over 1,200 crime stopper organizations throughout the world.<sup>2</sup>

### *Crime Stoppers in Florida*

There are 27 crime stopper programs in Florida that operate collectively under the name Florida Association of Crime Stoppers, Inc. (FACS).<sup>3</sup> In order to expand the model of these programs by providing more stable funding, the Crime Stoppers Trust Fund (Fund) was created for the purpose of grant administration.<sup>4</sup> The Department of Legal Affairs (DLA) administers the Fund and is tasked with establishing criteria for local governments to apply for funding.<sup>5</sup>

In 2019, the Legislature created s. 16.557, F.S., to protect the identity of a person who engages in a privileged communication with a crime stoppers organization.<sup>6</sup> Section 16.557, F.S., provides that a person who discloses a privileged communication or protected information or any information concerning a privileged communication or protected information commits a third degree felony.<sup>7</sup> This does not apply to:

- The person who provides the privileged communication or protected information; or
- A law enforcement officer or an employee of a law enforcement agency or the DLA when he or she is acting within the scope of his or her employment.
- Criminal discovery.<sup>8</sup>

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<sup>1</sup> Crime Stoppers USA, *Profile*, available at <https://www.crimestoppersusa.org/profile/> (last visited March 15, 2021).

<sup>2</sup> Florida Association of Crime Stoppers, *Where it all started*, available at <https://dev.facsflorida.org/where-it-all-started/> (last visited March 15, 2021).

<sup>3</sup> Florida Association of Crime Stoppers, *Our History*, available at <https://dev.facsflorida.org/who-we-are/our-history/> (last visited March 15, 2021).

<sup>4</sup> Chapter 91-205, s. 13, L.O.F. (1991).

<sup>5</sup> Section 16.555, F.S.

<sup>6</sup> Chapter 19-167, s. 2, L.O.F. (2019).

<sup>7</sup> A third degree felony is punishable by up to five years imprisonment, a \$5,000 fine, or enhanced penalties as a habitual felony offender. Sections 775.082, 775.083, and 775.084, F.S.

<sup>8</sup> Section 16.557(2)(a), F.S.

Section 16.557, F.S., provides the following definitions:

- “Crime stoppers organization,” means a private not-for-profit organization that collects and expends donations for rewards to persons who report to the organization information concerning criminal activity, and forwards that information to appropriate law enforcement agencies.<sup>9</sup>
- “Privileged communication,” means the act of providing information to a crime stoppers organization for the purpose of reporting alleged criminal activity.<sup>10</sup>
- “Protected information,” includes the identity of a person who engages in privileged communication with a crime stoppers organization and any records, recordings, oral or written statements, papers, documents, or other tangible items provided to or collected by a crime stoppers organization, a law enforcement crime stoppers coordinator or his or her staff, or a law enforcement agency in connection with such privileged communication.<sup>11</sup>

### Crime Stoppers Trust Fund

The amount of funding available for a crime stoppers organization or a county is based upon all money deposited pursuant to s. 938.06, F.S., available unused funds, the DLA’s spending authority, and money collected pursuant to financial consequences.<sup>12</sup>

Section 938.06, F.S., provides that, in addition to other fines that may be imposed, a court must assess a \$20 fee for any person convicted of any criminal offense. The proceeds, less \$3 per assessment, must be deposited into the Fund.<sup>13</sup> Such proceeds are placed in a separate account in the Fund and are designated according to the judicial circuit in which they were collected.<sup>14</sup> A county may apply to the DLA for a grant from the funds collected in the judicial circuit in which the county is located. However, such grants are awarded only to counties that are served by an organization that is an official member of the FACS and in good standing.<sup>15</sup>

Money awarded from a grant to a county may only be used to support the FACS and its crime fighting programs.<sup>16</sup> Only one crime stoppers program per county is eligible to receive funding. To be eligible to receive funds, a program must:

- Be a 501(c)(3) non-profit organization.
- Have endorsement from the county commission in the county they serve.
- Be a member in good standing of the FACS.<sup>17</sup>

Eligible programs must complete and submit a performance-based grant proposal outlining its annual operational plan, along with a budget based upon the certified funds previously authorized by the Florida Office of the Attorney General.<sup>18</sup> A county that is awarded a grant may

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<sup>9</sup> Section 16.557(1)(a), F.S.

<sup>10</sup> Section 16.557(1)(b), F.S.

<sup>11</sup> Section 16.557(1)(c), F.S.

<sup>12</sup> Fla. Admin. Code. R. 2A-9.003(2).

<sup>13</sup> Section 938.06(1) and (2), F.S.

<sup>14</sup> Section 16.555(4)(b), F.S.

<sup>15</sup> Section 15.555(5)(b), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> Florida Association of Crime Stoppers, *Funding*, available at <https://dev.facsflorida.org/who-we-are/62-2/> (last visited March 15, 2021).

<sup>18</sup> *Id.*

use such funds to purchase items to assist in educating the public and increasing public awareness of FACS,<sup>19</sup> fund student crime watch programs,<sup>20</sup> or used to reimburse programs for the payment of rewards.<sup>21</sup> In order to obtain reimbursement from the Fund, the reward paid must have been for:

- An arrest.
- The recovery of stolen property.
- The recovery of illegal narcotics.
- The recovery of the body of a homicide victim.
- The recovery of a human trafficking victim or missing person connected to criminal activity.
- The recovery of an illegal firearm or an illegal weapon on a K-12 school campus.
- The prevention of a terrorist act.
- The solving and closing of a criminal case involving a homicide or other violent felony offense that remains unsolved for 1 year or more after being reported to a law enforcement agency and that has no viable and unexplored investigatory leads.<sup>22</sup>

### ***Crime Stoppers Privileged Communication in Other States***

Other states have implemented laws that both protect the identity of a person who provides a tip to a crime stoppers organization and provide that the communication of the tip and any documents created as a result of the tip are privileged. Some of those states include: Arkansas,<sup>23</sup> Colorado,<sup>24</sup> Connecticut,<sup>25</sup> Kentucky,<sup>26</sup> Louisiana,<sup>27</sup> Michigan,<sup>28</sup> Mississippi,<sup>29</sup> New Mexico,<sup>30</sup> Oklahoma,<sup>31</sup> and Texas.<sup>32</sup>

Additionally, some states have created criminal penalties for the prohibited disclosure of such protected information. These states include: Arkansas,<sup>33</sup> Colorado,<sup>34</sup> Kentucky,<sup>35</sup> Mississippi,<sup>36</sup>

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<sup>19</sup> Section 16.555(5)(c), F.S.

<sup>20</sup> Section 16.555(5)(d), F.S.

<sup>21</sup> Section 16.555(5)(e), F.S.

<sup>22</sup> Section 16.555(5)(e)1.-8., F.S.

<sup>23</sup> Section 16-90-1005, A.C.A.

<sup>24</sup> Section 16-15.7-104, C.R.S.A.

<sup>25</sup> Section 29-1d., C.G.S.A.

<sup>26</sup> Section 431.580, K.R.S.

<sup>27</sup> Section 15:477.1, L.A.R.S.

<sup>28</sup> Section 600.2157b, M.C.L.A.

<sup>29</sup> Section 45-39-7, M.C.A.

<sup>30</sup> Section 29-12A-4, N.M.S.A.

<sup>31</sup> Section 2510.1, O.S.A.

<sup>32</sup> Sections 414.008 and 414.009, V.T.C.A.

<sup>33</sup> Section 16-90-1006, A.C.A.

<sup>34</sup> Section 16-15.7-104, C.R.S.A.

<sup>35</sup> Section 431.585, K.R.S.

<sup>36</sup> Section 45-39-9, M.C.A.

New Mexico,<sup>37</sup> and Texas.<sup>38</sup> The criminal penalty is generally a misdemeanor,<sup>39</sup> rather than a felony.<sup>40</sup>

### **Privileged Communications in the Evidence Code**

The Florida Evidence Code (Code) specifies what types of evidence and testimony are admissible in court.<sup>41</sup> The Code makes certain communications privileged, meaning their disclosure generally cannot be compelled, even in legal proceedings.<sup>42</sup> Privileged communication is used to describe an interaction between two parties in which the law recognizes a private, protected relationship.<sup>43</sup> Some examples of generally privileged communications include communications between a lawyer and client,<sup>44</sup> a husband and wife,<sup>45</sup> and a psychotherapist and a patient.<sup>46</sup>

Typically, such communication only loses its privileged status if the person who made the original disclosure of such information waives the privilege, thus permitting the communication to be subject to general rules of evidence. A person is deemed to have waived the privilege if he or she voluntarily discloses or makes the communication when he or she does not have a reasonable expectation of privacy, or consents to the disclosure of any significant part of the communication.<sup>47</sup>

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

This bill amends s. 16.557, F.S., providing that a person who knowingly and willfully attempts to obtain, obtains or discloses privileged communication, or protected information, or any information concerning a privileged communication or protected information commits a third degree felony. Section 16.557, F.S., currently provides that only the person who discloses such information commits a third degree felony.

Currently, the disclosure of such information doesn't apply to certain people. This bill adds an employee, board member, or volunteer of a crime stoppers organization while acting in the course and scope of the person's duties or functions, and a person complying with criminal discovery rules to the list of persons to whom this section does not apply.

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<sup>37</sup> Section 29-12A-5, N.M.S.A

<sup>38</sup> Section 414.009, V.T.C.A

<sup>39</sup> A misdemeanor is punishable by one year or less in jail, while a felony is punishable by more than a year in state prison. Section 775.082, F.S.

<sup>40</sup> Of the states listed, the exception to the offense being classified as a misdemeanor is in Texas where the offense is a felony if the person divulged the information for the purposes of obtaining a monetary benefit. *See* s. 414.009, V.T.C.A.

<sup>41</sup> Chapter 90, F.S.

<sup>42</sup> US Legal, *Privileged Communications Law and Legal Definition*, available at <https://definitions.uslegal.com/p/privileged-communications/> (last visited March 15, 2021).

<sup>43</sup> Will Kenton, Investopedia, *Privileged Communication*, (December 1, 2020), available at <https://www.investopedia.com/terms/p/privileged-communication.asp> (last visited March 15, 2021).

<sup>44</sup> Section 90.502, F.S.

<sup>45</sup> Section 90.504, F.S.

<sup>46</sup> Section 90.503, F.S.

<sup>47</sup> Section 90.507, F.S.

This bill also provides a person who, in the course and scope of his or her duties or functions, receives, forwards, or acts on a privileged communication is immune from civil liability damages resulting from an act or omission in the performance of such duties or functions unless the act or omission was intentional or grossly negligent.

This bill is effective October 1, 2021.

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

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

Section 1 of the bill creates a new criminal offense that may result in indeterminate local fund expenditures for costs relating to criminal prosecution and confinement if a jail sentence is imposed. However, these provisions relate to the defense, prosecution, or punishment of criminal offenses, and criminal law and are exempt from the requirements of Art. VII, s. 18(d) 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, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. The bill creates a new felony offense related to a person who knowingly and willfully attempts to obtain or obtains any information related to privileged communication or protected information

pertaining to a tip provided to a crime stoppers organization. To the extent that this provision results in offenders being convicted for this felony offense, the bill may result in a positive indeterminate prison bed impact (i.e. an unquantifiable increase in prison beds).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 16.557 of the Florida Statutes.

**IX. Additional Information:**

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

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

**CS by Criminal Justice on March 23, 2021:**

The committee substitute:

- Provides that a person who knowingly and willfully attempts to obtain, obtains, or discloses a privileged communication, or protected information, or any information concerning a privileged communication or protected information commits a third degree felony.
- Provides that a person who is acting in the course and scope of his or her employment and receives, forwards, or acts on such communication is immune from civil liability unless the act or omission was intentional or grossly negligent.
- Removes language that provided that evidence of such communication may not be relied upon, or considered in determining whether probable cause exists to issue a warrant, or that evidence of such communication is admissible or subject to discovery in any court.

**B. Amendments:**

None.



264456

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2021	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete lines 39 - 75

and insert:

(2) (a) Except ~~pursuant to criminal discovery or~~ as provided in paragraph (b), a person who knowingly and willfully attempts to obtain, obtains, or discloses a privileged communication, or protected information, or any information concerning a privileged communication or protected information commits a felony of the third degree, punishable as provided in s.



264456

11 775.082, s. 775.083, or s. 775.084.

12 (b) This subsection does not apply to:

13 1. The person who provides the privileged communication or  
14 protected information; ~~or~~

15 2. An employee, board member, or volunteer of a crime  
16 stoppers organization while acting in the course and scope of  
17 the person's duties or functions;

18 ~~3.2.~~ A law enforcement officer or an employee of a law  
19 enforcement agency or the Department of Legal Affairs when he or  
20 she is acting within the scope of his or her official duties;  
21 ~~or-~~

22 4. A person complying with criminal discovery rules.

23 (c) This subsection does not limit the right of any  
24 criminal defendant to criminal discovery.

25 (3) A person who, in the course and scope of his or her  
26 duties or functions receives, forwards, or acts on a privileged  
27 communication is immune from civil liability for damages  
28 resulting from an act or omission in the performance of his or  
29 her duties or functions unless the act or omission was  
30 intentional or grossly negligent.

31  
32 ===== T I T L E A M E N D M E N T =====

33 And the title is amended as follows:

34 Delete lines 4 - 12

35 and insert:

36 F.S.; prohibiting a person from knowingly and  
37 willfully attempting to obtain, obtaining, or  
38 disclosing a privileged communication or protected  
39 information; providing a penalty; providing an





264456

40 exemption from criminal liability for employees, board  
41 members, or volunteers of crime stoppers organization  
42 in certain circumstances; providing immunity from  
43 civil liability for certain actions by specified  
44 persons concerning privileged communications;

By Senator Bean

4-00942-21

20211868\_\_

A bill to be entitled

An act relating to privileged communications made to crime stoppers organizations; amending s. 16.557, F.S.; providing that the recipient of an illegally disclosed privileged communication also commits an offense; providing penalties; providing an exemption for employees, board members, or volunteers of a crime stoppers organization in certain circumstances; providing immunity from civil liability for certain actions by specified persons concerning privileged communications; limiting the uses of privileged communications or evidence of such communications; providing an effective date.

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

Section 1. Section 16.557, Florida Statutes, is amended to read:

16.557 Crime stoppers organizations; disclosure of privileged communications or protected information; civil immunity; use.-

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

(a) "Crime stoppers organization" means a private not-for-profit organization that collects and expends donations for rewards to persons who report to the organization information concerning criminal activity, and forwards that information to appropriate law enforcement agencies.

(b) "Privileged communication" means the act of providing information to a crime stoppers organization for the purpose of

Page 1 of 3

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

4-00942-21

20211868\_\_

reporting alleged criminal activity.

(c) "Protected information" includes the identity of a person who engages in privileged communication with a crime stoppers organization and any records, recordings, oral or written statements, papers, documents, or other tangible items provided to or collected by a crime stoppers organization, a law enforcement crime stoppers coordinator or his or her staff, or a law enforcement agency in connection with such privileged communication.

(2) (a) Except pursuant to criminal discovery or as provided in paragraph (b), a person who discloses a privileged communication or protected information or any information concerning a privileged communication or protected information and the recipient of that disclosure each commit ~~commits~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) This subsection does not apply to:

1. The person who provides the privileged communication or protected information; ~~or~~

2. An employee, board member, or volunteer of a crime stoppers organization while acting in the course and scope of the person's duties or functions; or

3.2- A law enforcement officer or an employee of a law enforcement agency or the Department of Legal Affairs when he or she is acting within the scope of his or her official duties.

(c) This subsection does not limit the right of any criminal defendant to criminal discovery.

(3) A person in the course and scope of his or her duties or functions who receives, forwards, or acts on a privileged

Page 2 of 3

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

4-00942-21

20211868\_\_

59 communication is immune from civil liability for damages  
60 resulting from an act or omission in the performance of his or  
61 her duties or functions unless the act or omission was  
62 intentionally, willfully, or wantonly negligent, or done with  
63 conscious indifference or reckless disregard for the safety of  
64 others.

65 (4) (a) Evidence of a privileged communication, and  
66 information contained within a privileged communication, from an  
67 anonymous source to a crime stoppers organization may not be:

68 1. Relied upon, or considered in determining whether  
69 probable cause exists to issue either an arrest or search  
70 warrant.

71 2. Admissible or subject to discovery in any court  
72 proceeding.

73 (b) A privileged communication may only be used to assist a  
74 law enforcement agency in directing an investigation of alleged  
75 criminal activity.

76 Section 2. This act shall take effect October 1, 2021.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

Reset Form

THE FLORIDA SENATE

APPEARANCE RECORD

3/23/2021

Meeting Date

SB 1868

Bill Number (if applicable)

Topic Privileged Communications Made to Crime Stoppers Organizations

Amendment Barcode (if applicable)

Name Sean Pittman

Job Title Lobbyist

Address 1028 E Park Ave

Phone (850) 216-1002

Street

Tallahassee

FL

32301

Email Sean@pittman-law.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing 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.

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)

3/23/21  
Meeting Date

SB 1868  
Bill Number (if applicable)

Topic Privileged Communication made to Crime Stoppers Amendment Barcode (if applicable)  
organizations

Name Lori Figueroa

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

Address 12 Juniper Pass Dr.  
Street

Phone (352) 216-2196

Ocala Florida 34480  
City State Zip

Email lf10122965@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.

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

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

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

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

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BILL: SB 1934

INTRODUCER: Senators Book and Taddeo

SUBJECT: Health Care Practitioner Discipline

DATE: March 22, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto Van-Winkle	Brown	HP	<b>Favorable</b>
2.	Siples	Jones	CJ	<b>Favorable</b>
3.			RC	

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**I. Summary:**

SB 1934:

- Amends s. 456.072, F.S., to add to the list of offenses that are grounds for disciplinary action against the license of a health care practitioner regulated by the Department of Health (DOH), for:
  - Being convicted, found guilty, pleading guilty, or pleading nolo contendere, regardless of adjudication, to any of the crimes listed in s. 456.074(5), F.S., as amended; or
  - Attempting, soliciting, or conspiring to commit an act that would constitute a crime listed in s. 456.074(5), F.S., or similar crime in another jurisdiction.
- Amends s. 456.074, F.S., to add to the offenses, for which if committed by a licensed practitioner, the DOH must consider issuing an Emergency Suspension Order (ESO) or an Emergency Restriction Order (ERO) of the license of that practitioner. The bill requires the DOH to issue an ESO suspending the license of an allopathic or osteopathic pediatrician, or physician who treats children, if the physician is arrested for committing or attempting, soliciting, or conspiring to commit any act that would constitute a violation of any one of the listed criminal offenses involving a child or a similar offense in another jurisdiction.
- Directs the Office of Program Policy Analysis and Government Accountability (OPPAGA) to analyze state laws and rules relating to grounds for health care practitioner discipline and ESOs of licenses, specifically with respect to criminal offenses, and to report to Executive and Legislative Branch leadership by January 1, 2022.

The bill provides an effective date of July 1, 2021.

## II. Present Situation:

### The Department of Health

The Legislature created the DOH to protect and promote the health of all residents and visitors in the state.<sup>1</sup> The DOH is charged with the regulation of health practitioners for the preservation of the health, safety, and welfare of the public. The Division of Medical Quality Assurance (MQA) is responsible for the boards<sup>2</sup> and professions within the DOH.<sup>3</sup> The health care practitioners licensed by the DOH include the following:

- Acupuncturists;<sup>4</sup>
- Allopathic physicians, physician assistants, anesthesiologist assistants, and medical assistants;<sup>5</sup>
- Osteopathic physicians, physician assistants, and anesthesiologist assistants;<sup>6</sup>
- Chiropractic physicians and physician assistants;<sup>7</sup>
- Podiatric physicians;<sup>8</sup>
- Naturopathic physicians;<sup>9</sup>
- Optometrists;<sup>10</sup>
- Autonomous advanced practice registered nurses, advanced practice registered nurses, registered nurses, licensed practical nurses, and certified nursing assistants;<sup>11</sup>
- Pharmacists, pharmacy interns, and pharmacy technicians;<sup>12</sup>
- Dentists, dental hygienists, and dental laboratories;<sup>13</sup>
- Midwives;<sup>14</sup>
- Speech and language pathologists;<sup>15</sup>
- Audiologists;<sup>16</sup>
- Occupational therapists and occupational therapy assistants;<sup>17</sup>
- Respiratory therapists;<sup>18</sup>
- Dietitians and nutritionists;<sup>19</sup>
- Athletic trainers;<sup>20</sup>

<sup>1</sup> Section 20.43(1), F.S.

<sup>2</sup> Under s. 456.001(1), F.S., “board” is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the DOH or, in some cases, within the DOH MQA.

<sup>3</sup> Section 20.43(3)(g), F.S.

<sup>4</sup> Chapter 457, F.S.

<sup>5</sup> Chapter 458, F.S.

<sup>6</sup> Chapter 459, F.S.

<sup>7</sup> Chapter 460, F.S.

<sup>8</sup> Chapter 461, F.S.

<sup>9</sup> Chapter 462, F.S.

<sup>10</sup> Chapter 463, F.S.

<sup>11</sup> Chapter 464, F.S.

<sup>12</sup> Chapter 465, F.S.

<sup>13</sup> Chapter 466, F.S.

<sup>14</sup> Chapter 467, F.S.

<sup>15</sup> Part I, ch. 468, F.S.

<sup>16</sup> *Id.*

<sup>17</sup> Part III, ch. 468, F.S.

<sup>18</sup> Part V, ch. 468, F.S.

<sup>19</sup> Part X, ch. 468, F.S.

<sup>20</sup> Part XIII, ch. 468, F.S.

- Orthotists, prosthetists, and pedorthists;<sup>21</sup>
- Electrologists;<sup>22</sup>
- Massage therapists;<sup>23</sup>
- Clinical laboratory personnel;<sup>24</sup>
- Medical physicists;<sup>25</sup>
- Opticians;<sup>26</sup>
- Hearing aid specialists;<sup>27</sup>
- Physical therapists;<sup>28</sup>
- Psychologists and school psychologists;<sup>29</sup> and
- Clinical social workers, mental health counselors, and marriage and family therapists.<sup>30</sup>

### **Disciplinary Proceeding under Chapters 456 and 120, F.S.**

Section 456.072, F.S., enumerates at least 43 specific acts that constitute grounds for disciplinary action against licensed health care practitioners in Florida. In addition, each health care practitioner's respective practice act contains specific statutory provisions on prohibited acts, disciplinary actions, grounds for discipline, and actions by the applicable board.

The DOH, on behalf of the boards, investigates any complaint that is filed against a health care practitioner if the complaint is:

- In writing;
- Signed by the complainant;<sup>31</sup> and
- Legally sufficient.<sup>32</sup>

A complaint is legally sufficient if it contains allegations of ultimate facts that, if true, show that a regulated practitioner has violated:

- Chapter 456, F.S.;
- His or her practice act; or
- A rule of his or her board or the DOH.<sup>33</sup>

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<sup>21</sup> Part XIV, ch. 468, F.S.

<sup>22</sup> Chapter 478, F.S.

<sup>23</sup> Chapter 480, F.S.

<sup>24</sup> Part II, ch. 483, F.S.

<sup>25</sup> Part III, ch. 483, F.S.

<sup>26</sup> Part I, ch. 484, F.S.

<sup>27</sup> Part II, ch. 484, F.S.

<sup>28</sup> Chapter 486, F.S.

<sup>29</sup> Chapter 490, F.S.

<sup>30</sup> Chapter 491, F.S.

<sup>31</sup> Section 456.073(1), F.S. The DOH may also investigate an anonymous complaint, or that of a confidential informant, if the complaint is in writing and is legally sufficient, if the alleged violation of law or rules is substantial, and if the DOH has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*



The Consumer Services Unit receives the complaints and refers them to the closest Investigative Services Unit (ISU) office. The ISU investigates complaints against health care practitioners.<sup>34</sup> Complaints that present an immediate threat to public safety are given priority; however, all complaints are investigated as timely as possible. When the complaint is assigned to an investigator, the complainant will be contacted and given the opportunity to provide additional information. A thorough investigation will be conducted. The steps taken in the investigation are determined by the specifics of the allegations, but generally include the following:

- Obtaining medical records, documents, and evidence;
- Locating and interviewing the complainant, the patient, the subject, and any witnesses; and
- Drafting and serving subpoenas for necessary information.<sup>35</sup>

The ISU includes a staff of professional investigators and senior pharmacists who conduct interviews, collect documents and evidence, prepare investigative reports for the Prosecution Services Unit (PSU), and serve subpoenas and official orders for the DOH.<sup>36</sup>

The PSU is responsible for providing legal services to the DOH in the regulation of all health care boards and councils.<sup>37</sup> The PSU will review the investigative file and report from ISU and recommend a course of action to the State Surgeon General (when an immediate threat to the health, safety, and welfare of the people of Florida exists), the appropriate board's probable cause panel, or the DOH, if there is no board, which may include:

- Having the file reviewed by an expert;
- Issuing a closing order (CO);
- Filing an administrative complaint (AC); or
- Issuing an emergency order (ERO or ESO).<sup>38</sup>

If the ISU investigative file received by the PSU does not pose an immediate threat to the health, safety, and welfare of the people of Florida, then the PSU attorneys review the file and determine, first, whether expert review is required and, then, whether to recommend to the board's probable cause panel:

- A CO;
- An AC; or
- A Letter of Guidance (LOG).<sup>39, 40</sup>

A CO is recommended if the investigation and/or the expert opinion does not support the allegation(s). The subject and the complainant are notified of the results. The complainant may

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<sup>34</sup> Department of Health, Licensing and Regulation, Enforcement, Administrative Complaint Process, *Investigative Services*, available at <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/isu.html> (last visited March 18, 2021).

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

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

<sup>37</sup> Department of Health, Licensing and Regulation, Enforcement, Administrative Complaint Process, *Prosecution Services*, available at <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/psu.html> (last visited March 18, 2021).

<sup>38</sup> *Id.*

<sup>39</sup> Section 456.073(2), F.S. The DOH may recommend a LOG in lieu of finding probable cause if the subject has not previously been issued a LOG for a related offense.

<sup>40</sup> *Id.*

appeal the decision within sixty (60) days of notification by providing additional information for consideration. Cases closed with no finding of probable cause are confidential and are not available through a public records request.<sup>41</sup>

An AC is recommended when the investigation and/or the expert opinion supports the allegation(s). The subject is entitled to a copy of the complete case file prior to the probable cause panel meeting. When an AC is filed with the agency clerk, the subject has the right to choose one of the following options:

- *An Administrative Hearing Involving Disputed Issues of Material Fact* – The subject disputes the facts in the AC and elects to have a hearing before the Division of Administrative Hearings (DOAH). If this occurs, all parties may be asked to testify and the administrative law judge will issue a recommended order that will then go to the board or the DOH for final agency action.
- *A Settlement/Stipulation/Consent Agreement* – The subject enters into an agreement to be presented before the board or the DOH. Terms of this agreement may impose penalties negotiated between the subject or the subject’s attorney and the DOH’s attorney.
- *A Hearing Not Involving Disputed Issues of Material Fact* – The subject of the AC does not dispute the facts. The subject elects to be heard before the board or the DOH. At that time, the subject will be permitted to give oral and/or written evidence in mitigation or in opposition to the recommended action by the DOH.
- *Voluntary Relinquishment of License* – The subject of the AC may elect to surrender his or her license and to cease practice.<sup>42</sup>

Final DOH action, including all of the above, as well as cases where the subject has failed to respond to an AC, are presented before the applicable board, or the DOH if there is no board. The subject may be required to appear. The complainant is notified of the date and location of the hearing and may attend. If the subject is entitled to, and does, appeal the final decision, PSU defends the final order before the appropriate appellate court.<sup>43</sup>

If the ISU investigative file received by the PSU presents evidence of an immediate threat to the health, safety, and welfare of the people of Florida, then the PSU will present the file to the State Surgeon General and recommend one of two types of emergency orders – ESO or ERO – which are exclusively issued by the State Surgeon General against licensees who pose such a threat to the people of Florida.<sup>44</sup>

Whether the State Surgeon General issues an ERO or an ESO depends on the level of danger the licensee presents, because the DOH is permitted to use only the “least restrictive means” to stop the danger.<sup>45</sup> The distinction between the two orders is:

- ESOs – Licensees are deemed to be a threat to the public at large; or
- EROs – Licensees are considered a threat to a segment of the population.<sup>46</sup>

<sup>41</sup> *Supra* note 39.

<sup>42</sup> *Id.*

<sup>43</sup> *Supra* note 36.

<sup>44</sup> Sections 456.073(8) and 120.60(6), F.S.

<sup>45</sup> Section 120.60(6)(b), F.S.

<sup>46</sup> Department of Health, Licensing and Regulation, Enforcement, Administrative Complaint Process, Prosecution Services, *A Quick Guide to the MQA Disciplinary Process Discretionary Emergency Orders – 3 Things to Know*, available at

The emergency order process, which restricts someone's right to work, is carried out without a hearing, and when the order is served on the licensee, it must contain a notice to the licensee of his or her right to an immediate appeal of the emergency order.<sup>47</sup> An ESO or ERO is not considered final agency action, and the DOH must file an AC on the underlying facts supporting the ESO or ERO within 20 days of its issuance.<sup>48</sup> The appeal of the emergency order and the normal disciplinary process under the AC, and regular prosecution can run simultaneously.<sup>49</sup>

### ***Mandatory EROs and ESOs***

Section 456.074, F.S., directs that in certain cases, the DOH must issue an ESO or ERO to certain license practitioners under certain circumstances, specifically:

- If any of the following practitioners have plead guilty to, been convicted of, found guilty of, or have entered a plea of nolo contendere to, regardless of adjudication, certain offenses related to Medicare fraud, Medicaid fraud, health care fraud, controlled substances, or reproductive battery, they are subject to an ESO by the State Surgeon General:
  - Allopathic physician, physician assistants, anesthesiologist assistants, and medical assistants;
  - Osteopathic physician, physician assistants, and anesthesiologist assistants;
  - Chiropractic physician and physician assistants;
  - Podiatric physicians;
  - Naturopathic physicians;
  - Optometrists;
  - Autonomous advanced practice registered nurses, advanced practice registered nurses, registered nurses, licensed practical nurses and certified nursing assistants;
  - Pharmacists and pharmacy technicians;
  - Dentists, dental hygienist, and dental laboratories; and
  - Opticians;<sup>50</sup>
- The DOH may issue an ESO or ERO if the Board of Medicine (BOM) or Board of Osteopathic Medicine (BOOM) has previously found one of its physicians has committed medical malpractice,<sup>51</sup> gross medical malpractice, or repeated medical malpractice,<sup>52</sup> and the probable cause panel again finds probable cause for another malpractice violation. In such cases, the State Surgeon General must review the matter to determine if an ESO or ERO is warranted;<sup>53</sup>

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<http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/documents/a-quick-guide-to-the-mqa-disciplinary-process-discretionary-emergency-orders.pdf> (last visited March 18, 2021).

<sup>47</sup> See Fla. Admin. Code R. 28-106.501(3) (2020), and ss. 120.569(2)(n) and 120.60(6), F.S.

<sup>48</sup> Fla. Admin. Code R. 28-106.501(3) (2020).

<sup>49</sup> Section 120.60(6)(c), F.S.

<sup>50</sup> Section 456.074(1), F.S.

<sup>51</sup> Section 456.50(1)(g), F.S., "Medical malpractice" means the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in law related to health care licensure.

<sup>52</sup> *Id.* "Repeated medical malpractice" is medical malpractice, and any similar wrongful act, neglect, or default committed in another state or country which, if committed in this state, would have been considered medical malpractice, and will be considered medical malpractice, if the standard of care and burden of proof applied in the other state or country equaled or exceeded that used in this state.

<sup>53</sup> Section 456.074(2), F.S.

- The DOH may issue an ESO or ERO if any practitioner governed by ch. 456, F.S., tests positive for any drug on any government or private sector pre-employment or employer-ordered confirmed drug test,<sup>54</sup> when the practitioner does not have a lawful prescription and legitimate medical reason for using such drug;<sup>55</sup>
- The DOH must issue an ESO if it receives information that a massage therapist, a person with an ownership interest in the establishment, or a massage corporate establishment corporation whose owners, officers, or individual are directly involved in the management of the establishment, has been convicted of, found guilty of, or has entered a guilty or nolo contendere plea to, regardless of adjudication, a felony under any of the following crimes anywhere, relating to:<sup>56</sup>
  - Prostitution;<sup>57</sup>
  - Kidnapping;<sup>58</sup>
  - False imprisonment;<sup>59</sup>
  - Luring or enticing a child;<sup>60</sup>
  - Human trafficking;<sup>61</sup>
  - Human smuggling;<sup>62</sup>
  - Sexual battery;<sup>63</sup>
  - Female genital mutilation;<sup>64</sup>
  - Procuring a person under 18 for prostitution;<sup>65</sup>
  - Selling or buying of minors into prostitution;<sup>66</sup>
  - Forcing, compelling, or coercing another to become a prostitute;<sup>67</sup>
  - Deriving support from the proceeds of prostitution;<sup>68</sup>
  - Prohibiting prostitution and related acts;<sup>69</sup>
  - Lewd or lascivious offenses committed upon or in the presence of persons under 16;<sup>70</sup>
  - Lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person;<sup>71</sup>
  - Sexual performance by a child;<sup>72</sup>

<sup>54</sup> Section 112.0445, F.S., defines a “confirmed drug test” as a second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen, and must be different in scientific principle than the initial drug test.

<sup>55</sup> Section 456.074(3), F.S. The practitioner must be given 48 hours from the time of notification of the confirmed test results to produce a lawful prescription for the drug before an emergency order is issued.

<sup>56</sup> Section 456.074(4), F.S.

<sup>57</sup> Section 796.07(1)(a), F.S. “Prostitution” means the giving or receiving of the body for sexual activity for hire, but excludes sexual activity between spouses. Prostitution that took place at a massage establishment is reclassified to the next higher degree. *See s. 796.07(2)(a), F.S.*, which is reclassified under s. 796.07(7), F.S.

<sup>58</sup> Section 787.01, F.S.

<sup>59</sup> Section 787.02, F.S.

<sup>60</sup> Section 787.025, F.S.

<sup>61</sup> Section 787.06, F.S.

<sup>62</sup> Section 787.07, F.S.

<sup>63</sup> Section 794.011, F.S.

<sup>64</sup> Section 794.08, F.S.

<sup>65</sup> Former s. 796.03, F.S.

<sup>66</sup> Former s. 796.035, F.S.

<sup>67</sup> Section 796.04, F.S.

<sup>68</sup> Section 796.05, F.S.

<sup>69</sup> Section 796.07(4)(a)3., F.S., relating to a felony of the third degree for a third or subsequent violation of s. 796.07, F.S.

<sup>70</sup> Section 800.04, F.S.

<sup>71</sup> Section 825.1025(2)(b), F.S.

<sup>72</sup> Section 827.071, F.S.

- Protection of minors;<sup>73</sup>
- Computer pornography;<sup>74</sup>
- Transmission of material harmful to minors, to a minor by electronic device or equipment;<sup>75</sup> and
- Selling or buying of minors.<sup>76</sup>
- The DOH must issue an ESO if a BOM or BOOM probable cause panel determines that the following constitutes a violation of the practice act and there exists an immediate danger to the public:
  - The registered surgery office where office surgery level liposuction, or Level II or Level III office surgeries are being performed; or the physician practicing in the office, are not in compliance with the standards of practice for office surgery set by statute and board rule;<sup>77</sup> or
  - The physician is practicing beyond the scope of his or her education, training and experience, and performing procedures the licensee knows, or has reason to know, that he or she is not competent to perform.<sup>78, 79</sup>

### III. Effect of Proposed Changes:

The bill:

- Amends s. 456.072, F.S., to add to the list of offenses that are grounds for disciplinary action against the license of a health care practitioner regulated by the DOH. The bill adds the following to that list: being convicted or found guilty of, entering a plea of guilty or nolo contendere to, regardless of adjudication, or committing or attempting, soliciting, or conspiring to commit an act that would constitute a violation of any of the offenses listed in s. 456.074(5), F.S., or a similar offense in another jurisdiction.
- Creates a new subsection (5) of s. 456.074, F.S., to require the DOH to issue an emergency order suspending the license of any allopathic or osteopathic physician who is a pediatrician or who otherwise treats children in his or her practice, if the physician is arrested for committing or attempting, soliciting, or conspiring to commit any act that would constitute a violation of any of the following criminal offenses involving a child in Florida or similar offenses in another jurisdiction:
  - Sexual misconduct against an individual with a developmental disability;<sup>80</sup>
  - Sexual misconduct against a patient of a receiving or treatment facility or in the custody of the Department of Children and Families;<sup>81</sup>
  - Kidnapping;<sup>82</sup>
  - False imprisonment;<sup>83</sup>

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<sup>73</sup> Section 847.0133, F.S.

<sup>74</sup> Section 847.0135, F.S.

<sup>75</sup> Section 847.0138, F.S.

<sup>76</sup> Section 847.0145, F.S.

<sup>77</sup> *Id.* and Fla. Admin. Code Rs. 64B8-9.009 and 64B15-14.007 (2020).

<sup>78</sup> Sections 458.331(1)(v) and 459.015(1)(z), F.S.

<sup>79</sup> Section 456.074(5), F.S.

<sup>80</sup> Section 393.135(2), F.S.

<sup>81</sup> Section 394.4593(2), F.S.,

<sup>82</sup> Section 787.01, F.S.

<sup>83</sup> Section 787.02, F.S.

- Luring or enticing a child;<sup>84</sup>
- Human trafficking for commercial sexual activity;<sup>85</sup>
- Human trafficking of a child under 5 for commercial sexual activity;<sup>86</sup>
- Human smuggling;<sup>87</sup>
- Sexual battery, excluding a person charged with falsely accusing certain individuals of sexual battery;<sup>88</sup>
- Unlawful sexual activity with certain minors;<sup>89</sup>
- Female genital mutilation;<sup>90</sup>
- Procuring a person under age 18 for prostitution;<sup>91</sup>
- Selling or buying of minors into prostitution;<sup>92</sup>
- Forcing, compelling, or coercing another to become a prostitute;<sup>93</sup>
- Deriving support from the proceeds of prostitution;<sup>94</sup>
- Prohibiting prostitution and related acts;<sup>95</sup>
- Lewd or lascivious offenses committed upon or in the presence of persons under age 16;<sup>96</sup>
- Video voyeurism of a minor;<sup>97</sup>
- Sexual performance by a child;<sup>98</sup>
- Performing prohibited acts in connection with obscene, lewd, and other materials;<sup>99</sup>
- Selling, renting, loaning, for monetary consideration, materials harmful to minors, using a minor in the production of such material, or distributing such material to a minor in certain locations;<sup>100</sup>
- Exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations;<sup>101</sup>
- Selling, renting, loaning, giving away, distributing, transmitting, or showing any obscene material to a minor;<sup>102</sup>
- Computer pornography, prohibited computer usage, or traveling to meet minors, excluding owners or operators of computer services;<sup>103</sup>
- Transmission of child pornography by electronic device or equipment;<sup>104</sup>

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<sup>84</sup> Section 787.025(2), F.S.

<sup>85</sup> Section 787.06(3)(b),(d), (f), or (g), F.S.

<sup>86</sup> Former s. 787.06(3)(h), F.S.

<sup>87</sup> Section 787.07, F.S.

<sup>88</sup> Section 794.011, F.S.

<sup>89</sup> Section 794.05, F.S.

<sup>90</sup> Section 794.08, F.S.

<sup>91</sup> Former s. 796.03, F.S.

<sup>92</sup> Former s. 796.035, F.S.

<sup>93</sup> Section 796.04, F.S.

<sup>94</sup> Section 796.05, F.S.

<sup>95</sup> Section 796.07(4)(a)3., F.S., relating to a felony of the third degree for a third or subsequent violation of s. 796.07, F.S.

<sup>96</sup> Section 800.04, F.S.

<sup>97</sup> Section 810.145(8), F.S.

<sup>98</sup> Section 827.071, F.S.

<sup>99</sup> Section 847.011, F.S.

<sup>100</sup> Section 847.012, F.S.

<sup>101</sup> Section 847.013, F.S.

<sup>102</sup> Section 847.0133, F.S.

<sup>103</sup> Sections 847.0135, and 847.0135(6), F.S.

<sup>104</sup> Section 847.0137, F.S.

- Transmission of material harmful to minors to a minor by electronic device or equipment;<sup>105</sup>
- Selling or buying of minors;<sup>106</sup>
- Loitering or prowling in close proximity to children;<sup>107</sup>
- Racketeering activity;<sup>108</sup>
- Sexual misconduct against a forensic client of a civil or forensic facility for defendants who have a mental illness or an intellectual disability;<sup>109</sup>
- Sexual misconduct against a juvenile offender;<sup>110</sup> and
- Any similar offense committed in this state which has been re-designated from a former statute number to one of those listed above.
- Section 3 of the bill directs the OPPAGA to analyze Florida’s laws and rules relating to grounds for health care practitioner discipline and immediate suspension of licenses, specifically with respect to criminal offenses, and report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2022. The analysis must identify all health care professions regulated by the DOH, and for each profession:
  - Indicate all sections of the Florida Statutes, and related rules, that subject practitioners to discipline or an ESO of his or her license;
  - Identify which criminal offenses are specifically listed as grounds for disciplinary action or a ESO suspending a practitioner’s license, distinguishing whether the DOH may take such action upon a health care practitioner’s arrest for the criminal offense or conduct or only if the health care practitioner is found guilty or convicted of, or enters a plea of nolo contendere to, the criminal offense;
  - Compare all of the information obtained and determine:
    - Whether there are disparities between the professions as to which criminal offenses are grounds for disciplinary action or grounds for an ESO; and
    - Whether there are disparities between the disciplinary guidelines adopted by the boards or the DOH for the different professions;
  - Review historical disciplinary action data from the DOH, including all of the disciplinary actions taken or immediate suspensions issued by the DOH for a health care practitioner’s arrest for, conviction of, or entering a plea to a criminal offense, and identifying the types of offenses and details of the corresponding disciplinary action taken, if any; and
  - To the extent possible, determine how many health care practitioners in the past 10 years (or in prior years if older data are available) have been arrested for, been convicted of, or have entered a plea to a criminal offense listed in s. 456.074(5), F.S., as amended by the bill, and, for such practitioners, determine how many have had administrative complaints filed or disciplinary action taken against their license or have had their license immediately suspended by the DOH for such arrest, conviction, or criminal plea, noting the final disposition of their case with the DOH, if any; and;

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<sup>105</sup> Section 847.0138, F.S.

<sup>106</sup> Section 847.0145, F.S.

<sup>107</sup> Section 856.022, F.S.

<sup>108</sup> Section 895.03, F.S., if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this subsection or at least one offense listed in this subsection which was committed with sexual intent or motive.

<sup>109</sup> Section 916.1075(2), F.S.

<sup>110</sup> Section 985.701(1), F.S.

- Compare all of the information obtained under the analysis and determine if Florida’s current laws and rules, relating to discipline and ESOs of practitioners licenses, are creating discrepancies relating to practitioners who are arrested for, convicted of, or entering pleas to criminal offenses, that pose a danger to the health, safety, and welfare of the public, but are not being subjected to disciplinary action or ESOs of their licenses.
- Requires that, upon the OPPAGA’s request, all state agencies must assist the OPPAGA in its analysis and preparation of the report, including, but not limited to, providing technical assistance and any relevant information or data the OPPAGA requests.

The bill repeals the authority for the OPPAGA report on January 2, 2022.

The bill provides an effective date of July 1, 2021.

#### **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 bill might result in increased expenses borne by the OPPAGA to cover the costs associated with producing the report required under the bill.



The DOH may incur costs associated with issuing and enforcing the ESOs authorized in the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

To potentially give the OPPAGA more time to conduct the analysis required under section 3 of the bill, an amendment should be considered to make that section effective upon the bill becoming law.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 456.072 and 456.074.

This bill creates a non-statutory section of the Laws of Florida.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

By Senator Book

32-01089C-21

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1 A bill to be entitled  
 2 An act relating to health care practitioner  
 3 discipline; amending s. 456.072, F.S.; subjecting  
 4 health care practitioners to disciplinary action for  
 5 specified offenses; amending s. 456.074, F.S.;  
 6 requiring the Department of Health to issue emergency  
 7 orders to suspend certain physicians' licenses if they  
 8 are arrested for committing or attempting, soliciting,  
 9 or conspiring to commit acts that would constitute  
 10 violations of specified criminal offenses involving a  
 11 child; requiring the Office of Program Policy Analysis  
 12 and Government Accountability (OPPAGA) to analyze  
 13 certain laws and rules and their application;  
 14 providing requirements for the analysis; requiring all  
 15 state agencies, upon OPPAGA's request, to assist  
 16 OPPAGA and provide requested information and data;  
 17 requiring OPPAGA to submit a report to the Governor  
 18 and the Legislature by a specified date; providing for  
 19 future repeal; providing an effective date.

20  
 21 Be It Enacted by the Legislature of the State of Florida:

22  
 23 Section 1. Paragraph (rr) is added to subsection (1) of  
 24 section 456.072, Florida Statutes, to read:

25 456.072 Grounds for discipline; penalties; enforcement.—

26 (1) The following acts shall constitute grounds for which  
 27 the disciplinary actions specified in subsection (2) may be  
 28 taken:

29 (rr) Being convicted or found guilty of, entering a plea of

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

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30 guilty or nolo contendere to, regardless of adjudication, or  
 31 committing or attempting, soliciting, or conspiring to commit an  
 32 act that would constitute a violation of any of the offenses  
 33 listed in s. 456.074(5) or a similar offense in another  
 34 jurisdiction.

35 Section 2. Present subsection (5) of section 456.074,  
 36 Florida Statutes, is redesignated as subsection (6), and a new  
 37 subsection (5) is added to that section, to read:

38 456.074 Certain health care practitioners; immediate  
 39 suspension of license.—

40 (5) The department shall issue an emergency order  
 41 suspending the license of any physician licensed under chapter  
 42 458 or chapter 459 who is a pediatrician or who otherwise treats  
 43 children in his or her practice if the physician is arrested for  
 44 committing or attempting, soliciting, or conspiring to commit  
 45 any act that would constitute a violation of any of the  
 46 following criminal offenses involving a child in this state or  
 47 similar offenses in another jurisdiction:

48 (a) Section 393.135(2), relating to sexual misconduct  
 49 against an individual with a developmental disability.

50 (b) Section 394.4593(2), relating to sexual misconduct  
 51 against a patient of a receiving or treatment facility or  
 52 otherwise in the custody of the Department of Children and  
 53 Families.

54 (c) Section 787.01, relating to kidnapping.

55 (d) Section 787.02, relating to false imprisonment.

56 (e) Section 787.025(2), relating to luring or enticing a  
 57 child.

58 (f) Section 787.06(3)(b), (d), (f), or (g), relating to

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

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59 human trafficking for commercial sexual activity.  
 60 (g) Former s. 787.06(3)(h), relating to human trafficking  
 61 of a child under the age of 15 for commercial sexual activity.  
 62 (h) Section 787.07, relating to human smuggling.  
 63 (i) Section 794.011, relating to sexual battery, excluding  
 64 s. 794.011(10).  
 65 (j) Section 794.05, relating to unlawful sexual activity  
 66 with certain minors.  
 67 (k) Section 794.08, relating to female genital mutilation.  
 68 (l) Former s. 796.03, relating to procuring a person under  
 69 the age of 18 for prostitution.  
 70 (m) Former s. 796.035, relating to the selling or buying of  
 71 minors into prostitution.  
 72 (n) Section 796.04, relating to forcing, compelling, or  
 73 coercing another to become a prostitute.  
 74 (o) Section 796.05, relating to deriving support from the  
 75 proceeds of prostitution.  
 76 (p) Section 796.07(4)(a)3., relating to a felony of the  
 77 third degree for a third or subsequent violation of s. 796.07,  
 78 relating to prohibiting prostitution and related acts.  
 79 (q) Section 800.04, relating to lewd or lascivious offenses  
 80 committed upon or in the presence of persons younger than 16  
 81 years of age.  
 82 (r) Section 810.145(8), relating to video voyeurism of a  
 83 minor.  
 84 (s) Section 827.071, relating to sexual performance by a  
 85 child.  
 86 (t) Section 847.011, relating to prohibited acts in  
 87 connection with obscene, lewd, and other materials.

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88 (u) Section 847.012, relating to materials harmful to  
 89 minors.  
 90 (v) Section 847.013, relating to exposing minors to harmful  
 91 motion pictures, exhibitions, shows, presentations, or  
 92 representations.  
 93 (w) Section 847.0133, relating to the protection of minors  
 94 from obscene materials.  
 95 (x) Section 847.0135, relating to computer pornography,  
 96 prohibited computer usage, or traveling to meet minors,  
 97 excluding s. 847.0135(6).  
 98 (y) Section 847.0137, relating to transmission of child  
 99 pornography by electronic device or equipment.  
 100 (z) Section 847.0138, relating to the transmission of  
 101 material harmful to minors to a minor by electronic device or  
 102 equipment.  
 103 (aa) Section 847.0145, relating to the selling or buying of  
 104 minors.  
 105 (bb) Section 856.022, relating to loitering or prowling in  
 106 close proximity to children.  
 107 (cc) Section 895.03, relating to racketeering activity, if  
 108 the court makes a written finding that the racketeering activity  
 109 involved at least one sexual offense listed in this subsection  
 110 or at least one offense listed in this subsection which was  
 111 committed with sexual intent or motive.  
 112 (dd) Section 916.1075(2), relating to sexual misconduct  
 113 against a forensic client of a civil or forensic facility for  
 114 defendants who have a mental illness or an intellectual  
 115 disability.  
 116 (ee) Section 985.701(1), relating to sexual misconduct

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117 against a juvenile offender.

118 (ff) Any similar offense committed in this state which has  
119 been redesignated from a former statute number to one of those  
120 listed in this subsection.

121 Section 3. Health care practitioner study.—

122 (1) The Office of Program Policy Analysis and Government  
123 Accountability (OPPAGA) shall analyze this state’s laws and  
124 rules relating to grounds for disciplinary actions against and  
125 immediate suspension of health care practitioner licenses and  
126 the application of such laws and rules, specifically with  
127 respect to criminal offenses.

128 (2) In its analysis, OPPAGA shall do all of the following,  
129 at a minimum:

130 (a) Identify all of the health care professions regulated  
131 by the Department of Health and, for each health care  
132 profession, indicate all sections of the Florida Statutes and  
133 related rules that subject practitioners of that health care  
134 profession to discipline or immediate suspension of licensure.

135 (b) For each health care profession, identify which  
136 criminal offenses are specifically enumerated as grounds for  
137 disciplinary action against or immediate suspension of the  
138 health care practitioner’s license. This information must  
139 distinguish whether the department may take such action upon a  
140 health care practitioner’s arrest for the criminal offense or  
141 conduct or only if the health care practitioner is found guilty  
142 or convicted of or enters a plea of nolo contendere to the  
143 criminal offense. OPPAGA shall also review the corresponding  
144 disciplinary guidelines adopted by rule of the applicable board,  
145 or the department if there is no board, for each health care

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146 profession.

147 (c) Compare all of the information obtained under paragraph  
148 (b) and determine whether there are disparities between health  
149 care professions as to which criminal offenses are grounds for  
150 disciplinary action against or immediate suspension of licensure  
151 and whether there are disparities between the corresponding  
152 disciplinary guidelines adopted by the board or the department,  
153 as applicable, for the different health care professions.

154 (d) Review historical disciplinary action data from the  
155 department which includes all of the disciplinary actions taken  
156 or immediate suspensions issued by the department for a health  
157 care practitioner’s arrest for, conviction of, or entering a  
158 plea to a criminal offense, identifying the types of offenses  
159 and details of the corresponding disciplinary action taken, if  
160 any.

161 (e) To the extent possible, determine how many health care  
162 practitioners in the past 10 years have been arrested for, been  
163 convicted of, or have entered a plea to a criminal offense  
164 enumerated in s. 456.074(5), Florida Statutes, as amended by  
165 this act. OPPAGA may review such instances that occurred more  
166 than 10 years ago if such information is available.

167 (f) For the health care practitioners identified in  
168 paragraph (e), determine how many have had administrative  
169 complaints filed or disciplinary action taken against their  
170 license or have had their license immediately suspended by the  
171 department for such arrest, conviction, or criminal plea, noting  
172 the final disposition of their case with the department, if any.

173 (g) Compare all of the information obtained under this  
174 subsection and determine if this state’s current laws and rules

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175 relating to discipline and immediate suspension of health care  
176 practitioner licenses are creating discrepancies relating to  
177 health care practitioners who are arrested for, are convicted  
178 of, or enter pleas to criminal offenses that pose a danger to  
179 the health, safety, and welfare of the public but are not  
180 subjected to disciplinary action or immediate suspension of  
181 their licenses.

182 (3) Upon OPPAGA's request, all state agencies shall assist  
183 in conducting its analysis and preparing its report under this  
184 section, including, but not limited to, providing technical  
185 assistance and any relevant information or data OPPAGA requests.

186 (4) OPPAGA shall submit a report of its findings to the  
187 Governor, the President of the Senate, and the Speaker of the  
188 House of Representatives by January 1, 2022.

189 (5) This section is repealed January 2, 2022.

190 Section 4. This act shall take effect July 1, 2021.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

03/23/2021

Meeting Date

1934

Bill Number (if applicable)

Topic Health Care Practitioner Discipline

Amendment Barcode (if applicable)

Name Jennifer L. Dritt

Job Title Executive Director

Address 1820 E. Park Ave., Suite 100

Phone (850) 297-2000

Street

Tallahassee

FL

32301

Email jdritt@fcasv.org

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Council Against Sexual Violence

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 Jason Pizzo, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** March 17, 2021

---

I respectfully request that **Senate Bill 1934**, relating to Health Care Practitioner Discipline, be placed on the:

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

Thank you for your consideration.

A handwritten signature in cursive script that reads "Lauren Book".

---

Senator Lauren Book  
Florida Senate, District 32

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

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

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

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BILL: SB 1972

INTRODUCER: Senator Pizzo

SUBJECT: Expunction and Sealing of Judicial Records

DATE: March 22, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Stokes</u>	<u>Jones</u>	<u>CJ</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

---

**I. Summary:**

SB 1972 creates s. 741.301, F.S., permitting a person, who was the respondent to a domestic violence injunction petition, to request that the court seal the injunction petition and all related records and documents, if the petition for the injunction was withdrawn or dismissed or if there was a ruling in favor of the respondent. The petition for sealing may be filed at any time.

This bill amends s. 943.0585, F.S., to permit a person who has had a prior expunction granted for an offense that was committed when he or she was a minor to have another eligible record expunged. If the prior expunction was for an offense in which the minor was charged as an adult, the person is not eligible for a subsequent expunction.

Additionally, this bill provides that a person who is eligible to seek an expunction for an indictment, information, or other charging document that was filed and dismissed or nolle prosequi by the state, was dismissed by a court, or a judgment of acquittal or verdict of not guilty was rendered, is not ineligible if they had a prior sealing or expunction.

The bill requires the Florida Department of Law Enforcement (FDLE) to issue a certificate of eligibility or deny the request for a certificate no later than 6 months after the application is submitted.

This bill may have a negative fiscal impact on the FDLE and the courts. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2021.



## II. Present Situation:

### Domestic Violence Injunctions

#### *Temporary Injunctions*

If someone believes that she or he is a victim of domestic violence<sup>1</sup> or has reasonable cause to believe that she or he is in imminent danger of becoming a victim of domestic violence, that person may petition a circuit court for an injunction for protection against domestic violence.<sup>2</sup> The clerk's office will take the sworn petition to a judge who rules on the petition, generally within 24 hours.

The judge examines the petition, *ex parte*, meaning that the judge examines only the information submitted by the petitioner. The parties are generally not present, and no additional evidence is submitted. If it appears to the court that an immediate and present danger of domestic violence exists, the court may grant a temporary injunction, pending a full hearing at a later date.<sup>3</sup>

Any *ex parte* temporary injunction is effective for a fixed period of time that does not exceed 15 days. A full hearing will be set for a date that is no later than the date when the temporary injunction expires, although the court may grant a continuance for good cause shown, including a continuance to obtain service of process on the respondent. A temporary injunction will be extended if it is necessary to remain in full force and effect during the continuance.<sup>4</sup>

#### *Injunctions*

The court may grant an injunction after a hearing is held and the court concludes that the petitioner is a victim of domestic violence or has reasonable cause to believe that she or he is in imminent danger of becoming a victim.<sup>5</sup> The injunction remains in effect until it is modified or dissolved. The petitioner or respondent may move at any time for those actions.<sup>6</sup>

### Sealing of Judicial Records

The Florida Constitution mandates that the public must have access to court records, subject only to certain enumerated limitations.<sup>7</sup> The rules promulgated by the Florida Supreme Court govern public access and protection of records of the judicial branch.<sup>8</sup> The rules provide that specified

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<sup>1</sup> "Domestic violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. Section 741.28(2), F.S.

"Family or household member means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit." Section 741.28(3), F.S.

<sup>2</sup> Section 741.30(1)(a), F.S.

<sup>3</sup> Section 741.30(5)(a), F.S.

<sup>4</sup> Section 741.30(5)(c), F.S.

<sup>5</sup> Section 741.30(6)(a), F.S.

<sup>6</sup> Section 741.30(6)(c), F.S.

<sup>7</sup> Art. I, s. 24, Fla. Const.

<sup>8</sup> Rule 2.420, Fla. R. Gen. Prac. & Jud. Admin.

records of the judicial branch<sup>9</sup> must be confidential, including all records made confidential under the Florida and United States Constitution and Florida and federal law.<sup>10</sup> “Confidential,” means that such information is exempt from the public right of access under article I, section 24(a) of the Florida Constitution and may be released only to the persons or organizations designated by law, statute, or court order. As applied to information contained within a court record, the term “exempt” means that such information is confidential.<sup>11</sup> Additionally, a court can determine that any court record is confidential by:

- A finding that confidentiality is required to:
  - Prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
  - Protect trade secrets;
  - Protect a compelling governmental interest;
  - Obtain evidence to determine legal issues in a case;
  - Avoid substantial injury to innocent third parties;
  - Avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of proceeding sought to be closed;
  - Comply with established public policy set forth in the Florida or United States Constitution or statutes or Florida rules or case law.
- A finding that no less restrictive measures are available to protect the interest set forth above.<sup>12</sup>

A person may request the court to determine the confidentiality of trial court records in noncriminal cases. Such request must be made in writing in the form of a motion captioned, “Motion to Determine Confidentiality of Court Records.” Such motion must:

- Identify the particular court records or a portion of a record that the movant seeks to have determined as confidential with as much specificity as possible without revealing the information subject to the confidentiality determination;
- Specify the basis for determining that such court records are confidential without revealing confidential information; and
- Set forth the specific legal authority and any applicable legal standards for determining such court records to be confidential without revealing confidential information.<sup>13</sup>

---

<sup>9</sup> *Id.*, providing that “records of the judicial branch,” are all records, regardless of physical form, characteristics, or means of transmission, made or received in connection with the transaction of official business by any judicial branch entity and consists of: (1) “court records,” which are the contents of the court file, including the progress docket and other similar records generated to document activity in a case, transcripts filed with the clerk, documentary exhibits in the custody of the clerk, and electronic records, videotapes, or stenographic tapes of depositions or other proceedings filed with the clerk, and electronic records, videotapes, or stenographic tapes of court proceedings; and (2) “administrative records,” which are all other records made or received pursuant to court rule, law, or ordinance, or in connection with the transaction of official business by any judicial branch entity.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

Florida statute and rule provide for the sealing of certain criminal history records. A criminal history record that is ordered sealed by the court is confidential and exempt from public record laws, and only available to specified persons.<sup>14</sup>

### **Expunction of Criminal History Records**

State courts have continuing jurisdiction over their own procedures, including the expunction and sealing of judicial records that contain criminal history information.<sup>15</sup> Pursuant to statute, judges have the discretion to order criminal records maintained by the court system and records held by law enforcement agencies to be sealed<sup>16</sup> or expunged for either a minor or an adult.<sup>17</sup> However, no one has a right to have a record expunged and the request may be denied at the sole discretion of the court.<sup>18</sup>

A person may have his or her criminal history record<sup>19</sup> expunged under certain enumerated circumstances.<sup>20</sup> When a record is expunged, the criminal justice agencies<sup>21</sup> that possess the record must physically destroy or obliterate it. However, a criminal justice agency may retain a notation indicating compliance with an order to expunge.<sup>22</sup> The FDLE maintains a copy of the record to evaluate subsequent requests for sealing or expunction, and to recreate the record in the event a court vacates the order to expunge.<sup>23</sup> The criminal history record retained by the FDLE is confidential and exempt.<sup>24</sup> Once the record is expunged, a person may lawfully deny or fail to acknowledge the arrests covered by the expunged record, subject to exceptions.<sup>25</sup>

---

<sup>14</sup> Section 943.059(6), F.S., providing that a sealed criminal history record is available to the subject of the record, the subjects attorney, criminal justice agencies for specified purposes, judges in the state court system for specified purposes, and specified entities for licensing access authorization and employment purposes.; *see also* Rule 2.420 Fla. R. Gen. Prac. & Jud. Admin.

<sup>15</sup> Sections 943.0585(4)(a) and 943.059(4)(a), F.S. The procedures, however, must be consistent with the duties established in statute. *See also* Henry P. Trawick, Jr., *Florida Pleading and Practice Forms* 11B. Fla. Pl. & Pr. Forms s. 97:14 (May 2020).

<sup>16</sup> In general terms, sealing makes records confidential in most cases while expunction requires the actual physical destruction of records held by courts and most law enforcement agencies. When a record is sealed, it is preserved so that it is secure and inaccessible to any person who does not have a legal right to access the record or the information contained within the record. A court may order a criminal history record sealed, rendering it confidential and exempt from Florida's public records laws. Sections 943.045(19), 943.059(6), and 119.07(1), F.S., and Art. I, s. 24(a), Fla. Const.

<sup>17</sup> Sections 943.0585(4)(b) and 943.059(4)(b), F.S.

<sup>18</sup> Section 943.0585(4)(b) and (e), F.S.

<sup>19</sup> Section 943, 045(6), F.S., provides that a "criminal history record" is any judicial record maintained by a criminal justice agency containing criminal history information.

<sup>20</sup> Sections 943.0581, 943.0582, 943.0583, and 943.0585, F.S.

<sup>21</sup> Section 943.045(11), F.S., provides that "criminal justice agency," means: (1) A court; (2) the FDLE; (3) The Department of Juvenile Justice; (4) The protective investigations component of the Department of Children and Families, which investigates the crimes of abuse and neglect; and (5) Any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice.

<sup>22</sup> Section 943.0585(6)(a), F.S.

<sup>23</sup> Section 943.045(16), F.S.

<sup>24</sup> Section 943.0585(6)(a), F.S.

<sup>25</sup> Section 943.0585(6), F.S.

### *Court-Ordered Expunction*

A court, in its discretion, may order the expunction of a person's criminal history record if the FDLE issues the person a certificate of eligibility for expunction.<sup>26</sup> The FDLE must issue a certificate of eligibility for court-ordered expunction to a person meeting the criteria set forth in statute.<sup>27</sup> Generally, a person is eligible for expunction if:

- An indictment, information, or other charging document was not filed or issued in the case giving rise to the criminal history record.
- An indictment, information, or other charging document was filed or issued in the case giving rise to the criminal history record, but was dismissed or nolle prosequi by the State, was dismissed by the court, a judgment of acquittal was rendered, or a verdict of not guilty was rendered.
- The person is not seeking to seal a criminal history record relating to a violation of certain enumerated offenses.
- The person has never, prior to filing the application for a certificate of eligibility, been either:
  - Adjudicated guilty of any criminal offense or comparable ordinance violation; or
  - Adjudicated delinquent of any felony or certain enumerated misdemeanors as a juvenile.
- The person has not been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to expunge pertains.
- The person is no longer under court supervision applicable to the disposition of arrest or alleged criminal activity to which the petition to expunge pertains.
- The person has never secured a prior sealing or expunction, unless:
  - Expunction is sought of a criminal history record previously sealed for at least 10 years; and
  - The record was sealed because adjudication was withheld, or because a judgment of acquittal or verdict of not guilty was rendered.<sup>28</sup>

### *Certificate of Eligibility*

Before petitioning a court to expunge a criminal history record, a person must apply to the FDLE for a certificate of eligibility for expunction. The FDLE must issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

- Is eligible for expunction, as described above;
- 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 specified criteria;<sup>29</sup>
- Has submitted to the FDLE a certified copy of the disposition of the charge to which the petition pertains; and

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<sup>26</sup> Section 943.0585(4), F.S.

<sup>27</sup> Section 943.0585(2), F.S.

<sup>28</sup> Section 943.0585(1), F.S.

<sup>29</sup> Section 943.0585(2)(a)2., F.S., Specified criteria include: An indictment, information, or other charging document was not filed or issued in the case giving rise to the criminal history record; An indictment, information, or other charging document was filed or issued in the case giving rise to the criminal history record, was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court or a judgment of acquittal was rendered, or a verdict of not guilty was rendered; The person has never been adjudicated guilty or delinquent for committing any felony or specified misdemeanors.

- Pays a \$75 processing fee to the FDLE.<sup>30</sup>

A certificate of eligibility for expunction is valid for 12 months after the date stamped on the certificate when issued by the FDLE.<sup>31</sup>

### *Other Types of Expunction*

Other types of expunction include:

- Lawful self-defense expunction.<sup>32</sup>
- Human trafficking victim expunction.<sup>33</sup>
- Automatic juvenile expunction.<sup>34</sup>
- Early juvenile expunction.<sup>35</sup>
- Administrative expunction due to a mistake.<sup>36</sup>
- Juvenile diversion program expunction.<sup>37</sup>

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

This bill creates s. 741.301, F.S., permitting a person, who was the respondent to a domestic violence injunction petition, to request that the court seal the injunction petition and all related records and documents, if the petition for the injunction was withdrawn or dismissed or if there was a ruling in favor of the respondent. The petition for sealing may be filed at any time.

This bill amends s. 943.0585, F.S., to permit a person who has had a prior expunction granted for an offense that was committed when he or she was a minor to have another eligible record expunged. If the prior expunction was for an offense in which the minor was charged as an adult, the person is not eligible for a subsequent expunction.

Additionally, this bill provides that a person who is eligible to seek an expunction for an indictment, information, or other charging document that was filed and dismissed or nolle prosequi by the state, was dismissed by a court, or a judgment of acquittal or verdict of not guilty was rendered, may seek such expunction even if they had a prior sealing or expunction.

The bill requires the FDLE to issue a certificate of eligibility or deny the request for a certificate no later than 6 months after the application is submitted. Current law does not provide a time frame for which the FDLE must issue a certificate of eligibility or deny a request.

The bill takes effect July 1, 2021.

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<sup>30</sup> Section 943.0585(2)(a)1.-4., F.S.

<sup>31</sup> Section 943.0585(2), F.S.

<sup>32</sup> Section 943.0578, F.S.

<sup>33</sup> Section 943.0583, F.S.

<sup>34</sup> Section 943.0515(1)(b)1., F.S.

<sup>35</sup> Section 943.0515(1)(b)2., F.S.

<sup>36</sup> Section 943.0581, F.S.

<sup>37</sup> Section 943.0582, F.S.

**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 FDLE states that there are currently 1,454,269 unique identification numbers with criminal records. If one percent of those individuals apply for a Certificate of Eligibility each year, applications would increase by 14,543 applications each year.<sup>38</sup>

In order to accommodate the increased workload, the Seal/Expunge Section would need 18 FTE positions (one Criminal Justice Information Consultant II, 2 Criminal Justice Consultant Is, 8 Criminal Justice Information Analyst IIs, 2 Criminal Justice Information Analyst Is, 3 Criminal Justice Information Examiners, one Operations and Management Consultant Manager, and one Senior Management Analyst Supervisor) for a total of \$1,207,115 of which \$1,137,005 is recurring.<sup>39</sup>

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<sup>38</sup> Florida Department of Law Enforcement, *2021 Agency Bill Analysis of SB 1972* (March 11, 2021) (on file with the Senate Committee on Criminal Justice).

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

In order to maintain the proposed processing time of 6 months, the section would require five FTE positions (2 Criminal Justice Consultant Is, one Criminal Justice Information Analyst I, and 2 Criminal Justice Information Examiners) totaling \$315,359 (\$295,884 recurring).<sup>40</sup>

The required changes to Computerized Criminal History will cost an estimated \$724,000 in non-recurring funds. The increase in positions would also require the acquisition of additional office space to house the new employees, because the department's headquarters building is currently at capacity.<sup>41</sup>

These amounts, according to the FDLE, would total \$2,249,474 of which \$1,432,889 is recurring.<sup>42</sup>

It is likely that courts may also see an increase in requests for expunctions and an increase in workload to accommodate those requests.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 943.0585 of the Florida Statutes.

This bill creates section 741.301 of the Florida Statutes.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

By Senator Pizzo

38-00892A-21

20211972\_\_

1 A bill to be entitled  
 2 An act relating to expunction and sealing of judicial  
 3 records; creating s. 741.301, F.S.; providing for  
 4 sealing of a petition for a domestic violence  
 5 injunction and related documents if the petition was  
 6 withdrawn or dismissed, or if there was a ruling in  
 7 favor of the respondent; reenacting and amending s.  
 8 943.0585, F.S.; exempting expunctions sought for cases  
 9 dismissed or nolle prosequi or that resulted in an  
 10 acquittal from the limit on the number of expunctions  
 11 that may be sought; expanding an exception to an  
 12 eligibility requirement for expunction of a criminal  
 13 history record to allow expunction for an offense  
 14 committed when the person was a minor; providing an  
 15 exception; requiring the Department of Law Enforcement  
 16 to act on applications for certificates of eligibility  
 17 within a specified timeframe; providing an effective  
 18 date.  
 19  
 20 Be It Enacted by the Legislature of the State of Florida:  
 21  
 22 Section 1. Section 741.301, Florida Statutes, is created to  
 23 read:  
 24 741.301 Sealing of domestic violence injunction petitions  
 25 not granted.—A respondent to a petition made under s. 741.30 may  
 26 petition the court to seal the petition for injunction and all  
 27 records and documents related to it if the petition for  
 28 injunction was withdrawn or dismissed or if there was a ruling  
 29 in favor of the respondent. A petition for sealing under this

Page 1 of 6

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

38-00892A-21

20211972\_\_

30 section may be filed at any time.  
 31 Section 2. Subsections (1) and (2) of section 943.0585,  
 32 Florida Statutes, are amended, and subsection (3) of that  
 33 section is reenacted, to read:  
 34 943.0585 Court-ordered expunction of criminal history  
 35 records.—  
 36 (1) ELIGIBILITY.—A person is eligible to petition a court  
 37 to expunge a criminal history record if:  
 38 (a) An indictment, information, or other charging document  
 39 was not filed or issued in the case giving rise to the criminal  
 40 history record.  
 41 (b) An indictment, information, or other charging document  
 42 was filed or issued in the case giving rise to the criminal  
 43 history record, was dismissed or nolle prosequi by the state  
 44 attorney or statewide prosecutor, or was dismissed by a court of  
 45 competent jurisdiction or a judgment of acquittal was rendered  
 46 by a judge, or a verdict of not guilty was rendered by a judge  
 47 or jury. Paragraph (g) does not apply to an expunction sought  
 48 under this paragraph.  
 49 (c) The person is not seeking to expunge a criminal history  
 50 record that is ineligible for court-ordered expunction under s.  
 51 943.0584.  
 52 (d) The person has never, as of the date the application  
 53 for a certificate of expunction is filed, been adjudicated  
 54 guilty in this state of a criminal offense or been adjudicated  
 55 delinquent in this state for committing any felony or any of the  
 56 following misdemeanors, unless the record of such adjudication  
 57 of delinquency has been expunged pursuant to s. 943.0515:  
 58 1. Assault, as defined in s. 784.011;

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20211972\_\_

59 2. Battery, as defined in s. 784.03;

60 3. Assault on a law enforcement officer, a firefighter, or

61 other specified officers, as defined in s. 784.07(2)(a);

62 4. Carrying a concealed weapon, as defined in s. 790.01(1);

63 5. Open carrying of a weapon, as defined in s. 790.053;

64 6. Unlawful possession or discharge of a weapon or firearm

65 at a school-sponsored event or on school property, as defined in

66 s. 790.115;

67 7. Unlawful use of destructive devices or bombs, as defined

68 in s. 790.1615(1);

69 8. Unlawful possession of a firearm, as defined in s.

70 790.22(5);

71 9. Exposure of sexual organs, as defined in s. 800.03;

72 10. Arson, as defined in s. 806.031(1);

73 11. Petit theft, as defined in s. 812.014(3);

74 12. Neglect of a child, as defined in s. 827.03(1)(e); or

75 13. Cruelty to animals, as defined in s. 828.12(1).

76 (e) The person has not been adjudicated guilty of, or

77 adjudicated delinquent for committing, any of the acts stemming

78 from the arrest or alleged criminal activity to which the

79 petition pertains.

80 (f) The person is no longer under court supervision

81 applicable to the disposition of arrest or alleged criminal

82 activity to which the petition to expunge pertains.

83 (g) Except for an expunction sought under paragraph (b),

84 the person has never secured a prior sealing or expunction of a

85 criminal history record under this section, s. 943.059, former

86 s. 893.14, former s. 901.33, or former s. 943.058, unless:

87 1. Expunction is sought of a criminal history record

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88 previously sealed for 10 years pursuant to paragraph (h) and the

89 record is otherwise eligible for expunction; or

90 2. The prior expunction of a criminal history record was

91 granted for an offense that was committed when the person was a

92 minor and the record is otherwise eligible for expunction. This

93 subparagraph does not apply if the prior expunction was for an

94 offense in which the minor was charged as an adult.

95 (h) The person has previously obtained a court-ordered

96 sealing of a ~~the~~ criminal history record under s. 943.059,

97 former s. 893.14, former s. 901.33, or former s. 943.058 for a

98 minimum of 10 years because adjudication was withheld or because

99 all charges related to the arrest or alleged criminal activity

100 to which the petition to expunge pertains were not dismissed

101 before trial, without regard to whether the outcome of the trial

102 was other than an adjudication of guilt. The requirement for the

103 record to have previously been sealed for a minimum of 10 years

104 does not apply if a plea was not entered or all charges related

105 to the arrest or alleged criminal activity to which the petition

106 to expunge pertains were dismissed before trial or a judgment of

107 acquittal was rendered by a judge or a verdict of not guilty was

108 rendered by a judge or jury.

109 (2) CERTIFICATE OF ELIGIBILITY.—Before petitioning a court

110 to expunge a criminal history record, a person seeking to

111 expunge a criminal history record must apply to the department

112 for a certificate of eligibility for expunction. The department

113 shall issue a certificate or deny the request for a certificate

114 no later than 6 months after the application is submitted. The

115 department shall adopt rules to establish procedures for

116 applying for and issuing a certificate of eligibility for

Page 4 of 6

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117 expunction.

118 (a) The department shall issue a certificate of eligibility  
119 for expunction to a person who is the subject of a criminal  
120 history record if that person:

121 1. Satisfies the eligibility criteria in paragraphs (1) (a)-  
122 (h) and is not ineligible under s. 943.0584.

123 2. Has submitted to the department a written certified  
124 statement from the appropriate state attorney or statewide  
125 prosecutor which confirms the criminal history record complies  
126 with the criteria in paragraph (1) (a) or paragraphs (1) (b) and  
127 (c).

128 3. Has submitted to the department a certified copy of the  
129 disposition of the charge to which the petition to expunge  
130 pertains.

131 4. Remits a \$75 processing fee to the department for  
132 placement in the Department of Law Enforcement Operating Trust  
133 Fund, unless the executive director waives such fee.

134 (b) A certificate of eligibility for expunction is valid  
135 for 12 months after the date stamped on the certificate when  
136 issued by the department. After that time, the petitioner must  
137 reapply to the department for a new certificate of eligibility.  
138 The petitioner's status and the law in effect at the time of the  
139 renewal application determine the petitioner's eligibility.

140 (3) PETITION.—Each petition to expunge a criminal history  
141 record must be accompanied by:

142 (a) A valid certificate of eligibility issued by the  
143 department.

144 (b) The petitioner's sworn statement that he or she:

145 1. Satisfies the eligibility requirements for expunction in

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20211972\_\_

146 subsection (1).

147 2. Is eligible for expunction to the best of his or her  
148 knowledge and does not have any other petition to seal or  
149 expunge a criminal history record pending before any court.

150  
151 A person who knowingly provides false information on such sworn  
152 statement commits a felony of the third degree, punishable as  
153 provided in s. 775.082, s. 775.083, or s. 775.084.

154 Section 3. This act shall take effect July 1, 2021.

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# 2021 FDLE LEGISLATIVE BILL ANALYSIS



BILL INFORMATION	
<b>BILL NUMBER:</b>	SB 1972
<b>BILL TITLE:</b>	Expunction and Sealing of Judicial Records
<b>BILL SPONSOR:</b>	Senator Pizzo
<b>EFFECTIVE DATE:</b>	July 1, 2021

COMMITTEES OF REFERENCE
1) Judiciary
2) Criminal Justice
3) Rules
4)
5)

CURRENT COMMITTEE
Judiciary

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

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

IDENTICAL BILLS	
<b>BILL NUMBER:</b>	841
<b>SPONSOR:</b>	Grieco

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
<b>DATE OF ANALYSIS:</b>	March 11, 2021
<b>LEAD AGENCY ANALYST:</b>	Charles Schaeffer
<b>ADDITIONAL ANALYST(S):</b>	Robin Sparkman, Ebony Tisby, Becky Bezemek
<b>LEGAL ANALYST:</b>	Jim Martin, Wes Petkovsek
<b>FISCAL ANALYST:</b>	Cynthia Barr

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## POLICY ANALYSIS

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**1. EXECUTIVE SUMMARY**

Amends s. 943.0585, FS, to allow for multiple expunctions of charges that were not filed. Establishes a six-month processing time frame for certificate of eligibility applications determinations.

**2. SUBSTANTIVE BILL ANALYSIS**

1. **PRESENT SITUATION:** An individual is only allowed one court-ordered sealing or expunction under ss. 943.0585 and 943.059, FS, in a lifetime. The department does not have a statutorily-mandated processing time for making a determination regarding the issuance of a certificate of eligibility application.
2. **EFFECT OF THE BILL:** Allows for a court-ordered expunction to be issued to an individual with a previous court-ordered sealing or expunction. The bill also allows for multiple expunctions of charges that were dismissed or nolle prosequi by the state, attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction or a judgment of acquittal was rendered by a judge or a verdict of not guilty was rendered by a judge or jury. Currently, the Computerized Criminal History (CCH) files contain 1,454,269 unique state identification numbers who would potentially be eligible for this relief. The number of potential non-identified individuals with charges located outside of CCH cannot be estimated. This bill establishes a six-month processing time for certificate of eligibility application determinations.
3. **DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES OR PROCEDURES?** Y  N

If yes, explain:	
What is the expected impact to the agency's core mission?	
Rule(s) impacted (provide references to F.A.C., etc.):	

**4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

List any known proponents and opponents:	
Provide a summary of the proponents' and opponents' positions:	

**5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?** Y  N 

If yes, provide a description:	
Date Due:	
Bill Section Number:	

**6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL?** Y  N 

Board:	
Board Purpose:	

Who Appointments:	
Appointee Term:	
Changes:	
Bill Section Number(s):	

### FISCAL ANALYSIS

#### 1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y N

Revenues:	
Expenditures:	
Does the legislation increase local taxes or fees?	
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:	
Expenditures:	<ul style="list-style-type: none"> <li>• Currently, there are 1,454,269 unique identification numbers with criminal records. Assuming one percent of the individuals would apply for a Certificate of Eligibility per year there would be an increase of 14,543 applications annually.</li> <li>• To accommodate this increased workload, the Seal/Expunge Section is requesting 18 FTE positions (one Criminal Justice Information Consultant II, 2 Criminal Justice Consultant Is, 8 Criminal Justice Information Analyst IIs, 2 Criminal Justice Information Analyst Is, 3 Criminal Justice Information Examiners, one Operations and Management Consultant Manager and one Senior Management Analyst Supervisor) totaling \$1,207,115 (\$1,137,005 recurring).</li> <li>• To maintain the proposed processing time of six months the section is requesting five FTE positions (2 Criminal Justice Consultant Is, one Criminal Justice Information Analyst I and 2 Criminal Justice Information Examiners) totaling \$315,359 (\$295,884 recurring)</li> <li>• Required changes to CCH will cost an estimated \$724,000 non-recurring (see Technology Impact).</li> <li>• The increase in positions would also require the acquisition of additional office space to house the new members, as the department's headquarters building is currently at capacity.</li> </ul> <p><b>Total FDLE Fiscal: \$2,249,474 (\$1,432,889 recurring)</b></p>
Does the legislation contain a State Government appropriation?	
If yes, was this appropriated last year?	

**3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y  N**

Revenues:	
Expenditures:	
Other:	

**4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y  N**

Does the bill increase taxes, fees or fines?	
Does the bill decrease taxes, fees or fines?	
What is the impact of the increase or decrease?	
Bill Section Number:	

**TECHNOLOGY IMPACT**

**1. DOES THE LEGISLATION 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.	This will require changes in CCH workflows (seal/expunge, juvenile diversion and early juvenile expunction) including the addition of new fields, modification to existing notification templates. This will also require additional business rules, changes to the suppression rules regarding the seal/expunge dissemination status and impact the record maintenance processes including various batch processes. The required changes (analysis, design, programming and testing) will total approximately \$724,000 (non-recurring) and require six months to complete.
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**FEDERAL IMPACT**

**1. DOES THE LEGISLATION 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.	
--	--

**LEGAL - GENERAL COUNSEL'S OFFICE REVIEW**

Issues/concerns/comments and recommended action:	Regarding court-ordered expunction of criminal history records, it appears that the amendment provides an advantage to a person for being formally charged by the State Attorney's Office (SAO) with a crime (and having the case subsequently dismissed, nolle prossed, judgement of acquittal, etc.) versus those who were not formally charged at all by the SAO from the outset (e.g., no information filed). This is because the amendment language only appears to exempt those applying under s. 943.0585(1)(b), FS, from the requirement to have not previously secured a seal or expunction under this section, but does not extend this exemption those applying under s. 943.0585(1)(a), FS.
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## ADDITIONAL COMMENTS

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- Would alter the effect of s. 943.059, FS., which states the person have never secured a prior sealing or expunction of a criminal history record of these sections or former s. 893.14, s. 901.33, s. 943.058, F.S.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/23/21

Meeting Date

SB 1972

Bill Number (if applicable)

Topic Expunction and Sealing of Judicial Records

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 S Monroe St.

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 Florida Association of Criminal Defense Lawyers

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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)

3/23/21

Meeting Date

SS 1972

Bill Number (if applicable)

Topic EXPUNCTION & SEALING OF JUVENILE RECORDS

Amendment Barcode (if applicable)

Name CHRISTINA MINOR

Job Title EXECUTIVE DIRECTOR

Address 1300 N ADAMS ST.

Phone (321) 223-4232

Street

TALLAHASSEE

FL

32303

Email CMINOR@FJJJ.ORG

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against

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

Representing FLORIDA JUVENILE JUSTICE 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)

3/23/21

Meeting Date

1972

Bill Number (if applicable)

Topic Expungement

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 N Gadsden St

Phone 850-488-6850

Street

Tallahassee FL 32301

City

State

Zip

Email ndaniels@flda.org

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.

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

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

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

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BILL: CS/SB 1974

INTRODUCER: Criminal Justice Committee and Senator Pizzo

SUBJECT: Public Records/Domestic Violence Injunction

DATE: March 24, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Stokes</u>	<u>Jones</u>	<u>CJ</u>	<b>Fav/CS</b>
3.	_____	_____	<u>RC</u>	_____

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

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 1974 is the public records exemption linked to SB 1972. This bill creates a public records exemption for a petition, records, and documents relating to a petition for a domestic violence injunction when the petition was withdrawn, dismissed, or a ruling was issued in favor of the respondent and the court has ordered that those items be sealed upon the petition of the respondent. SB 1972 creates s. 741.301, F.S., permitting a person, who was the respondent to a domestic violence injunction petition, to request that the court seal the injunction petition and all related records and documents, if the petition for the injunction was withdrawn or dismissed or if there was a ruling in favor of the respondent. The petition for sealing may be filed at any time.

The bill further provides that the exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2026, unless it is reviewed and saved from repeal through enactment by the Legislature.

The bill also contains a statement of public necessity as required by s. 24(c), Art. I of the State Constitution. According to the statement, allowing the sealing of those petitions, records, and documents would allow the requestors to continue their lives without facing barriers to employment and other life opportunities including possible discrimination and public criticism.

Because this bill creates a public records exemption, it will require a two-thirds vote of each house in order to pass.

The bill takes effect on the same date that SB 1972, or similar legislation takes effect, if that legislation is adopted 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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>4</sup> Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

### Court Files, Records, and Exemptions

Pursuant to s. 119.0714, F.S., nothing in the public records chapter may be construed to exempt a public record that was made a part of a court file *unless* the record has been specifically closed by court order, or falls into one of eleven enumerated categories. The final exemption, enacted in 2017, provides an exemption for a petition, and its contents for an injunction for protection against domestic violence which is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself *without an injunction being issued*. The exemption applies to records relating to petitions dismissed on or after July 1, 2017.<sup>5</sup>

### Court Rules and Confidentiality

The Florida Constitution mandates that the public must have access to court records, subject only to certain enumerated limitations.<sup>6</sup> Article V, section 2 of the State Constitution grants rulemaking power to the Florida Supreme Court. Subject to that rulemaking power, the Court has adopted rules that “govern public access to and the protection of the records of the judicial branch of government.”<sup>7</sup> Rule 2.420 of the Florida Rules of Judicial Administration states that the public shall have access to all records of the judicial branch except as provided in the rule. The “judicial branch” is defined to include the clerks of court when acting as an arm of the court.

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<sup>1</sup> FLA. CONST. art. I, s. 24(a).

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

<sup>3</sup> See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2020-2022).

<sup>4</sup> *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

<sup>5</sup> Chapter 2017-14, s. 3, L.O.F.

<sup>6</sup> Art. I, s. 24, Fla. Const.

<sup>7</sup> Fla. R. Jud. Admin. 2.420(a).

Another portion of the rule states that the clerk of the court will designate and maintain the confidentiality of information contained within a court record that is described in the rule.<sup>8</sup>

The rules provide that specified records of the judicial branch<sup>9</sup> must be confidential, including all records made confidential under the Florida and United States Constitution and Florida and federal law.<sup>10</sup> “Confidential,” means that such information is exempt from the public right of access under article I, section 24(a) of the Florida Constitution and may be released only to the persons or organizations designated by law, statute, or court order. As applied to information contained within a court record, the term “exempt” means that such information is confidential.<sup>11</sup> The rule further lists a series of records that will be maintained as confidential including, but not limited to, records relating to adoption, HIV test results and the identity of persons tested, birth records and portions of death and fetal death records, information that can be used to identify a minor who petitions for a waiver of parental or guardian notice of consent when seeking to terminate a pregnancy, and clinical records under the Baker Act.<sup>12</sup>

However, the rule does not include the domestic violence injunction petition listed above. According to correspondence from the Florida Court Clerks and Comptrollers, in 2017, the Clerks requested guidance from the Florida Supreme Court to resolve their dilemma after the legislation was passed in 2017. Should the clerks release the confidential information that the Legislature intended to be confidential, or did they need to wait until the Court added the item to Rule 2.420 before keeping the items confidential?<sup>13</sup>

The Court ultimately decided that it would *not* amend the rule to include the domestic violence injunction materials.<sup>14</sup> The Rules of Judicial Administration Committee stated that it did not believe that the statute was an appropriate subject for court rule. The Committee reasoned that the statute did not make the petition and its contents confidential upon filing, but rather upon dismissal for certain reasons and in certain circumstances. Because the clerks would not necessarily be able to glean why the petition was dismissed from the face of the order, there was no feasible way for the clerks to reliably determine in all cases when the provisions of the statute came into play. The Committee concluded and recommended that the burden of ensuring the confidentiality of the injunction petition should be upon the party or the party’s attorney against whom the injunction was sought when the petition was dismissed for the reasons that would trigger the confidentiality protections in statute. They felt that the burden should not be upon the

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<sup>8</sup> Fla. R. Jud. Admin. 2.420(d)(1).

<sup>9</sup> Fla. R. Jud. Admin. 2.420(b), providing that “records of the judicial branch,” are all records, regardless of physical form, characteristics, or means of transmission, made or received in connection with the transaction of official business by any judicial branch entity and consists of: (1) “court records,” which are the contents of the court file, including the progress docket and other similar records generated to document activity in a case, transcripts filed with the clerk, documentary exhibits in the custody of the clerk, and electronic records, videotapes, or stenographic tapes of depositions or other proceedings filed with the clerk, and electronic records, videotapes, or stenographic tapes of court proceedings; and (2) “administrative records,” which are all other records made or received pursuant to court rule, law, or ordinance, or in connection with the transaction of official business by any judicial branch entity.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Fla. R. Jud. Admin. 2.420(c)(1)-(10).

<sup>13</sup> Correspondence from Marcia M. Johnson, President, Florida Court Clerks & Comptrollers, to the Honorable Jorge Labarga, Chief Justice of the Florida Supreme Court, (July 31, 2017) (on file with the Senate Committee on Judiciary).

<sup>14</sup> Correspondence from John A. Tomasino, Clerk of the Supreme Court of Florida, to Marcia M. Johnson, President, Florida Court Clerks & Comptrollers (Jan. 10, 2018) (on file with the Senate Committee on Judiciary).

clerks by creating a new section in the Rules of Judicial Administration.<sup>15</sup> This remains the current solution.

A court, however, can determine that any court record is confidential by:

- A finding that confidentiality is required to:
  - Prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
  - Protect trade secrets;
  - Protect a compelling governmental interest;
  - Obtain evidence to determine legal issues in a case;
  - Avoid substantial injury to innocent third parties;
  - Avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of proceeding sought to be closed;
  - Comply with established public policy set forth in the Florida or United States Constitution or statutes or Florida rules or case law.
- A finding that no less restrictive measures are available to protect the interest set forth above.<sup>16</sup>

A person may request the court to determine the confidentiality of trial court records in noncriminal cases. Such request must be made in writing in the form of a motion captioned, “Motion to Determine Confidentiality of Court Records.” Such motion must:

- Identify the particular court records or a portion of a record that the movant seeks to have determined as confidential with as much specificity as possible without revealing the information subject to the confidentiality determination;
- Specify the bases for determining that such court records are confidential without revealing confidential information; and
- Set forth the specific legal authority and any applicable legal standards for determining such court records to be confidential without revealing confidential information.<sup>17</sup>

Florida statute and rule provide for the sealing of certain criminal history records. A criminal history record that is ordered sealed by the court is confidential and exempt from public record laws, and only available to specified persons.<sup>18</sup>

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<sup>15</sup> Correspondence from Judson Lee Cohen, Chair, Rules of Judicial Administration Committee to John A. Tomasino, Clerk of the Supreme Court of Florida (Nov. 21, 2017) (on file with the Senate Committee on Judiciary).

<sup>16</sup> Fla. R. Jud. Admin. 2.420(c).

<sup>17</sup> Fla. R. Jud. Admin. 2.420(e).

<sup>18</sup> Section 943.059(6), F.S., providing that a sealed criminal history record is available to the subject of the record, the subjects attorney, criminal justice agencies for specified purposes, judges in the state court system for specified purposes, and specified entities for licensing access authorization and employment purposes; *see also* Rule 2.420 Fla. R. Gen. Prac. & Jud. Admin.

## Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>19</sup> (the Act) prescribes a legislative review process for newly created or substantially amended<sup>20</sup> public records or open meetings exemptions, with specified exceptions.<sup>21</sup> 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.<sup>22</sup>

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.<sup>23</sup> 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;<sup>24</sup>
- 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;<sup>25</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>26</sup>

The Act also requires specified questions to be considered during the review process.<sup>27</sup> 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.<sup>28</sup> 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

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<sup>19</sup> Section 119.15, F.S.

<sup>20</sup> 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.

<sup>21</sup> 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.

<sup>22</sup> Section 119.15(3), F.S.

<sup>23</sup> Section 119.15(6)(b), F.S.

<sup>24</sup> Section 119.15(6)(b)1., F.S.

<sup>25</sup> Section 119.15(6)(b)2., F.S.

<sup>26</sup> Section 119.15(6)(b)3., F.S.

<sup>27</sup> 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?

<sup>28</sup> See *generally* s. 119.15, F.S.

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.<sup>29</sup>

### **Statement of Public Necessity**

The State Constitution, in s. 24(c), Art. I, requires that each law establishing a public record exemption provide a statement of public necessity. The public necessity statement must specify the reason for the public necessity exemption and may be no broader than necessary to accomplish the stated purpose of the law. The law must pass each House of the Legislature by a two-thirds vote.

### **Domestic Violence Injunctions**

#### ***Temporary Injunctions***

If someone believes that she or he is a victim of domestic violence<sup>30</sup> or has reasonable cause to believe that she or he is in imminent danger of becoming a victim of domestic violence, that person may petition a circuit court for an injunction for protection against domestic violence.<sup>31</sup> The clerk's office will take the sworn petition to a judge who rules on the petition, generally within 24 hours.

The judge examines the petition, *ex parte*, meaning that the judge examines only the information submitted by the petitioner. The parties are generally not present, and no additional evidence is submitted. If it appears to the court that an immediate and present danger of domestic violence exists, the court may grant a temporary injunction, pending a full hearing at a later date.<sup>32</sup>

Any *ex parte* temporary injunction is effective for a fixed period of time that does not exceed 15 days. A full hearing will be set for a date that is no later than the date when the temporary injunction expires, although the court may grant a continuance for good cause shown, including a continuance to obtain service of process on the respondent. A temporary injunction will be extended if it is necessary to remain in full force and effect during the continuance.<sup>33</sup>

#### ***Injunctions***

Once notice is given, a hearing is held, and the court concludes that the petitioner is a victim of domestic violence or has reasonable cause to believe that she or he is in imminent danger of

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<sup>29</sup> Section 119.15(7), F.S.

<sup>30</sup> "Domestic violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. Section 741.28(2), F.S.

"Family or household member" means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit. Section 741.28(3), F.S.

<sup>31</sup> Section 741.30(1)(a), F.S.

<sup>32</sup> Section 741.30(5)(a), F.S.

<sup>33</sup> Section 741.30(5)(c), F.S.



becoming a victim, the court may grant an injunction.<sup>34</sup> The injunction remains in effect until it is modified or dissolved. The petitioner or respondent may move at any time for those actions.<sup>35</sup>

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

SB 1974 is the public records exemption linked to SB 1972. This bill creates a public records exemption for a petition, records, and documents relating to a petition for a domestic violence injunction when the petition was withdrawn, dismissed, or a ruling was issued in favor of the respondent and the court has ordered that those items be sealed upon the petition of the respondent. SB 1972 creates s. 741.301, F.S., permitting a person, who was the respondent to a domestic violence injunction petition, to request that the court seal the injunction petition and all related records and documents, if the petition for the injunction was withdrawn or dismissed or if there was a ruling in favor of the respondent. The petition for sealing may be filed at any time.

The bill complies with the provisions of the Open Government Sunset Review Act. Section 741.301(2)(b), F.S., states that the new exemption language is subject to the Act and will stand repealed on October 2, 2026, unless reviewed and saved from repeal by reenactment by the Legislature.

The bill also contains a statement of public necessity as required by s. 24(c), Art. I of the State Constitution. The public necessity statement provides that:

The Legislature finds that it is a public necessity that petitions filed under ss. 741.30 and 741.301, Florida Statutes, and all records and documents related to the petitions be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution unless the domestic violence petition was granted. Persons who have been accused of domestic violence face barriers to employment and other life opportunities, and knowledge that they were so accused, although no injunction was granted, would expose them to possible discrimination and public obloquy. It is necessary that these petitions and related documents be made confidential and exempt in order for such petitioners to have the chance to continue their lives without such consequences when no injunction was ever issued.

The bill takes effect on the same date that SB 1972, or similar legislation takes effect, if that legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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

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

None.

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<sup>34</sup> Section 741.30(6)(a), F.S.

<sup>35</sup> Section 741.30(6)(c), F.S.

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

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meeting exemption. Because this bill creates an exemption for domestic violence injunction records when the injunction was never issued, the bill requires a two-thirds vote.

***Public Necessity Statement***

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public exemption. Because this bill creates an exemption for domestic violence injunction records when the injunction was never issued, the bill provides a public necessity statement.

***Breadth of Exemption***

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill makes confidential and exempt domestic violence injunction records when the injunction was never issued. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

**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 741.301, 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 March 23, 2021:**

The committee substitute is a technical amendment to add a reference to the linked bill, SB 1972.

B. Amendments:

None.



564538

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2021	.	
	.	
	.	
	.	

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

**Senate Amendment (with directory amendment)**

Delete line 47

and insert:

SB 1972 or similar legislation takes effect, if such legislation

===== **D I R E C T O R Y C L A U S E A M E N D M E N T**=====

And the directory clause is amended as follows:

Delete line 15

and insert:



564538

11 SB 1972, 2021 Regular Session, is amended to read:

By Senator Pizzo

38-00893A-21

20211974\_\_

A bill to be entitled

An act relating to public records; amending s. 741.301, F.S.; providing that all pleadings and documents related to a petition domestic violence injunction that have been ordered to be sealed are confidential and exempt from public records requirements; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 741.301, Florida Statutes, as created by SB \_\_\_\_, 2021 Regular Session, is amended to read:

741.301 Sealing of domestic violence injunction petitions not granted.—

(1) A respondent to a petition made under s. 741.30 may petition the court to seal the petition for injunction and all records and documents related to it if the petition for injunction was withdrawn or dismissed or if there was a ruling in favor of the respondent. A petition for sealing under this section may be filed at any time.

(2) (a) A petition, records, and documents that have been ordered sealed under subsection (1) and the petition for sealing are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand

Page 1 of 2

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

38-00893A-21

20211974\_\_

repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that petitions filed under ss. 741.30 and 741.301, Florida Statutes, and all records and documents related to the petitions be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution unless the domestic violence petition was granted. Persons who have been accused of domestic violence face barriers to employment and other life opportunities, and knowledge that they were so accused, although no injunction was granted, would expose them to possible discrimination and public obloquy. It is necessary that these petitions and related documents be made confidential and exempt in order for such petitioners to have the chance to continue their lives without such consequences when no injunction was ever issued.

Section 3. This act shall take effect on the same date that SB \_\_\_\_ or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

Page 2 of 2

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

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/23/21

Meeting Date

SB 1974

Bill Number (if applicable)

Topic Public Records/Domestic Violence Injunction

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 S Monroe St.

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 Florida Association of Criminal Defense Lawyers

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

# CourtSmart Tag Report

Room: SB 110

Case No.:

Type:

Caption: Senate Criminal Justice Committee

Judge:

Started: 3/23/2021 12:30:51 PM

Ends: 3/23/2021 1:55:36 PM

Length: 01:24:46

12:30:50 PM Meeting called to order by Chair Pizzo  
12:30:53 PM Roll call by CAA Sue Arnold  
12:31:00 PM Quorum present  
12:31:15 PM Comments from Chair Pizzo  
12:31:48 PM Introduction of Tab 1, SB 762 by Chair Pizzo  
12:32:01 PM Explanation of SB 762, Public Records/Criminal Conflict and Civil Regional Counsel Office by Senator Baxley  
12:32:53 PM Introduction of Amendment Barcode 842356 by Chair Pizzo  
12:32:59 PM Explanation of Amendment by Senator Baxley  
12:33:38 PM Comments from Chair Pizzo  
12:33:43 PM Closure waived  
12:33:45 PM Amendment adopted  
12:33:53 PM Comments from Chair Pizzo  
12:34:02 PM Closure waived  
12:34:04 PM Roll call by CAA  
12:34:10 PM CS/SB 762 reported favorably  
12:34:21 PM Introduction of Tab 8, SB 1826 by Chair Pizzo  
12:34:36 PM Explanation of SB 1826, Human Trafficking by Senator Diaz  
12:34:47 PM Introduction of Amendment Barcode 557034 by Chair Pizzo  
12:34:52 PM Explanation of Amendment by Senator Diaz  
12:35:09 PM Comments from Chair Pizzo  
12:35:27 PM Closure waived  
12:35:32 PM Comments from Chair Pizzo  
12:35:37 PM Daniel Olson, Office of the Attorney General waives in support  
12:35:43 PM John Guard, Office of the Attorney General waives in support  
12:35:54 PM Amy McGuire, Shumaker Advisors Florida waives in support  
12:35:58 PM Christian Minor, Florida Juvenile Justice Association waives in support  
12:36:05 PM Dr. Danielle Thomas, Florida PTA waives in support  
12:36:07 PM Barbara DeVane, FL NOW waives in support  
12:36:27 PM Speaker Christine Koester in support  
12:38:35 PM Comments from Chair Pizzo  
12:38:45 PM Senator Diaz in closure  
12:38:51 PM Roll call by CAA  
12:39:05 PM CS/SB 1826 reported favorably  
12:39:21 PM Introduction of Tab 9, SB 1868 by Chair Pizzo  
12:39:43 PM Explanation of SB 1868, Privileged Communications Made to Crime Stoppers Organizations by Senator Bean  
12:40:35 PM Introduction of Amendment Barcode 264456 by Chair Pizzo  
12:40:39 PM Explanation of Amendment by Senator Bean  
12:41:17 PM Comments from Chair Pizzo  
12:41:27 PM Closure waived  
12:41:32 PM Amendment adopted  
12:41:35 PM Comments from Chair Pizzo  
12:41:44 PM Speaker Lori Figueroa in support  
12:44:15 PM Comments from Chair Pizzo  
12:44:50 PM Closure waived  
12:44:56 PM Roll call by CAA  
12:45:01 PM CS/SB 1868 reported favorably  
12:45:11 PM Introduction of Tab 2 CS/SB 764 by Chair Pizzo  
12:45:29 PM Explanation of CS/SB 764, Veterans Treatment Courts by Senator Burgess  
12:46:10 PM Introduction of Amendment Barcode 240822 by Chair Pizzo  
12:46:20 PM Explanation of Amendment by Senator Burgess



12:46:51 PM Introduction of Amend. to Amend. Barcode 727420 by Chair Pizzo  
12:46:58 PM Explanation of Amendment by Senator Brandes  
12:47:22 PM Comments from Chair Pizzo  
12:47:26 PM Closure waived by Senator Brandes  
12:47:28 PM Amendment to Amendment adopted  
12:47:31 PM Introduction of Amend. to Amend. Barcode 917972 by Chair Pizzo  
12:47:41 PM Explanation of Amendment by Senator Brandes  
12:47:48 PM Comments from Chair Pizzo  
12:48:02 PM Closure waived by Senator Brandes  
12:48:05 PM Amendment to the Amendment adopted  
12:48:09 PM Comments from Chair Pizzo  
12:48:19 PM Senator Burgess waives closure  
12:48:22 PM Amendment 240822 as amended adopted  
12:48:27 PM Comments from Chair Pizzo  
12:48:32 PM James "Hammer" Hartsell, Department of Veterans' Affairs waives in support  
12:48:40 PM Daniel Olson, Office of the Attorney General waives in support  
12:48:56 PM Comments from Chair Pizzo  
12:49:01 PM Senator Burgess in closure  
12:49:09 PM Roll call by CAA  
12:49:30 PM CS/SB 764 reported favorably  
12:49:39 PM Introduction of Tab 3, SB 1344 by Chair Pizzo  
12:49:47 PM Explanation of SB 1344, Protection of Elderly Persons and Disabled Adults by Senator Burgess  
12:51:21 PM Introduction of Amendment Barcode 948234 by Chair Pizzo  
12:51:25 PM Explanation of Amendment by Senator Burgess  
12:51:54 PM Question from Senator Powell  
12:52:05 PM Response from Senator Burgess  
12:53:21 PM Comments from Chair Pizzo  
12:53:29 PM Closure waived  
12:53:31 PM Amendment adopted  
12:53:33 PM Comments from Chair Pizzo  
12:53:39 PM Question from Senator Brandes  
12:53:43 PM Response from Senator Burgess  
12:53:50 PM Questions from Chair Pizzo  
12:54:26 PM Response from Senator Burgess  
12:55:41 PM Speaker Karen Murillo, Office of Attorney General in support  
12:57:17 PM Follow-up question from Chair Pizzo  
12:57:27 PM Response from Ms. Murillo  
12:58:18 PM Follow-up question from Chair Pizzo  
12:58:26 PM Response from Ms. Murillo  
12:59:22 PM Follow-up question from Chair Pizzo  
12:59:28 PM Response from Ms. Murillo  
12:59:38 PM Question from Senator Brandes  
12:59:45 PM Response from Ms. Murillo  
1:00:02 PM Follow-up question from Senator Brandes  
1:00:08 PM Response from Ms. Murillo  
1:00:56 PM Follow-up question from Senator Brandes  
1:01:04 PM Response from Ms. Murillo  
1:01:12 PM Question from Senator Powell  
1:01:17 PM Response from Ms. Murillo  
1:02:12 PM Follow-up question from Senator Powell  
1:02:22 PM Response from Ms. Murillo  
1:03:25 PM Question from Senator Brandes  
1:03:29 PM Response from Ms. Murillo  
1:04:30 PM Question from Chair Pizzo  
1:04:49 PM Response from Ms. Murillo  
1:05:42 PM Follow-up question from Chair Pizzo  
1:05:49 PM Response from Ms. Murillo  
1:07:00 PM Follow-up question from Chair Pizzo  
1:07:07 PM Response from Ms. Murillo  
1:07:50 PM Follow-up question from Chair Pizzo  
1:07:59 PM Response from Ms. Murillo  
1:09:06 PM Follow-up question from Chair Pizzo

1:09:13 PM Response from Ms. Murillo  
1:09:24 PM Karen Murillo, Office of the Attorney General waives in support  
1:09:30 PM Will McKinley, Dr. Steve Scott / Scott Holdings, LLC waives in support  
1:09:36 PM Greg Black, Elder Law Section of the Florida Bar/Academy of Elder Law Attorneys waives in support  
1:09:42 PM Daniel Olson, Office of the Attorney General waives in support  
1:09:53 PM Senator Brandes in debate  
1:11:47 PM Speaker Shannon P. (wrong bill)  
1:12:48 PM Senator Baxley in debate  
1:14:32 PM Comments from Chair Pizzo  
1:14:37 PM Senator Burgess in closure  
1:14:42 PM Roll call by CAA  
1:15:14 PM CS/SB 1344 reported favorably  
1:15:31 PM Introduction by Chair Pizzo of Tab 5, SB 1508, Public Records by Senator Book  
1:15:41 PM Introduction by Chair Pizzo of Amendment Barcode 658030 by Senator Book  
1:16:03 PM Explanation of Amendment by Senator Book  
1:18:06 PM Comments from Chair Pizzo  
1:18:24 PM Closure waived  
1:18:27 PM Amendment adopted  
1:18:31 PM Comments from Chair Pizzo  
1:18:41 PM Closure waived  
1:18:45 PM Roll call by CAA  
1:18:49 PM CS/SB 1508 reported favorably  
1:19:04 PM Introduction of Tab 6 by Chair Pizzo, SB 1530, Victims of Sexual Offenses by Senator Book  
1:19:16 PM Introduction by Chair Pizzo of Amendment Barcode 905096 then substitute amendment 730446 by Chair Book  
1:19:33 PM Explanation of Amendment by Senator Book  
1:20:21 PM Comments from Chair Pizzo  
1:20:26 PM Question from Senator Brandes  
1:20:31 PM Response from Senator Book  
1:21:28 PM Follow-up question from Senator Brandes  
1:21:35 PM Response from Senator Book  
1:22:16 PM Question from Chair Pizzo  
1:22:29 PM Response from Senator Book  
1:24:12 PM Barbara DeVane, FL NOW waives in support  
1:24:17 PM Speaker Jennifer Dritt, Florida Council Against Sexual Violence in support  
1:24:47 PM Speaker Captain Mike Schentrup, Gainesville Police Department in support  
1:28:29 PM Question from Chair Pizzo  
1:28:33 PM Response from Captain Schentrup  
1:29:04 PM Follow-up question from Chair Pizzo  
1:29:11 PM Response from Captain Schentrup  
1:30:51 PM Comments from Chair Pizzo  
1:30:58 PM Senator Book in closure  
1:31:04 PM Amendment adopted  
1:31:26 PM Barbara DeVane, FL Now waives in support  
1:31:29 PM Jennifer Dritt, Florida Council Against Sexual Violence waives in support  
1:31:31 PM Captain Mike Schentrup, Gainesville Police Department waives in support  
1:31:56 PM Senator Brandes in debate  
1:33:24 PM Chair Pizzo in debate  
1:34:09 PM Senator Book in closure  
1:34:14 PM Roll call by CAA  
1:34:28 PM CS/SB 1530 reported favorably  
1:34:45 PM Introduction of Tab 10, SB 1934 by Chair Pizzo  
1:35:01 PM Explanation of SB 1934, Health Care Practitioner Discipline by Senator Book  
1:36:33 PM Question from Senator Brandes  
1:36:39 PM Response from Senator Book  
1:37:53 PM Follow-up question from Senator Brandes  
1:38:00 PM Response from Senator Book  
1:38:59 PM Follow-up question from Senator Brandes  
1:39:07 PM Response from Senator Book  
1:39:34 PM Question from Senator Boyd  
1:39:42 PM Response from Senator Book  
1:40:34 PM Follow-up question from Senator Boyd

1:40:42 PM Response from Senator Book  
1:41:06 PM Question from Senator Brandes  
1:41:10 PM Response from Senator Book  
1:41:24 PM Follow-up question from Senator Brandes  
1:41:30 PM Response from Senator Book  
1:42:00 PM Question from Senator Boyd  
1:42:08 PM Response from Staff Director Lauren Jones  
1:42:47 PM Follow-up question from Senator Boyd  
1:42:55 PM Response from Senator Book  
1:43:33 PM Jennifer Dritt, Florida Council Against Sexual Violence waives in support  
1:43:56 PM Chair Pizzo in debate  
1:45:14 PM Senator Book in closure  
1:45:20 PM Roll call by CAA  
1:45:57 PM SB 1934 reported favorably  
1:46:18 PM Introduction of Tab 4, SB 1476 by Chair Pizzo  
1:46:27 PM Explanation of SB 1476, Controlled Substances by Senator Brodeur  
1:47:50 PM Comments from Chair Pizzo  
1:48:05 PM Closure waived  
1:48:07 PM Roll call by CAA  
1:48:14 PM SB 1476 reported favorably  
1:48:31 PM Chair passed to Senator Brandes  
1:48:36 PM Introduction of Tab 7, SB 1802 by Chair Brandes  
1:48:48 PM Explanation of SB 1802, Interception of Wire, Oral, or Electronic Communications Made in Violation of Protective Orders by Senator Pizzo  
1:49:14 PM Introduction of Amendment Barcode 508250 by Chair Brandes  
1:49:20 PM Explanation of Amendment by Senator Pizzo  
1:49:36 PM Comments from Chair Brandes  
1:49:45 PM Amendment adopted  
1:49:48 PM Comments from Chair Brandes  
1:49:53 PM Question from Chair Brandes  
1:50:02 PM Response from Senator Pizzo  
1:50:56 PM Jennifer Dritt, Florida Council Against Sexual Violence waives in support  
1:51:04 PM Comments from Chair Brandes  
1:51:07 PM Closure waived  
1:51:11 PM Roll call by CAA  
1:51:17 PM CS/SB 1802 reported favorably  
1:51:26 PM Introduction of Tab 11, SB 1972 by Chair Brandes  
1:51:38 PM Explanation of SB 1972, Expunction and Sealing of Judicial Records by Senator Pizzo  
1:52:05 PM Comments from Chair Brandes  
1:52:09 PM Jorge Chamizo, Florida Association of Criminal Defense Lawyers waives in support  
1:52:14 PM Christian Minor, Florida Juvenile Justice Association waives in support  
1:52:18 PM Nancy Daniels, Florida Public Defender Association waives in support  
1:52:25 PM Comments from Chair Brandes  
1:52:29 PM Closure waived  
1:52:31 PM Roll call by CAA  
1:52:35 PM SB 1972 reported favorably  
1:52:48 PM Introduction of Tab 12, SB 1974 by Chair Brandes  
1:52:56 PM Explanation of SB 1974, Public Records/Domestic Violence Injunction by Senator Pizzo  
1:53:08 PM Introduction of Amendment Barcode 564538 by Chair Brandes  
1:53:16 PM Explanation of Amendment by Senator Pizzo  
1:53:26 PM Comments from Chair Brandes  
1:53:33 PM Jorge Chamizo, Florida Association of Criminal Defense Lawyers waives in support  
1:53:39 PM Closure waived  
1:53:42 PM Amendment adopted  
1:53:45 PM Comments from Chair Brandes  
1:53:54 PM Roll call by CAA  
1:53:58 PM CS/SB 1974 reported favorably  
1:54:09 PM Chair returned to Senator Pizzo  
1:54:17 PM Senator Baxley moves to give staff license to make technical and conforming changes to the Committee Substitutes. Without objection, show that adopted  
1:54:32 PM Senator Baxley would like to be shown voting in the affirmative on CS/SB 1826, CS/SB 1868, CS/CS/764  
1:54:56 PM Senator Perry would like to be shown voting in the affirmative on CS/SB 762, CS/SB 1826, CS/SB 1868,

CS/SB 764

**1:55:16 PM**

Comments from Chair Pizzo

**1:55:18 PM**

Senator Boyd moves to adjourn

**1:55:25 PM**

Meeting adjourned