

<b>Tab 1</b>	<b>SB 266</b> by <b>Diaz</b> ; (Compare to CS/H 00139) Service as a Law Enforcement Officer						
612690	D	S	RCS	CJ, Diaz	Delete everything after	01/11 04:34 PM	

<b>Tab 2</b>	<b>SB 284</b> by <b>Polsky</b> ; (Identical to H 00047) Fraudulent Proof of Vaccination						
885578	A	S	TP	CJ, Brandes	Delete L.17 - 19:	01/11 04:34 PM	

<b>Tab 3</b>	<b>SB 636</b> by <b>Perry (CO-INTRODUCERS) Brandes</b> ; (Identical to H 00433) State-Operated Institutions Inmate Welfare Trust Fund						
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<b>Tab 4</b>	<b>SB 668</b> by <b>Cruz</b> ; (Similar to H 00109) Custodial Interrogations of Minors						
171948	A	S	RCS	CJ, Cruz	Delete L.28 - 43:	01/11 04:34 PM	

<b>Tab 5</b>	<b>SB 752</b> by <b>Gainer</b> ; (Compare to H 00387) Probationary or Supervision Services for Misdemeanor Offenders						
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<b>Tab 6</b>	<b>SB 760</b> by <b>Berman</b> ; (Identical to H 00521) Human Trafficking						
817232	A	S	RCS	CJ, Berman	Delete L.83 - 325:	01/11 04:34 PM	

<b>Tab 7</b>	<b>SB 874</b> by <b>Pizzo</b> ; Arrests						
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<b>Tab 8</b>	<b>SB 978</b> by <b>Rouson</b> ; (Compare to H 00161) Public Records/Applications for Certification as a Victim of Florida Reform School Abuse						
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**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

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

**MEETING DATE:** Tuesday, January 11, 2022  
**TIME:** 1:30—3:30 p.m.  
**PLACE:** *Toni Jennings Committee Room*, 110 Senate Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 266</b> Diaz (Compare CS/H 139)	Service as a Law Enforcement Officer; Revising the definition of the term "law enforcement officer" to specify that the time spent on certain activities is part of service as an officer, etc.  CJ      01/11/2022 Fav/CS ACJ AP	Fav/CS Yeas 7 Nays 0
2	<b>SB 284</b> Polsky (Identical H 47)	Fraudulent Proof of Vaccination; Prohibiting specified actions involving fraudulent proof of vaccination; providing criminal penalties, etc.  CJ      01/11/2022 Temporarily Postponed JU RC	Temporarily Postponed
3	<b>SB 636</b> Perry (Identical H 433)	State-Operated Institutions Inmate Welfare Trust Fund; Increasing the maximum amount of funds that may be deposited into the trust fund in a fiscal year; adding environmental health upgrades to Department of Corrections facilities as a permissible use for funds in the trust fund, etc.  CJ      01/11/2022 Favorable ACJ AP	Favorable Yeas 7 Nays 0
4	<b>SB 668</b> Cruz (Similar H 109)	Custodial Interrogations of Minors; Providing a presumption of inadmissibility for confessions of certain minors which are made as a result of a custodial interrogation at a place of detention if deceptive tactics are used; specifying circumstances under which the presumption may be rebutted; providing that the state attorney has the burden of proving that such confessions were voluntary, etc.  CJ      01/11/2022 Fav/CS CF RC	Fav/CS Yeas 7 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Tuesday, January 11, 2022, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	<b>SB 752</b> Gainer (Compare H 387)	Probationary or Supervision Services for Misdemeanor Offenders; Deleting a prohibition on private entities providing probationary or supervision services to certain misdemeanor offenders, etc.  CJ 01/11/2022 Temporarily Postponed ACJ AP	Temporarily Postponed
6	<b>SB 760</b> Berman (Identical H 521)	Human Trafficking; Revising the definition of the term "coercion"; providing criminal penalties for engaging in human trafficking or benefiting financially by receiving value from human trafficking using the labor or services or commercial sexual activity of an adult; prohibiting facilitating or enabling the receiving of persons in any place, structure, building, or conveyance for the purpose of prostitution, lewdness, or assignation, or facilitating or enabling any person to remain there for such purposes; providing increased criminal penalties for specified prohibited acts relating to prostitution, lewdness, or assignation, etc.  CJ 01/11/2022 Fav/CS ACJ AP	Fav/CS Yeas 7 Nays 0
7	<b>SB 874</b> Pizzo	Arrests; Authorizing warrantless arrests when a law enforcement officer has probable cause to believe that a person younger than 18 years of age has violated a specified provision related to possession of a firearm by a minor younger than 18 years of age, etc.  CJ 01/11/2022 Favorable JU RC	Favorable Yeas 8 Nays 0
8	<b>SB 978</b> Rouson (Compare H 161, Linked S 482)	Public Records/Applications for Certification as a Victim of Florida Reform School Abuse; Providing an exemption from public records requirements for personal identifying information in applications submitted to the Department of State by persons seeking certification as victims of Florida reform school abuse; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.  CJ 01/11/2022 Favorable ATD AP	Favorable Yeas 8 Nays 0

Other Related Meeting Documents

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

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

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

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BILL: CS/SB 266

INTRODUCER: Criminal Justice Committee and Senator Diaz

SUBJECT: Motor Vehicle Insurance

DATE: January 11, 2022

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	Fav/CS
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 266 creates s. 627.7491, F.S., which provides that if an employing agency of a law enforcement officer authorizes the officer to travel to his or her place of residence in an official law enforcement vehicle outside of the course and scope of the officer's employment or function, the employing agency must maintain current and valid motor vehicle insurance.

This motor vehicle insurance includes bodily injury, death, and property damage liability coverage that covers the period in which a law enforcement officer travels to or from work in an official law enforcement vehicle and covers the time a law enforcement officer travels to and from any other employing agency assignment in an official law enforcement vehicle. However, such motor vehicle insurance is not required to provide for coverage if:

- The law enforcement officer makes a distinct deviation for a nonessential personal errand unless a collective bargaining agreement permits such deviation; or
- The law enforcement officer acts in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Any suit or action brought or maintained against an employing agency for damages arising out of tort pursuant to the bill are limited to the statutory damages caps in s. 768.28(5), F.S. (\$200,000 per person and \$300,000 per incident). Further, the employing agency is authorized to be self-insured, to enter into risk management programs, or to purchase liability insurance in order to meet the bill's requirements.

Finally, the bill provides a declaration of an important state interest.

The bill may have a fiscal impact on counties and municipalities. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2022.

## II. Present Situation:

### Motor Vehicle Insurance

Chapter 627, part XI, F.S., Motor Vehicle and Casualty Insurance Contracts, and ch. 324, F.S., Financial Responsibility, establish motor vehicle insurance coverage requirements. Florida's financial responsibility law exists to ensure that the privilege of owning or operating a motor vehicle on the public streets and highways is exercised with due consideration for others and their property, to promote safety, and to provide financial security requirements for the owners or operators of motor vehicles who are responsible to recompense others for injury to person or property caused by a motor vehicle.<sup>1</sup>

Florida law requires owners of motor vehicles with four or more wheels to purchase both \$10,000 of property damage (PD) liability insurance and \$10,000 of personal injury protection (PIP) insurance.<sup>2</sup> PD liability insurance covers damage to, or destruction of, property of others as a result of a crash.<sup>3</sup>

PIP insurance, on the other hand, compensates insured persons injured in accidents regardless of fault.<sup>4</sup> Policyholders are indemnified by their own insurer. The intent of no-fault insurance is to provide for medical, surgical, funeral, and disability insurance benefits without regard to fault.<sup>5</sup> This coverage also provides policyholders with immunity from liability for economic damages up to the policy limits and limits tort suits for non-economic damages (pain and suffering) below a specified injury threshold.<sup>6</sup>

A driver's license and vehicle registration are subject to suspension for failure to comply with the security requirement to maintain PD liability insurance and PIP insurance coverage.<sup>7</sup> A driver's license and registration may be reinstated by obtaining a liability policy and by paying a fee to the Department of Highway Safety and Motor Vehicles.<sup>8</sup>

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<sup>1</sup> Section 324.011, F.S.

<sup>2</sup> See ss. 627.733 and 324.022, F.S. A driver in compliance with the requirement to carry PIP insurance coverage is not required to maintain bodily injury (BI) liability coverage. However, Florida law requires proof of ability to pay monetary damages in the amount of \$10,000 because of bodily injury to, or death of, one person in any one crash, and \$20,000 for bodily injury to, or death of, two or more persons in any one crash, and \$10,000 in the event of damage to property of others, or \$30,000 combined BI/PD liability insurance after a motor vehicle accident. See ss. 324.011 and 324.051, F.S.

<sup>3</sup> Section 324.022, F.S.

<sup>4</sup> Section 627.733, F.S.

<sup>5</sup> Section 627.731, F.S.

<sup>6</sup> Section 627.737, F.S.

<sup>7</sup> Section 324.0221(2), F.S.

<sup>8</sup> Section 324.0221(3), F.S.

## Obligations of Insurer to Insured

A liability insurer generally owes two major contractual duties to its insured in exchange for premium payments: the duty to indemnify and the duty to defend.

The term *indemnify* is generally interpreted as imposing an obligation on one party (the *indemnitor*) to pay or compensate the other party (the *indemnitee*) for certain legal liabilities or losses, but that obligation does not typically arise until the end of a case when the indemnitee has had a judgment entered against it for damages or has made payments or suffered actual loss. The term *defend*, on the other hand, usually imposes an independent duty to either actively defend or fund the defense of any claim brought against the indemnitee that falls within the scope of the indemnification provision. The duty to defend is a promise to render, or fund, the service of providing a defense on the indemnitee's behalf--a duty that usually arises as soon as a claim is made against the indemnitee and may continue until the claim has been resolved.<sup>9</sup>

## Vehicle Take-Home Programs for Law Enforcement Officers

Vehicle take-home programs, also referred to as assigned vehicle programs, are currently in operation throughout Florida. In the 2020 Criminal Justice Agency Profile Report by the Florida Department of Law Enforcement, it was reported that approximately ninety percent of the state's law enforcement agencies operate a vehicle take-home program.<sup>10</sup> Some of the cited reasons for and benefits of such a program include:

- An increased police presence in the community;
- Improved patrol shift transitions;
- Improved operational mobility and flexibility;
- Improved emergency response and control;
- Increased vehicle longevity;
- Lower operating cost; and
- Less down time for vehicle maintenance.<sup>11</sup>

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<sup>9</sup> Sean McChristian, *Indemnity vs. Duty to Defend: Know the Differences and Potential Critical Variations in State Law* (Aug. 16, 2019), American Bar Assoc., available at [https://www.americanbar.org/groups/construction\\_industry/publications/under\\_construction/2019/summer/indemnity-vs-duty/](https://www.americanbar.org/groups/construction_industry/publications/under_construction/2019/summer/indemnity-vs-duty/) (last visited on Jan. 11, 2022).

<sup>10</sup> Florida Department of Law Enforcement, Criminal Justice Agency Profile Report, Police Departments and Sheriffs' Offices, Supplemental Programs, available at <http://www.fdle.state.fl.us/CJSTC/Publications/CJAP/CJAP.aspx> (last visited on Jan. 11, 2022); *See also Sheriffs' Offices, 2007 – Statistical Table* (Dec. 2012), U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, available at <https://bjs.ojp.gov/content/pub/pdf/so07st.pdf> (last visited on Jan. 11, 2022) (reporting that ninety-three percent of sheriffs' departments around the country allow personnel to take department vehicles home).

<sup>11</sup> *See Assigned Vehicle Program*, Pima County Sheriff's Department, available at [https://pimasheriff.org/application/files/5415/6346/6464/Assigned\\_Vehicles\\_Program.pdf](https://pimasheriff.org/application/files/5415/6346/6464/Assigned_Vehicles_Program.pdf) (last visited on Jan. 11, 2022). *See also* 05-36 Fla. Op. Att'y Gen. (June 16, 2005).

### **Sovereign Immunity and s. 768.28, F.S.**

Sovereign immunity is a principle under which a government cannot be sued without its consent.<sup>12</sup> Article X, s. 13, of the Florida Constitution allows the Legislature to waive this immunity. Section 768.28(1), F.S., authorizes suits in tort against the State and its agencies and political subdivisions for damages resulting from the negligence of government employees acting in the scope of their employment. This liability exists only where a private person would be liable for the same conduct. The waiver applies only to “injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee’s office or employment...”<sup>13</sup> Section 768.28(5)(a), F.S., limits tort recovery from a governmental entity to \$200,000 per person and \$300,000 per accident. This limitation does not prevent a judgement in excess of such amounts from being entered, but a claimant is unable to collect above the statutory limit unless a claim bill is passed by the Legislature.<sup>14</sup>

### **Workers’ Compensation – “Going or Coming” Rule**

Section 440.092, F.S., in part, sets forth special requirements for compensability relating to workers’ compensation coverage. Section 440.092(2), F.S., codifies “the ‘going or coming’ rule.”<sup>15</sup> Specifically, subsection (2) provides that an injury suffered while going to or coming from work is not an injury arising out of and in the course of employment whether or not the employer provided transportation if such means of transportation was available for the exclusive personal use by the employee, unless the employee was engaged in a special errand or mission for the employer. For the purposes of subsection (2) and notwithstanding any other provisions of law to the contrary, an injury to a “law enforcement officer” as defined in s. 943.10(1), F.S., during the officer’s work period or while going to or coming from work in an official law enforcement vehicle, is presumed to be an injury arising out of and in the course of employment unless the injury occurred during a distinct deviation for a nonessential personal errand. If, however, the employer’s policy or the collective bargaining agreement that applies to the officer permits such deviations for nonessential errands, the injury is presumed to arise out of and in the course of employment.<sup>16</sup>

### ***Garcia v. City of Hollywood* – Officer was not acting within the course and scope of employment when he struck a pedestrian with his “take home” patrol vehicle**

In *Garcia v. City of Hollywood*,<sup>17</sup> the Florida Fourth District Court of Appeals (Fourth DCA) affirmed a trial court granting summary judgment for the City of Hollywood, finding that the city was not liable for a pedestrian’s injuries incurred when he was struck by a “take home” vehicle owned by the city and operated by a sergeant who traveled to the station an hour before his shift to study for an exam. The marked patrol vehicle was provided to the sergeant pursuant to a

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<sup>12</sup> *Sovereign Immunity*, The Legal Information Institute, Cornell Law School, available at [https://www.law.cornell.edu/wex/sovereign\\_immunity](https://www.law.cornell.edu/wex/sovereign_immunity) (last visited on Jan. 11, 2022).

<sup>13</sup> Section 768.28(1), F.S.

<sup>14</sup> Section 768.28(5)(a), F.S.

<sup>15</sup> *Dunnam v. Olsten Quality Care*, 667 So.2d 948, 949 (Fla. 1st DCA 1996).

<sup>16</sup> Section 440.092(2), F.S.

<sup>17</sup> 966 So.2d 5 (Fla. 4th DCA 2007).

vehicle take-home policy that was incorporated in a collective bargaining agreement between the Broward County Police Benevolent Association and the City of Hollywood.<sup>18</sup>

The Fourth DCA concluded that the sergeant was not within the course and scope of his employment when the accident occurred. The Fourth DCA noted that the uncontradicted testimony in the trial court established that the officer “had yet to begin work when the accident occurred and was merely driving to the police station an hour before his shift began to study for an exam prior to beginning work.”<sup>19</sup> Further, the appellate court commented:

The City notes that although ... [the sergeant] was driving a City-owned police vehicle, the Florida Supreme Court has held that our waiver of sovereign immunity statute, section 768.28(1), Florida Statutes (2004), does not waive sovereign immunity under the dangerous instrumentality doctrine.<sup>20</sup> *Rabideau v. State*, 409 So.2d 1045, 1046 (Fla.1982) (“twenty-four-hour assignment of a state-owned vehicle to a state employee does not enlarge state liability under section 768.28 to include acts committed outside the employee’s scope of employment”).<sup>21</sup>

The Fourth DCA found support for its conclusion in the following cases: *Foremost Dairies v. Godwin*,<sup>22</sup> a case in which the Florida Supreme Court reversed a negligence judgment against an employee whom the Court held was not in the course of his employment as a matter of law when he was “merely going to or from work in his own car”;<sup>23</sup> and *Everett Ford Co. v. Laney*,<sup>24</sup> a case in which the Florida Supreme Court held that an employee who worked irregular hours was not within the scope of her employment when the accident occurred (while driving home to recover a key to the closed office which she had forgotten).<sup>25</sup>

The Fourth DCA found additional support for its conclusion in *Palm Beach County Sheriff’s Office v. Ginn*,<sup>26</sup> a worker’s compensation case involving a deputy who was injured in an accident while driving a vehicle provided by his employer. When the accident occurred, the deputy was off-duty and running a personal errand, which he was authorized by his employer to do. Prior to his accident the deputy had been monitoring a police radio in case he was called and was wearing a beeper. The First District Court of Appeal (First DCA) in *Ginn* found that the deputy was not acting within the course of his employment when the accident occurred.<sup>27</sup> The Fourth DCA quoted the following findings of the First DCA:

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<sup>18</sup> *Id.* at 5-6.

<sup>19</sup> *Id.* at 6.

<sup>20</sup> “Adopted in 1920, Florida’s dangerous instrumentality doctrine imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another.” *Aurbach v. Gallina*, 753 So.2d 60, 63 (Fla. 2000) (citation omitted). Under this doctrine, “an owner who gives authority to another to operate the owner’s vehicle, by either express or implied consent, has a nondelegable obligation to ensure that the vehicle is operated safely.” *Id.* (citation omitted).

<sup>21</sup> *Garcia*, 966 So.2d at 6.

<sup>22</sup> 158 Fla. 245, 26 So.2d 773 (Fla. 1946).

<sup>23</sup> *Garcia*, 966 So.2d at 7, citing *Foremost Dairies, Inc.*, 26 So.2d at 774.

<sup>24</sup> 189 So.2d 877.

<sup>25</sup> *Garcia*, 966 So.2d at 7, citing *Everett Ford. Co.*, 189 So.2d at 878.

<sup>26</sup> 570 So.2d 1059 (Fla. 1st DCA 1990).

<sup>27</sup> *Garcia*, 966 So.2d at 7 describing *Ginn*, 570 So.2d at 1060.



The fact that a law enforcement officer is on call for duty and has a police radio and other indicia of his authority in his possession is not dispositive in determining whether an off-duty officer is acting within the course of his employment. Rather, the issue, pursuant to the provisions of Section 440.091, is whether the officer is carrying out his primary responsibility, which is the “prevention or detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.”<sup>28</sup>

The Fourth DCA found this situation similar to the situation in the case it was reviewing. The sergeant was “not in the process of carrying out a ‘primary responsibility’ of his job as a police officer” and “not engaged in the ‘prevention or detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the State.’”<sup>29</sup> The Fourth DCA concluded:

He was not furthering any interest of his employer or performing any duties of his employment. He was simply in transit to the police station an hour before he was required to report for work for the personal reason of studying for the Lieutenant’s exam.<sup>30</sup>

### **Impact of *Garcia v. City of Hollywood***

As a result of the *Garcia* opinion, some law enforcement agencies recommend or require their law enforcement officers to obtain a “use of non-owned vehicle” insurance policy that provides liability coverage when the officer is operating a vehicle owned by another person or entity (i.e., an official law enforcement vehicle).<sup>31</sup> For example, the Orlando Police Department requires their officers to show proof of non-owned vehicle insurance coverage before issuance of a take-home vehicle. The stated purpose of “this policy is to recognize that certain potential liabilities incurred by employees are not covered by the City’s insurance program, and that requiring personal insurance coverage is in the best interest of the City, the employee, and the public.”<sup>32</sup>

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

The bill creates s. 627.7491, F.S., which provides that if an employing agency<sup>33</sup> of a law enforcement officer<sup>34</sup> authorizes the officer to travel to his or her place of residence in an official

<sup>28</sup> *Garcia*, 966 So.2d at 7, quoting *Ginn*, 570 So.2d at 1060.

<sup>29</sup> *Garcia*, 966 So.2d at 7.

<sup>30</sup> *Id.* at 7-8.

<sup>31</sup> See e.g. Collective Bargaining Agreement between the City of Ocala, Florida and Florida State Lodge, Fraternal Order of Police, available at <https://www.ocalafl.org/home/showpublisheddocument/2130/637504395197530000>; City of Hollywood, Florida, Take Home Vehicle Policy HB-038:2, available at <http://www.hollywoodfl.org/DocumentCenter/View/11445/038-2-TakeHome-Vehicle?bidId>; Orlando Police Department Policy and Procedure 1802.17, Use of City Vehicles, available at <https://www.orlando.gov/files/sharedassets/public/documents/opd/policies-and-procedures/city-owned-vehicles/1802.17-use-of-city-vehicles.pdf>; and Collective Bargaining Agreement between Town of Davie, Florida and Florida State Lodge Fraternal Order of Police, Inc., available at <https://www.davie-fl.gov/DocumentCenter/View/9755/FOP-CollectiveBargaining-Agreement-2019-2022-PDF> (all sites last visited on Jan. 11, 2022).

<sup>32</sup> Orlando Police Department Policy and Procedure 1802.17, Use of City Vehicles, available at <https://www.orlando.gov/files/sharedassets/public/documents/opd/policies-and-procedures/city-owned-vehicles/1802.17-use-of-city-vehicles.pdf> (last visited on Jan. 11, 2021).

<sup>33</sup> The bill defines the term “employing agency” as an agency that employs a law enforcement officer.

<sup>34</sup> The bill defines the term “law enforcement officer” by reference to s. 943.10(1), F.S., which defines a “law enforcement officer” as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the

law enforcement vehicle outside of the course and scope of the officer's employment or function, the employing agency must maintain current and valid motor vehicle insurance.

This motor vehicle insurance includes bodily injury, death, and property damage liability coverage that covers the period in which a law enforcement officer travels to or from work in an official law enforcement vehicle and covers the time a law enforcement officer travels to and from any other employing agency assignment in an official law enforcement vehicle. However, such motor vehicle insurance is not required to provide for coverage if:

- The law enforcement officer makes a distinct deviation for a nonessential personal errand unless a collective bargaining agreement permits such deviation; or
- The law enforcement officer acts in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Any suit or action brought or maintained against an employing agency for damages arising out of tort pursuant to the bill are limited to the statutory damages caps in s. 768.28(5), F.S. (\$200,000 per person and \$300,000 per incident). Further, the employing agency is authorized to be self-insured, to enter into risk management programs, or to purchase liability insurance in order to meet the bill's requirements.

Finally, the bill provides that the Legislature finds and declares that this act fulfills an important state interest.

The bill takes effect July 1, 2022.

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

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

Article VII, s. 18(a), of the Florida Constitution provides, in relevant part, that: "No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: the law requiring such expenditure is approved by two-thirds vote of the membership of each house of the legislature; [or] . . . the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments...."

The bill provides a declaration of an important state interest. Further, the provisions of the bill appear to apply to all persons similarly situated (state and local law enforcement agencies).

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prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

The mandate requirements do not apply to laws having an “insignificant impact” which, for Fiscal Year 2021-2022, appears to be an amount not exceeding \$2.2 million.<sup>35</sup> The fiscal impact of this bill on municipalities and counties is indeterminate. If costs imposed by the bill are determined to exceed \$2.2 million in the aggregate, the bill may be binding on municipalities and counties if the bill contains a finding of important state interest and meets one of the exceptions specified in Article VII, s. 18(a) of the State Constitution (e.g., applies to all persons similarly situated or is enacted by a vote of two-thirds of the membership of each house of the Legislature).

**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 bill will likely have an indeterminate, positive fiscal impact on the private sector as a result of premiums collected by insurers on this coverage.

**C. Government Sector Impact:**

An employing agency with a vehicle take-home program would no longer be able to recommend or require their law enforcement officers to obtain a “use of non-owned vehicle” insurance policy. The employing agency would have to provide motor vehicle insurance coverage. The cost of this coverage is currently indeterminate.

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<sup>35</sup> A 2012 Senate interim report indicated that an “insignificant fiscal impact” is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See *Insignificant Impact*, Interim Report 2012-115: (Sep. 2011), Florida Senate Committee on Community Affairs, available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited on Jan. 11, 2022). The Florida Demographic Estimating Conference’s November 3, 2020, population forecast for 2021 was 21,830,364 persons. The conference packet is available at: <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited on Jan. 11, 2022).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 627.7491 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 January 11, 2022:**

The committee substitute:

- Creates s. 627.7491, F.S., which provides that if an employing agency of a law enforcement officer authorizes the officer to travel to his or her place of residence in an official law enforcement vehicle outside of the course and scope of the officer's employment or function, the employing agency must maintain current and valid motor vehicle insurance.
- Specifies types of vehicle insurance that must be obtained.
- Provides exceptions to providing vehicle insurance.
- Provides that any suit or action brought or maintained against an employing agency for damages arising out of tort pursuant to the bill are limited to the statutory damages caps in s. 768.28(5), F.S. (\$200,000 per person and \$300,000 per incident).
- Provides that the employing agency is authorized to be self-insured, to enter into risk management programs, or to purchase liability insurance in order to meet the bill's requirements.
- Provides a declaration of an important state interest.

- B. **Amendments:**

None.



612690

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/11/2022	.	
	.	
	.	
	.	

---

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 627.7491, Florida Statutes, is created  
to read:

627.7491 Official law enforcement vehicles; motor vehicle  
insurance requirements.-

(1) For purposes of this section, the term:

(a) "Law enforcement officer" has the same meaning as in s.



612690

11 943.10(1).

12 (b) "Employing agency" means an agency that employs a law  
13 enforcement officer.

14 (2) If an employing agency authorizes a law enforcement  
15 officer to travel to his or her place of residence in an  
16 official law enforcement vehicle outside of the course and scope  
17 of the officer's employment or function, the employing agency  
18 shall maintain current and valid motor vehicle insurance,  
19 including bodily injury, death, and property damage liability  
20 coverage that covers the period in which a law enforcement  
21 officer travels to or from work in an official law enforcement  
22 vehicle and covers the time a law enforcement officer travels to  
23 and from any other employing agency assignment in an official  
24 law enforcement vehicle. However, such motor vehicle insurance  
25 is not required to provide for coverage if:

26 (a) The law enforcement officer makes a distinct deviation  
27 for a nonessential personal errand unless a collective  
28 bargaining agreement permits such deviation; or

29 (b) The law enforcement officer acts in bad faith or with  
30 malicious purpose or in a manner exhibiting wanton and willful  
31 disregard of human rights, safety, or property.

32 (3) Any suit or action brought or maintained against an  
33 employing agency for damages arising out of tort pursuant to  
34 this section, including, without limitation, any claim arising  
35 upon account of an act causing loss of property, personal  
36 injury, or death, shall be subject to the limitations provided  
37 in s. 768.28(5).

38 (4) The requirements of this section may be met by any  
39 method authorized by s. 768.28(16).



612690

40           Section 2. The Legislature finds and declares that this act  
41 fulfills an important state interest.

42           Section 3. This act shall take effect July 1, 2022.

43

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

45 And the title is amended as follows:

46           Delete everything before the enacting clause  
47 and insert:

48   A bill to be entitled  
49           An act relating to motor vehicle insurance; creating  
50           s. 627.7491, F.S.; providing definitions; requiring  
51           agencies that employ law enforcement officers to  
52           maintain motor vehicle insurance under certain  
53           circumstances; providing exceptions; providing  
54           liability limitations; providing methods in which the  
55           employing agency may meet the liability insurance  
56           requirements; providing a declaration of important  
57           state interest; providing an effective date.

By Senator Diaz

36-00241-22

2022266\_\_

A bill to be entitled

An act relating to service as a law enforcement officer; amending s. 943.10, F.S.; revising the definition of the term "law enforcement officer" to specify that the time spent on certain activities is part of service as an officer; reenacting ss. 111.065(1), 112.1815(1), 112.19(2)(g), 196.081(6)(c), 316.066(5), 440.092(2), 440.15(11), 790.052(1), and 960.194(1)(e), F.S., relating to legal actions against law enforcement or correctional officers and employer payment of costs and attorney fees or provision of attorney; special provisions for employment-related accidents and injuries of firefighters, paramedics, emergency medical technicians, and law enforcement officers; death benefits for law enforcement, correctional, and correctional probation officers; an exemption for surviving spouses of first responders who die in the line of duty; written reports of crashes; special requirements for compensability, deviation from employment, and subsequent intervening accidents; compensation for disability; carrying concealed firearms by off-duty law enforcement officers; and emergency responder death benefits, respectively, to incorporate amendments made by the act; providing an effective date.

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

Section 1. Subsection (1) of section 943.10, Florida

Page 1 of 9

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

36-00241-22

2022266\_\_

Statutes, is amended to read:

943.10 Definitions; ss. 943.085-943.255.—The following words and phrases as used in ss. 943.085-943.255 are defined as follows:

(1) "Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. A person's service as a law enforcement officer includes the time that begins when an officer enters an agency-issued vehicle and travels portal-to-portal to an assignment and also includes the time spent traveling to, from, and during any work performed by an officer for which the law enforcement agency or another government entity collects a fee for providing law enforcement services.

Section 2. For the purpose of incorporating the amendment made by this act to section 943.10, Florida Statutes, in a reference thereto, subsection (1) of section 111.065, Florida Statutes, is reenacted to read:

111.065 Law enforcement or correctional officers, legal action against; employer payment of costs and attorney's fees or

Page 2 of 9

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



36-00241-22

2022266\_\_

59 provision of attorney.-

60 (1) For the purpose of this section only, the term  
61 "officer" means any law enforcement officer, correctional  
62 officer, or correctional probation officer as defined in s.  
63 943.10(1), (2), or (3), who is employed full time by any  
64 municipality or the state or any political subdivision thereof.

65 Section 3. For the purpose of incorporating the amendment  
66 made by this act to section 943.10, Florida Statutes, in a  
67 reference thereto, subsection (1) of section 112.1815, Florida  
68 Statutes, is reenacted to read:

69 112.1815 Firefighters, paramedics, emergency medical  
70 technicians, and law enforcement officers; special provisions  
71 for employment-related accidents and injuries.-

72 (1) The term "first responder" as used in this section  
73 means a law enforcement officer as defined in s. 943.10, a  
74 firefighter as defined in s. 633.102, or an emergency medical  
75 technician or paramedic as defined in s. 401.23 employed by  
76 state or local government. A volunteer law enforcement officer,  
77 firefighter, or emergency medical technician or paramedic  
78 engaged by the state or a local government is also considered a  
79 first responder of the state or local government for purposes of  
80 this section.

81 Section 4. For the purpose of incorporating the amendment  
82 made by this act to section 943.10, Florida Statutes, in a  
83 reference thereto, paragraph (g) of subsection (2) of section  
84 112.19, Florida Statutes, is reenacted to read:

85 112.19 Law enforcement, correctional, and correctional  
86 probation officers; death benefits.-

87 (2)

Page 3 of 9

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36-00241-22

2022266\_\_

88 (g) Any political subdivision of the state that employs a  
89 full-time law enforcement officer as defined in s. 943.10(1) or  
90 a full-time correctional officer as defined in s. 943.10(2) who  
91 is killed in the line of duty on or after July 1, 1993, as a  
92 result of an act of violence inflicted by another person while  
93 the officer is engaged in the performance of law enforcement  
94 duties or as a result of an assault against the officer under  
95 riot conditions shall pay the entire premium of the political  
96 subdivision's health insurance plan for the employee's surviving  
97 spouse until remarried, and for each dependent child of the  
98 employee until the child reaches the age of majority or until  
99 the end of the calendar year in which the child reaches the age  
100 of 25 if:

101 1. At the time of the employee's death, the child is  
102 dependent upon the employee for support; and

103 2. The surviving child continues to be dependent for  
104 support, or the surviving child is a full-time or part-time  
105 student and is dependent for support.

106 Section 5. For the purpose of incorporating the amendment  
107 made by this act to section 943.10, Florida Statutes, in a  
108 reference thereto, paragraph (c) of subsection (6) of section  
109 196.081, Florida Statutes, is reenacted to read:

110 196.081 Exemption for certain permanently and totally  
111 disabled veterans and for surviving spouses of veterans;  
112 exemption for surviving spouses of first responders who die in  
113 the line of duty.-

114 (6) Any real estate that is owned and used as a homestead  
115 by the surviving spouse of a first responder who died in the  
116 line of duty while employed by the state or any political

Page 4 of 9

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

36-00241-22 2022266\_\_

117 subdivision of the state, including authorities and special  
 118 districts, and for whom a letter from the state or appropriate  
 119 political subdivision of the state, or other authority or  
 120 special district, has been issued which legally recognizes and  
 121 certifies that the first responder died in the line of duty  
 122 while employed as a first responder is exempt from taxation if  
 123 the first responder and his or her surviving spouse were  
 124 permanent residents of this state on January 1 of the year in  
 125 which the first responder died.

126 (c) As used in this subsection only, and not applicable to  
 127 the payment of benefits under s. 112.19 or s. 112.191, the term:

128 1. "First responder" means a law enforcement officer or  
 129 correctional officer as defined in s. 943.10, a firefighter as  
 130 defined in s. 633.102, or an emergency medical technician or  
 131 paramedic as defined in s. 401.23 who is a full-time paid  
 132 employee, part-time paid employee, or unpaid volunteer.

133 2. "In the line of duty" means:

134 a. While engaging in law enforcement;  
 135 b. While performing an activity relating to fire  
 136 suppression and prevention;  
 137 c. While responding to a hazardous material emergency;  
 138 d. While performing rescue activity;  
 139 e. While providing emergency medical services;  
 140 f. While performing disaster relief activity;  
 141 g. While otherwise engaging in emergency response activity;  
 142 or  
 143 h. While engaging in a training exercise related to any of  
 144 the events or activities enumerated in this subparagraph if the  
 145 training has been authorized by the employing entity.

36-00241-22 2022266\_\_

146  
 147 A heart attack or stroke that causes death or causes an injury  
 148 resulting in death must occur within 24 hours after an event or  
 149 activity enumerated in this subparagraph and must be directly  
 150 and proximately caused by the event or activity in order to be  
 151 considered as having occurred in the line of duty.

152 Section 6. For the purpose of incorporating the amendment  
 153 made by this act to section 943.10, Florida Statutes, in a  
 154 reference thereto, subsection (5) of section 316.066, Florida  
 155 Statutes, is reenacted to read:

156 316.066 Written reports of crashes.—  
 157 (5) A law enforcement officer, as defined in s. 943.10(1),  
 158 may enforce this section.

159 Section 7. For the purpose of incorporating the amendment  
 160 made by this act to section 943.10, Florida Statutes, in a  
 161 reference thereto, subsection (2) of section 440.092, Florida  
 162 Statutes, is reenacted to read:

163 440.092 Special requirements for compensability; deviation  
 164 from employment; subsequent intervening accidents.—  
 165 (2) GOING OR COMING.—An injury suffered while going to or  
 166 coming from work is not an injury arising out of and in the  
 167 course of employment whether or not the employer provided  
 168 transportation if such means of transportation was available for  
 169 the exclusive personal use by the employee, unless the employee  
 170 was engaged in a special errand or mission for the employer. For  
 171 the purposes of this subsection and notwithstanding any other  
 172 provisions of law to the contrary, an injury to a law  
 173 enforcement officer as defined in s. 943.10(1), during the  
 174 officer's work period or while going to or coming from work in

36-00241-22 2022266\_\_

175 an official law enforcement vehicle, shall be presumed to be an  
 176 injury arising out of and in the course of employment unless the  
 177 injury occurred during a distinct deviation for a nonessential  
 178 personal errand. If, however, the employer's policy or the  
 179 collective bargaining agreement that applies to the officer  
 180 permits such deviations for nonessential errands, the injury  
 181 shall be presumed to arise out of and in the course of  
 182 employment.

183 Section 8. For the purpose of incorporating the amendment  
 184 made by this act to section 943.10, Florida Statutes, in a  
 185 reference thereto, subsection (11) of section 440.15, Florida  
 186 Statutes, is reenacted to read:

187 440.15 Compensation for disability.—Compensation for  
 188 disability shall be paid to the employee, subject to the limits  
 189 provided in s. 440.12(2), as follows:

190 (11) FULL-PAY STATUS FOR CERTAIN LAW ENFORCEMENT OFFICERS.—  
 191 Any law enforcement officer as defined in s. 943.10(1), (2), or  
 192 (3) who, while acting within the course of employment as  
 193 provided by s. 440.091, is maliciously or intentionally injured  
 194 and who thereby sustains a job-connected disability compensable  
 195 under this chapter shall be carried in full-pay status rather  
 196 than being required to use sick, annual, or other leave. Full-  
 197 pay status shall be granted only after submission to the  
 198 employing agency's head of a medical report which gives a  
 199 current diagnosis of the employee's recovery and ability to  
 200 return to work. In no case shall the employee's salary and  
 201 workers' compensation benefits exceed the amount of the  
 202 employee's regular salary requirements.

203 Section 9. For the purpose of incorporating the amendment

36-00241-22 2022266\_\_

204 made by this act to section 943.10, Florida Statutes, in  
 205 references thereto, subsection (1) of section 790.052, Florida  
 206 Statutes, is reenacted to read:

207 790.052 Carrying concealed firearms; off-duty law  
 208 enforcement officers.—

209 (1) (a) All persons holding active certifications from the  
 210 Criminal Justice Standards and Training Commission as law  
 211 enforcement officers or correctional officers as defined in s.  
 212 943.10(1), (2), (6), (7), (8), or (9) shall have the right to  
 213 carry, on or about their persons, concealed firearms, during  
 214 off-duty hours, at the discretion of their superior officers,  
 215 and may perform those law enforcement functions that they  
 216 normally perform during duty hours, utilizing their weapons in a  
 217 manner which is reasonably expected of on-duty officers in  
 218 similar situations.

219 (b) All persons holding an active certification from the  
 220 Criminal Justice Standards and Training Commission as a law  
 221 enforcement officer or a correctional officer as defined in s.  
 222 943.10(1), (2), (6), (7), (8), or (9) meet the definition of  
 223 "qualified law enforcement officer" in 18 U.S.C. s. 926B(c).

224 (c) All persons who held an active certification from the  
 225 Criminal Justice Standards and Training Commission as a law  
 226 enforcement officer or correctional officer as defined in s.  
 227 943.10(1), (2), (6), (7), (8), or (9), while working for an  
 228 employing agency, as defined in s. 943.10(4), but have separated  
 229 from service under the conditions set forth in 18 U.S.C. s.  
 230 926C(c), meet the definition of "qualified retired law  
 231 enforcement officer."

232 (d) This section does not limit the right of a law

36-00241-22

2022266\_\_

233 enforcement officer, correctional officer, or correctional  
234 probation officer to carry a concealed firearm off duty as a  
235 private citizen under the exemption provided in s. 790.06 that  
236 allows a law enforcement officer, correctional officer, or  
237 correctional probation officer as defined in s. 943.10(1), (2),  
238 (3), (6), (7), (8), or (9) to carry a concealed firearm without  
239 a concealed weapon or firearm license. The appointing or  
240 employing agency or department of an officer carrying a  
241 concealed firearm as a private citizen under s. 790.06 shall not  
242 be liable for the use of the firearm in such capacity. Nothing  
243 herein limits the authority of the appointing or employing  
244 agency or department from establishing policies limiting law  
245 enforcement officers or correctional officers from carrying  
246 concealed firearms during off-duty hours in their capacity as  
247 appointees or employees of the agency or department.

248 Section 10. For the purpose of incorporating the amendment  
249 made by this act to section 943.10, Florida Statutes, in a  
250 reference thereto, paragraph (e) of subsection (1) of section  
251 960.194, Florida Statutes, is reenacted to read:

252 960.194 Emergency responder death benefits.—

253 (1) For the purposes of this section, the term:

254 (e) "Law enforcement officer" has the same meaning as  
255 provided in s. 943.10.

256 Section 11. This act shall take effect July 1, 2022.

**From:** [Erickson, Mike](#)  
**To:** [Arnold, Sue](#)  
**Subject:** FW: SB 266  
**Date:** Tuesday, December 7, 2021 2:56:41 PM

---

Referenced in analysis.

---

**From:** Jennifer Pritt <jpritt@fpca.com>  
**Sent:** Monday, October 25, 2021 12:52 PM  
**To:** Erickson, Mike <ERICKSON.MIKE@flsenate.gov>  
**Subject:** FW: SB 266

Mike

FPCA has significant concerns with this proposed legislation because it will increase costs (or reduce staffing to compensate for the increased costs) and will increase legal exposure for auto negligence claims.

1. It would put the officers “on the clock” the minute they entered their car, and therefore, their time commuting to work would be compensable. This would result in significant and likely untenable overtime expenses, or in the alternative, reduced shifts to compensate for the increased cost of paying officers during their commute.
2. It would create additional potential liability for the agencies and their insurers. As evident by *Garcia*, an agency is not liable for the negligence of its officers simply driving to and from work, because they are not acting within the course and scope of employment. Section 768.28(9)(a), Florida Statutes specifically provides that the employer is not liable for the conduct of its employees outside the course and scope of employment. SB266 seems to want to make the officers “on-duty” the minute they enter the car, which would place them within the course and scope of employment, and thus trigger the agency’s exposure to liability for an officer’s negligence while commuting. This would expand the agency’s exposure.

Some members commented that should this pass, it could potentially end their take-home car policy.

From our attorney perspective -

As an aside, is the dangerous instrumentality doctrine. This provides that the owner of a dangerous instrumentality, in this case, a motor vehicle, is vicariously liable for the negligence of permissive users. Succinctly, if an owner of a car or

truck loans it to another, the owner becomes liable for the borrower's negligence. HOWEVER, the state and its subdivisions, which includes all police departments, is immune from suit under a dangerous instrumentality theory under the doctrine of sovereign immunity. SB266 seems to be a roundabout effort to circumvent the agency's entitlement to sovereign immunity and to establish their liability as the owner of the vehicle.

From a worker's comp perspective, Section 440.092(2) which provides that an injury incurred by a law enforcement officer going to or from work in an official law enforcement vehicle "shall be presumed to be an injury arising out of and in the course of employment." The presumption can be overcome in the work comp context by showing the officer was engaged in nonessential personal errands. SB 266 would conclusively establish the course and scope issue, therefore eliminating the exception that would permit the agency to deny a work comp claim if an officer was engaged in a purely personal errand in an agency vehicle. Although the subset of accidents this would apply to is likely small, it would further expose the agency to liability.

Cookie

**From:** [Erickson, Mike](#)  
**To:** [Arnold, Sue](#)  
**Subject:** FW: Time-Sensitive Request for Review and Possible DMS analysis, re: SB 266  
**Date:** Tuesday, December 7, 2021 2:54:49 PM

---

Referenced in analysis.

---

**From:** Kerce, Sam <Sam.Kerce@dms.fl.gov>  
**Sent:** Friday, December 3, 2021 9:37 AM  
**To:** Erickson, Mike <ERICKSON.MIKE@flsenate.gov>  
**Cc:** Russell, Tyler <Tyler.Russell@dms.fl.gov>  
**Subject:** RE: Time-Sensitive Request for Review and Possible DMS analysis, re: SB 266

Hey Mike,

Sorry for the delay on this, please see our response below. If you would like an analysis in the full template, please let me know and I can have the team work on it, but the below information is from our Division of Retirement -

Three (3) of the reenacted provisions impact the Florida Retirement System (FRS):

- Section 112.1815, F.S., provides a presumption for in-line-of-duty causation for specified employment-related accidents and injuries for firefighters, paramedics, emergency medical technicians, and law enforcement officers if the FRS member is applying for disability retirement or the FRS member's surviving spouse or dependent children are applying for a survivor benefit.
- Section 440.092(2), F.S, covers workers compensation coverage related to injuries while driving employer-provided transportation and would be part of the evaluation in the event of workers compensation periods claimed during a member's active career or in the event of an in-line-of-duty disability or death retirement application.
- Section 440.15(11), F.S., covers the retention of full pay status for law enforcement officers with specific in-line-of-duty disability workers compensation coverage and would be part of the evaluation in the event of workers compensation periods claimed during a member's active career or in the event of an in-line-of-duty disability or death retirement application.

As we discussed with Mike, **in its current version:**

- The changes in SB 266 to the definition of law enforcement officer do not change the ability for a member to qualify for the Special Risk Class.
- The reenactment of sections 112.1815, 440.092(2), and 440.15(11), F.S., do not appear to change retirement benefits from what is currently provided and, as such, would not impact the FRS.
- If the change in the definition of law enforcement office and the reenactment of these sections are designed to expand in-line-of-duty disability or death benefits through the FRS, then there would be an impact.





The Florida Senate

APPEARANCE RECORD

SB 266

01.11.2022

Meeting Date

Bill Number or Topic

Deliver both copies of this form to Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name FELIX DE ROSARIO

Phone 305-310-4081

Address 2852 SW 68 AVE

Email VPFO20@FORMIAMI.COM

Street

Miami

FL

33155

City

State

Zip

Speaking:  For  Against  Information OR Waive Speaking:  In Support  Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate  
**APPEARANCE RECORD**

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Senate professional staff conducting the meeting

266

Bill Number or Topic

Meeting Date  
Criminal Justice  
Committee

Name Lisa Henning

Phone 850-766-8808

Address 242 Office Plaza Dr  
Street

Email lphlegislative@aol.com

Tallahassee FL 32301  
City State Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

S-001 (08/10/2021)

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

January 11, 2022

Meeting Date

# The Florida Senate APPEARANCE RECORD

266

Bill Number or Topic

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Criminal Justice

Committee

Amendment Barcode (if applicable)

Name **Barney Bishop III**

Phone **850/510-9922**

Address **2215 Thomasville Road**

Email **barney@barneybishop.com**

Street

**Tallahassee**

**FL**

**32308**

City

State

Zip

Speaking:  For  Against  Information

**OR**

Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

**Florida Smart Justice Alliance**

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. 511.045 and Joint Rule 1, [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

October 13, 2021

Honorable Senator Jason W. B. Pizzo  
Chair  
Committee on Criminal Justice

Honorable Chair Pizzo,

I respectfully request Senate Bill 266 Law Enforcement Officers be placed on the next committee agenda.

Sincerely appreciate your support.

A handwritten signature in blue ink, appearing to read "M. Diaz, Jr.", written in a cursive style.

---

Senator Manny Diaz, Jr.  
Florida Senate, District 36

CC: Lauren Jones, Staff Director  
Sue Arnold, Committee Administrative Assistant  
Kayla Francis, 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.)

---

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

---

BILL: SB 284

INTRODUCER: Senator Polsky

SUBJECT: Fraudulent Proof of Vaccination

DATE: January 10, 2022

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Jones	CJ	<b>Pre-meeting</b>
2.			JU	
3.			RC	

---

**I. Summary:**

SB 284 prohibits a person from counterfeiting, forging, altering, cloning, or possessing a certificate, card, or other physical or electronic medium that falsely indicates that the holder has been vaccinated against a specific disease, with the intent to defraud. A person who commits such a crime is guilty of a felony of the third degree, punishable by up to five years imprisonment and a \$5,000 fine.

The Legislature’s Office of Economic and Demographic Research preliminarily estimates that the bill will have a “positive indeterminate” prison bed impact (unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2022.

**II. Present Situation:**

**Vaccinations**

The Advisory Committee on Immunizations Practices (ACIP) is comprised of medical and public health experts who develop recommendations on the use of vaccines in the United States.<sup>1</sup> The ACIP works with professional organizations such as the American Academy of Pediatrics, the American Academy of Family Physicians, the American College of Obstetricians and Gynecologists, and the American College of Physicians to develop annual childhood and adult

---

<sup>1</sup> Centers for Disease Control and Prevention, Advisory Committee Immunizations Practices (ACIP), *General Committee-Related Information*, (last rev. Oct. 8, 2020), available at <https://www.cdc.gov/vaccines/acip/committee/index.html> (last visited December 17, 2021).

immunization schedules.<sup>2</sup> The Centers for Disease Control and Prevention (CDC) reviews the ACIP's recommendations; and once approved, publishes its official recommendations for immunizations of the U.S. population.<sup>3</sup>

The CDC also biannually publishes the "Health Information for International Travel," commonly called the Yellow Book (Book), as a reference for those who advise international travelers about health risks.<sup>4</sup> The Book includes the CDC's most current travel health guidelines, including pre-travel vaccine recommendations and destination-specific health advice.

### ***Florida Law on Vaccination***

Current law requires the Department of Health (DOH) to implement a program to prevent and control vaccine-preventable diseases, including the immunization of all children in this state and to develop an automated, electronic, and centralized registry of immunizations.<sup>5</sup> The DOH has established vaccine requirements for children to attend school, and provides that a child may be exempted from such requirements for religious or medical reasons.<sup>6</sup>

The DOH employs the Florida State Health Online Tracking System (SHOTS), a statewide, online immunization registry, to track immunization records.<sup>7</sup> All health care practitioners who administer vaccines to children aged 17 and younger, or to students aged 18-23, at a Florida college or university health care facility must report vaccinations to the SHOTS.<sup>8</sup> Vaccinations administered to other individuals may be voluntarily submitted to the SHOTS. A parent may exclude a child's record or a college student may exclude his or her vaccination record from the SHOTS by submitting an opt-out form to the DOH.<sup>9</sup> If immunization records are not available in SHOTS, a DOH-approved form may be used to verify immunization status.

### **Covid-19 Pandemic**

A pandemic is an outbreak of disease over multiple parts of the world. The most severe pandemic in recent history occurred in 1918 when a strain of the H1N1 influenza virus (H1N1) killed approximately 50 million people worldwide.<sup>10</sup> Prior to 2019, the most recent pandemic

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<sup>2</sup> Centers for Disease Control and Prevention, Advisory Committee on Immunization Practices (ACIP), *ACIP Recommendations*, (last rev. Nov. 8, 2021), available at <https://www.cdc.gov/vaccines/acip/recommendations.html> (last visited December 17, 2021).

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

<sup>4</sup> Centers for Disease Control and Prevention, *CDC Yellow Book 2020: Health Information for International Travel*, (last rev. July 18, 2019), available at <https://wwwnc.cdc.gov/travel/page/yellowbook-home-2020> (last visited December 17, 2021).

<sup>5</sup> Section 381.003(1)(e), F.S.

<sup>6</sup> See Department of Health, *Immunization Guidelines: Florida Schools, Childcare Facilities, and Family Daycare Homes*, (March 2013), incorporated by reference in rule 64D-3.046, F.A.C., available at <http://www.floridahealth.gov/programs-and-services/immunization/children-and-adolescents/documents/school-guide.pdf> (last visited December 17, 2021), and s. 1003.22(5), F.S.

<sup>7</sup> Department of Health, *Frequency Asked Questions*, available at <http://www.floridahealth.gov/programs-and-services/immunization/immunization-faq.html> (last visited December 17, 2021).

<sup>8</sup> Section 381.003(1)(e), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Centers for Disease Control and Prevention, *1918 Pandemic (H1N1 Virus)*, available at <https://www.cdc.gov/flu/pandemic-resources/1918-pandemic-h1n1.html> (last visited December 17, 2021).



occurred in 2009 when a new strain of H1N1 caused the “swine flu,” killing between 151,700 and 575,400 people worldwide during the first year the virus circulated.<sup>11</sup>

Coronaviruses are a family of viruses that can cause upper-respiratory tract illnesses.<sup>12</sup> In December 2019, an outbreak of a new strain of coronavirus, called Severe Acute Respiratory Syndrome Coronavirus 2, emerged in China.<sup>13</sup> The disease caused by this strain of the coronavirus, coronavirus disease 2019 (COVID-19), quickly spread worldwide. COVID-19 causes a wide range of symptoms including fever, cough, difficulty breathing, fatigue, loss of taste or smell, sore throat, and congestion or runny nose.<sup>14</sup> Older adults and people with preexisting underlying medical conditions, such as lung disease or diabetes, are at higher risk of developing more serious COVID-19 complications.

The U.S. reported its first known death from COVID-19 in February 2020.<sup>15</sup> In March 2020, Florida reported both the state’s first known COVID-19 cases and deaths.<sup>16</sup> On March 11, 2020, the World Health Organization declared COVID-19 a pandemic.<sup>17</sup> As of January 10, 2022, more than 59 million cases of COVID-19 have been diagnosed, and over 834,000 deaths have been attributed to COVID-19 in the United States.<sup>18</sup> In Florida, there have been more than 4.5 million cases and approximately 62,600 COVID-19 deaths.<sup>19</sup>

### ***Covid-19 Vaccines***

In response to the COVID-19 pandemic, the federal government initiated “Operation Warp Speed,” launching a partnership among the Department of Health and Human Services, the CDC, the National Institutes of Health, the Biomedical Advanced Research and Development Authority, and the Department of Defense, and began to strategize how to accelerate the

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<sup>11</sup> Centers for Disease Control and Prevention, *2009 H1N1 Pandemic (H1N1pdm09 Virus)*, available at <https://www.cdc.gov/flu/pandemic-resources/2009-h1n1-pandemic.html> (last visited December 17, 2021).

<sup>12</sup> National Institute of Allergy and Infectious Diseases, *Coronaviruses*, available at <https://www.niaid.nih.gov/diseases-conditions/coronaviruses> (last visited December 17, 2021).

<sup>13</sup> *Id.*

<sup>14</sup> Centers for Disease Control and Prevention, *Symptoms of Coronavirus*, available at <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (last visited December 17, 2021).

<sup>15</sup> Centers for Disease Control and Prevention, *CDC, Washington State Report First COVID-19 Death*, (Feb. 29, 2020), available at <https://www.cdc.gov/media/releases/2020/s0229-COVID-19-first-death.html> (last visited December 17, 2021).

<sup>16</sup> Florida Department of Health, *Department of Health Announces Two Presumptive Positive COVID-19 Cases in Florida*, (March 1, 2020), available at <http://www.floridahealth.gov/newsroom/2020/03/030120-two-presumptive-positive-covid19-cases.pr.html> and *Department of Health Announces Important Updates Regarding COVID-19 in Florida – Two Confirmed Deaths Regarding COVID-19*, (March 6, 2020), available at <http://www.floridahealth.gov/newsroom/2020/03/030620-covid19.pr.html> (both websites last visited December 17, 2021).

<sup>17</sup> World Health Organization, *WHO Director-General’s Opening Remarks at the Media Briefing on COVID-19*, (March 11, 2020), available at <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (last visited December 17, 2021).

<sup>18</sup> Centers for Disease Control and Prevention, *United States COVID-19 Cases, Deaths, and Laboratory Testing (NAATs) by State, Territory, and Jurisdiction*, available at [https://covid.cdc.gov/covid-data-tracker/#cases\\_casesper100klast7days](https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days) (last visited January 10, 2022).

<sup>19</sup> Florida Department of Health, *COVID-19 Weekly Situation Report (December 31, 2021 – January 6, 2022)* at p. 9, (Jan. 7, 2022), available at [http://www11.doh.state.fl.us/comm/partners/covid19\\_report\\_archive/covid19-data/covid19\\_data\\_latest.pdf](http://www11.doh.state.fl.us/comm/partners/covid19_report_archive/covid19-data/covid19_data_latest.pdf) (last visited January 10, 2022).

development, manufacture, and distribution of COVID-19 countermeasures, including vaccines, therapeutics, and diagnostics.<sup>20</sup>

The United States Food and Drug Administration (FDA) has granted emergency use authorization for the Pfizer-BioNTech, Moderna, and Janssen (commonly known as Johnson & Johnson) COVID-19 vaccines.<sup>21</sup> Emergency use authorization allows the FDA to facilitate the availability and use of medical countermeasures during public health emergencies.<sup>22</sup> On August 23, 2021, the FDA granted full approval of the Pfizer-BioNTech COVID-19 vaccine for individuals 16 years of age and older.<sup>23</sup> The FDA has granted emergency use authorization for the use of the Pfizer-BioNTech for individuals aged 5 through 15 years of age and the administration of a booster dose to people 18 years of age and older.<sup>24</sup> The FDA has also granted emergency use authorization for the administration of a booster dose of the Moderna and Johnson & Johnson COVID-19 vaccines.<sup>25</sup>

Upon administration of the COVID-19 vaccination, the health care provider issues a CDC COVID-19 Vaccination Record Card (vaccine card) to the individual receiving the vaccine. The vaccine card notes which vaccine was received, the date(s) the vaccine was administered, and where the vaccine was received.<sup>26</sup> In Florida, approximately 72 percent of the population aged 5 and older have been vaccinated.<sup>27</sup>

### COVID-19 Vaccination Mandates

Since the FDA's full approval of COVID-19 vaccinations, some employers have begun to mandate vaccination.<sup>28</sup> For example on August 6, 2021, United Airlines became the first major

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<sup>20</sup> U.S. Department of Health & Human Services, *Explaining Operation Warp Speed*, available at <https://www.nihb.org/covid-19/wp-content/uploads/2020/08/Fact-sheet-operation-warp-speed.pdf> (last visited December 17, 2021).

<sup>21</sup> U.S. Food and Drug Administration, *Learn More about COVID-19 Vaccines from the FDA*, (Dec. 9, 2021), available at <https://www.fda.gov/consumers/consumer-updates/learn-more-about-covid-19-vaccines-fda> (last visited December 17, 2021).

<sup>22</sup> U.S. Food and Drug Administration, *Emergency Use Authorization*, (Dec. 16, 2021), available at <https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization> (last visited December 17, 2021). Medical countermeasures are FDA-regulated products (biologics, drugs, and devices) that may be used in the event of a potential public health emergency stemming a terrorist attack with a biological, chemical, or radiological/nuclear material, or a naturally occurring emerging disease. See U.S. Food and Drug Administration, *What are Medical Countermeasures?*, (May 26, 2021), available at <https://www.fda.gov/emergency-preparedness-and-response/about-mcmi/what-are-medical-countermeasures> (last visited December 17, 2021).

<sup>23</sup> U.S. Food and Drug Administration, *Comirnaty and Pfizer-BioNTech COVID-19 Vaccine*, (Dec. 16, 2021), available at <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/comirnaty-and-pfizer-biontech-covid-19-vaccine> (last visited December 17, 2021).

<sup>24</sup> *Id.*

<sup>25</sup> U.S. Food and Drug Administration, *Coronavirus (COVID-19) Update: FDA Takes Additional Actions on the Use of a Booster Dose for COVID-19 Vaccines*, (Oct. 20, 2021), available at <https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-takes-additional-actions-use-booster-dose-covid-19-vaccines> (last visited December 17, 2021).

<sup>26</sup> Centers for Disease Control and Prevention, *Getting Your CDC COVID-19 Vaccination Record Card*, (Dec. 15, 2021), available at <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/vaccination-card.html> (last visited December 17, 2021).

<sup>27</sup> *Supra* note 19, at p. 1.

<sup>28</sup> NBC News, *From McDonald's to Goldman Sachs, Here are the Companies Mandating Vaccines for All or Some Employees* (Aug. 3, 2021), available at <https://www.nbcnews.com/business/business-news/here-are-companies-mandating-vaccines-all-or-some-employees-n1275808> (last visited December 17, 2021).



airline to announce a COVID-19 vaccination mandate for its employees.<sup>29</sup> The airline terminated more than 230 employees who have not complied with the mandate.<sup>30</sup> In response to employer COVID-19 vaccination mandates, some states have restricted the use of such mandates.<sup>31</sup>

### ***Vaccination Mandates for Federal Employees and Contractors***

On September 9, 2021, the President of the United States, Joe Biden, issued an Executive Order requiring COVID-19 vaccination for all federal employees.<sup>32</sup> All federal employees were required to be fully vaccinated by November 22, 2021, unless they were exempted or granted an extension.<sup>33</sup>

On September 9, 2021, President Biden also issued an Executive Order requiring that every new federal contract after October 15, 2021, include a requirement to impose a COVID-19 vaccination requirement on the employees of federal contractors.<sup>34</sup> This requirement is the subject of ongoing litigation.<sup>35</sup>

### ***Vaccination Mandates by the Occupational Safety and Health Administration***

The Occupational Safety and Health Administration (OSHA) is a regulatory agency within the United States Department of Labor, created “to ensure safe and healthful working conditions for workers by setting and enforcing standards and by providing training, outreach, education and assistance.”<sup>36</sup> The Occupational Safety and Health Act (OSH Act) regulates most private sector employers as well as certain public sector employers. The OSH Act applies to employees of an organization, and does not apply to self-employed workers, immediate family members of farm employers, volunteers, or unpaid students.<sup>37</sup> The OSHA is authorized to set emergency

<sup>29</sup> United Airlines, *COVID-19 Vaccine Required for United Employees*, (Aug. 6, 2021) available at <https://www.united.com/en/us/newsroom/announcements/COVID-19-vaccine-required-for-United-employees> (last visited December 17, 2021).

<sup>30</sup> Fox Business, *United Airlines in The Process of Firing 232 Unvaccinated Employees*, (Oct. 13, 2021), available at <https://www.foxbusiness.com/lifestyle/united-airlines-firing-unvaccinated-employees> (last visited December 17, 2021).

<sup>31</sup> Littler, *COVID-19 Resources, Mandatory Employee Vaccines – Coming to A State Near You?*, (Dec. 16, 2021), available at <https://www.littler.com/publication-press/publication/mandatory-employee-vaccines-coming-state-near-you> (last visited December 17, 2021).

<sup>32</sup> Exec. Order No. 14043, *Executive Order on Requiring Coronavirus Disease 2019 Vaccination for Federal Employees* (Sept. 9, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/09/09/executive-order-on-requiring-coronavirus-disease-2019-vaccination-for-federal-employees/> (last visited December 17, 2021).

<sup>33</sup> The White House, *Update on Implementation of COVID-19 Vaccination Requirement for Federal Employees*, (Nov. 24, 2021), available at <https://www.whitehouse.gov/omb/briefing-room/2021/11/24/update-on-implementation-of-covid-19-vaccination-requirement-for-federal-employees/> (last visited December 17, 2021).

<sup>34</sup> Exec. Order No. 14042, *Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors* (Sept. 9, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/09/09/executive-order-on-ensuring-adequate-covid-safety-protocols-for-federal-contractors/> (last visited December 17, 2021). See Safer Federal Workforce, *COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors*, (last rev. Nov. 10, 2021), available at [https://www.saferfederalworkforce.gov/downloads/Guidance%20for%20Federal%20Contractors\\_Safer%20Federal%20Workforce%20Task%20Force\\_20211110.pdf](https://www.saferfederalworkforce.gov/downloads/Guidance%20for%20Federal%20Contractors_Safer%20Federal%20Workforce%20Task%20Force_20211110.pdf) (last visited Nov. 10, 2021).

<sup>35</sup> See *Georgia v. Biden*, 2021 WL 5779939, (S.D. Ga. Dec. 7, 2021), which grants a motion for a temporary injunction enjoining the enforcement of the vaccine mandate for federal contractors and subcontractors in all covered contracts in any state or territory of the U.S.

<sup>36</sup> Occupational Health and Safety Administration (OSHA), United States Department of Labor, *About OSHA*, available at <https://www.osha.gov/aboutosha> (last visited December 17, 2021).

<sup>37</sup> OSHA, *All About OSHA*, pg. 8, available at [https://www.osha.gov/sites/default/files/publications/all\\_about\\_OSHA.pdf](https://www.osha.gov/sites/default/files/publications/all_about_OSHA.pdf) (last visited December 17, 2021).

temporary standards in certain limited circumstances which take effect immediately and are in effect until superseded by a permanent standard. The OSHA must determine that workers are in grave danger and that an emergency standard is needed to protect them. Then, the OSHA publishes the emergency temporary standard in the Federal Register, where it also serves as a proposed permanent standard. The validity of an emergency temporary standard may be challenged in an appropriate U.S. Court of Appeals.<sup>38</sup>

On November 5, 2021, the OSHA published an emergency temporary standard that requires every employer having 100 or more employees to implement a COVID-19 vaccination mandate.<sup>39</sup> All employers having 100 or more employees must ensure that their workforce is fully vaccinated or must require any workers who remain unvaccinated to produce a negative test result on at least a weekly basis before coming to work and to wear personal protective equipment. Employees may be exempt from the requirement due to religious beliefs or having a severe allergic reaction to the vaccine or its ingredients. These employers must also provide paid time off to employees who decide to be vaccinated, to allow the employee time to receive the vaccination and recover in the event of experiencing any short-term side effects from the shot. The penalty for violating the emergency temporary standard is a fine of up to \$14,000 per violation. The employer must comply with the emergency temporary standard by January 4, 2022. The OSHA estimated that the total cost per entity to comply with the emergency temporary standard is \$11,298 per entity, for an estimated total of nearly \$3 billion.<sup>40</sup> As of October 4, 2021, the OSHA estimated that 61.3 percent of covered employees are fully vaccinated.<sup>41</sup>

On November 12, 2021, the U.S. Court of Appeals for the Fifth Circuit granted a motion to stay the OSHA's temporary emergency standard and ordered the OSHA to take no steps to enforce the mandate until further order of the court.<sup>42</sup> On December 17, 2021, the U.S. Sixth Circuit Court of Appeals<sup>43</sup> granted OSHA's motion to dissolve the stay, thus reinstating the emergency temporary standard and requiring all employers having 100 or more employees to implement a vaccine mandate.<sup>44</sup> The Department of Labor extended the deadline for compliance with the emergency temporary standard until February 9, 2022, as long as "an employer is exercising

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<sup>38</sup> The OSHA, *OSHA Standards Development*, available at <https://www.osha.gov/laws-regs/standards-development> (last visited December 17, 2021).

<sup>39</sup> 86 Fed. Reg. 61402 (Nov. 5, 2021).

<sup>40</sup> *Id.* at Table IV.B.13., p. 61493.

<sup>41</sup> *Id.* at Table IV.B.6., p. 61471.

<sup>42</sup> *BST Holdings, LLC, et. al. v. Occupational Safety and Health Administration, U.S. Dep't of Labor*, 17 F.4th 604 (5th Cir. 2021).

<sup>43</sup> All pending challenges to the OSHA's temporary emergency standard will be heard by the U.S. 6th Circuit Court of Appeals in a consolidated fashion. See *In re: Occupational Safety and Health Administration, Interim Final Rule: COVID-19 Vaccination and Testing; Emergency Temporary Standard*, 86 Fed. Reg. 61402, Issued on November 4, 2021, MCP No. 165, (U.S. Judicial Panel on Multidistrict Litigation Nov. 16, 2021).

<sup>44</sup> *In re: Occupational Safety and Health Administration, Interim Final Rule: COVID-19 Vaccination and Testing; Emergency Temporary Standard*, 86 Fed. Reg. 61402, 2021 WL 5989357, (6th Cir. Dec. 17, 2021), also available at <https://www.opn.ca6.uscourts.gov/opinions.pdf/21a0287p-06.pdf> (last visited December 20, 2021). This litigation is ongoing and additional appeals have been filed. See Durkee, Alison, "Supreme Court Now Weighing Multiple Lawsuits Against Biden's Vaccine Mandate," FORBES (Dec. 20, 2021), available at <https://www.forbes.com/sites/alisondurkee/2021/12/20/supreme-court-now-weighing-multiple-lawsuits-against-bidens-vaccine-mandate/?sh=b40ac1418fa8> (last visited December 21, 2021).

reasonable, good faith efforts to come into compliance with the standard.”<sup>45</sup> The National Federation of Independent Business, as well as the State of Ohio, have filed applications with the U.S. Supreme Court requesting the court to issue a stay of OSHA’s temporary emergency standard. The cases have been consolidated and oral arguments were scheduled for January 7, 2022.<sup>46</sup>

### ***Vaccination Mandates on Healthcare Workers***

On November 5, 2021, the federal Centers for Medicare and Medicaid Services (CMS) published an interim final rule to require that a healthcare employer<sup>47</sup> participating in Medicare or Medicaid implement a COVID-19 vaccination mandate.<sup>48</sup> The vaccination mandate applies to employees, licensed practitioners, students and trainees, volunteers, and contractors (individuals who provide care, treatment, or other services for the provider and/or its residents, under contract or by other arrangement).<sup>49</sup> A person may be exempt from the requirement due to religious beliefs or having a severe allergic reaction to the vaccine or its ingredients. There are ongoing legal challenges to the interim final rule.<sup>50</sup>

### ***Other Vaccine Mandates***

Some states, as well as some local governments, have implemented policies requiring employees to be vaccinated; however, many allow weekly testing in lieu of vaccination.<sup>51</sup> Some local

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<sup>45</sup> U.S. Dep’t of Labor, *News Release: Statement from the US Department of Labor on the 6th Circuit Court of Appeals Dissolving the Stay of OSHA Emergency Temporary Standard on Vaccination and Testing*, (Dec. 18, 2021), available at <https://www.dol.gov/newsroom/releases/osha/osha20211218> (last visited December 20, 2021).

<sup>46</sup> *Ohio v. Dep’t of Labor, et. al.*, 2021 WL 6061694 (S.Ct. Dec. 22, 2021), and *Nat. Fed’n. of Indep. Bus., et. al. v. Dep’t of Labor, et. al.*, 2021 WL 6061696 (S.Ct. Dec. 22, 2021). See also, SCOTUSblog, *National Federal of Independent Business v. Department of Labor, Occupational Safety and Health Administration*, available at <https://www.scotusblog.com/case-files/cases/national-federation-of-independent-business-v-osha/> (last visited January 5, 2022).

<sup>47</sup> The following entities are included: ambulatory surgical centers (ASCs); hospices; psychiatric residential treatment facilities; programs of all-inclusive care for the elderly (PACE); hospitals; long term care facilities; intermediate care facilities for individuals with intellectual disabilities; home health agencies; comprehensive outpatient rehabilitation facilities; critical access hospitals; clinics, rehabilitation agencies, and public health agencies as providers of outpatient physical therapy and speech-language pathology services; community mental health centers; home infusion therapy suppliers; rural health clinics; federally qualified health centers; and end-stage renal disease facilities.

<sup>48</sup> 86 Fed. Reg. 61555 (Nov. 5, 2021).

<sup>49</sup> The requirement does not apply to staff working remotely 100 percent of the time, or to staff providing offsite support services, if they have no direct contact with patients or other staff who are subject to the requirement. Similarly, it does not apply to one-time or infrequent non-health service providers or contractors who have no contact with patients or staff who are subject to the requirement.

<sup>50</sup> See *Florida v. Dep’t of Health and Human Services, et. al.*, 2021 WL 5416122 (N.D. Fla. Nov. 20, 2021), which denies the state’s motion for a preliminary injunction to enjoin the interim final rule mandating COVID-19 vaccines for covered healthcare staff. The decision was upheld by the 11th Circuit Court of Appeals in *Florida v. Dep’t of Health and Human Services, et. al.*, 2021 WL 5768796 (Dec. 6, 2021). See also *Louisiana v. Becerra*, 2021 WL 5913302 (5th Cir. Dec. 15, 2021), which partially reverses a nationwide injunction issued by a federal district court in Louisiana. The court limited the applicability of the injunction to the 14 states that brought the lawsuit in Louisiana (Louisiana, Montana, Arizona, Alabama, Georgia, Idaho, Indiana, Mississippi, Oklahoma, South Carolina, Utah, West Virginia, Kentucky, and Ohio).

<sup>51</sup> See Kaiser Family Foundation, *State COVID-19 Data and Policy Actions*, (Dec. 14, 2021), available at <https://www.kff.org/report-section/state-covid-19-data-and-policy-actions-policy-actions/> (last visited December 17, 2021).

governments have also issued mandates for its private businesses to require proof of vaccination of its patrons, as well.<sup>52</sup>

Some countries have also begun to require individuals to show proof of vaccination or proof of recovery from a COVID-19 infection in order to gain entry.<sup>53</sup> Some businesses require such proof to obtain services or enter their facilities. Other than the school vaccination requirements, current Florida law does not require documentation of vaccination to enter any public building or obtain access to any government service.

### **Florida Ban on COVID-19 Vaccine Mandates**

In October 2021, the Legislature enacted a law that prohibits private employers from imposing a COVID-19 vaccine mandate on full-time, part-time, or contract employees, which does not provide individual exemptions that allow an employee to opt out of the mandate.<sup>54</sup> The law establishes a minimum of five exemptions that an employer must offer if it imposes a COVID-19 vaccine mandate:

- Medical reasons, including pregnancy or anticipated pregnancy;
- Religious beliefs;
- COVID-19 immunity;
- Agreement to comply with periodic testing; and
- Agreement to comply with employer-provided personal protective equipment.<sup>55</sup>

An employee may file a complaint with the Department of Legal Affairs (DLA) alleging that the employer is not offering a required exemption, has improperly applied the exemption, or has improperly denied the exemption to the employee. If the DLA investigates the complaint and finds that the allegation is valid, then the DLA must notify the employer of the determination and allow the employer the opportunity to cure the noncompliance.<sup>56</sup>

An employer may also be subject to fines if the employer institutes a vaccine mandate but fails to offer or properly apply the exemptions as provided in law, and terminates an employee based on its vaccine mandate. Upon receipt of a complaint alleging such conduct, the DLA must conduct an investigation to determine, at a minimum, whether:

- The employer imposed a COVID-19 vaccine mandate;
- The employee submitted a proper exemption statement and complied with any specified condition; and
- The employee was terminated as a result of the COVID-19 vaccine mandate.<sup>57</sup>

<sup>52</sup> See Deslatte, Melinda and Rodriguez, Olga R., “More US Cities Requiring Proof of Vaccination to Go Places,” AP NEWS (Aug. 13, 2021), available at <https://apnews.com/article/joe-biden-business-health-coronavirus-pandemic-6ae309aff77864cb108fbf9a2dbcf449> (last visited December 17, 2021).

<sup>53</sup> See Whitmore, Geoff, “The Latest Vaccine Requirements for Travel,” FORBES, (Sept. 2, 2021), available at <https://www.forbes.com/sites/geoffwhitmore/2021/09/02/the-latest-vaccine-requirements-for-travel/?sh=575366afd4d6> (last visited December 17, 2021).

<sup>54</sup> Chapter 2021-272, s. 1, Laws of Fla, codified at s. 381.00317, F.S.

<sup>55</sup> *Id.* Employers must use forms adopted by the Department of Health for employees to submit exemption statements.

<sup>56</sup> Section 381.00317(3), F.S.

<sup>57</sup> Section 381.00317(4), F.S.

Upon a finding of an improper termination, the Attorney General must impose a fine of no more than \$10,000 per violation, if the employer has fewer than 100 employees and no more than \$50,000 per violation, if the employer has 100 or more employees.<sup>58</sup>

### ***Florida Ban on Vaccine Passports***

In April 2021, the Governor issued an executive order prohibiting government entities from issuing any standardized documentation to certify a person's COVID-19 vaccination status and prohibiting businesses from requiring customers or patrons to provide documentation of vaccine status.<sup>59</sup> The executive order remained in effect until June 26, 2021. In November 2021, the Legislature enacted a law that prohibits governmental entities from requiring documentation of COVID-19 vaccination or post-infection recovery to enter the government location or obtain government services.<sup>60</sup> The law also prohibits a business entity from requiring patrons or consumers and an educational institution from requiring students or residents to provide such documentation to access the location or service of the business or educational institution.<sup>61</sup> The law authorizes the DOH to impose a fine of up to \$5,000 per violation.

In spite of the law, some business and government entities adopted policies that required employees and consumers to provide proof of vaccination status. For example, Norwegian Cruise Lines adopted a policy requiring its passengers and crew members to be fully vaccinated.<sup>62</sup> Norwegian Cruise Lines filed a lawsuit challenging the validity of the law in July 2021, and in August 2021, the court granted Norwegian's motion for a preliminary injunction enjoining the state from enforcing the statute against Norwegian.<sup>63</sup> However, the DOH is investigating more than 100 other businesses and government entities for violating the law.<sup>64</sup>

### **Fraudulent Vaccination Cards**

In recent months, the number of reports of individuals selling fraudulent COVID-19 vaccination cards has risen.<sup>65</sup> The CDC and the Federal Bureau of Investigation have warned consumers that they should not buy fake vaccine cards, make their own cards, or fill in the blanks with false information.<sup>66</sup>

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<sup>58</sup> *Id.* The law provides factors that the Attorney General must consider in determining the amount of the fine to be imposed.

<sup>59</sup> Fla. Exec. Order No. 21-81 (April 2, 2021), available at [https://www.flgov.com/wp-content/uploads/orders/2021/EO\\_21-81.pdf](https://www.flgov.com/wp-content/uploads/orders/2021/EO_21-81.pdf) (last visited December 17, 2021). The executive order was to remain in effect for the duration of Exec. Order No. 20-52, as extended. Exec. Order No. 20-52 was last extended for 60 days on April 27, 2021.

<sup>60</sup> Chapter 2021-272, Laws of Fla., codified at s. 381.00316, F.S.

<sup>61</sup> The law specifically excludes certain health care providers, certain health care clinics, behavior analysts, and radiological personnel from its provisions.

<sup>62</sup> Norwegian Cruise Lines, *Sail Safe*, available at <https://www.ncl.com/sail-safe> (last visited December 17, 2021).

<sup>63</sup> *Norwegian Cruise Line Holdings, LTD., v. Rivkees*, 2021 WL 3471585 (S.D. Fla. Aug. 8, 2021).

<sup>64</sup> Handleman, Jay, "Vaccine Rule Complaints Filed against Florida Arts Venues, Businesses, and Cruise Lines" SARASOTA HERALD-TRIBUNE (Oct. 13, 2021), available at <https://www.heraldtribune.com/story/news/2021/10/13/complaints-filed-against-florida-businesses-over-covid-vaccine-rules/8424191002/> (last visited December 17, 2021).

<sup>65</sup> For example, see Theisen, Tiffini, "Florida Couple Arrested, Cited \$8,000 for Fake Vaccinations for Hawaii Trip," ORLANDO SENTINEL, (Aug. 20, 2021), available at <https://www.orlandosentinel.com/coronavirus/os-ne-florida-couple-arrested-cited-8000-fake-vaccination-cards-travel-20210820-4mbs22h25vg13ndoxoavzdwou-story.html> (last visited December 17, 2021).

<sup>66</sup> *Supra* note 26, and the Federal Bureau of Investigation, *If You Make or Buy a Fake COVID-19 Vaccination Card, You Endanger Yourself and Those Around You, and You Are Breaking the Law*, (March 30, 2021), available at <https://www.ic3.gov/Media/Y2021/PSA210330> (last visited December 17, 2021).



The Florida Office of Attorney General requested that the online platforms, eBay, Shopify, and Twitter block the sale of fraudulent COVID-19 vaccination cards on their platforms.<sup>67</sup> The letter requested the platforms to:

- Monitor their platforms for ads or links selling blank or fraudulently completed vaccination cards;
- Promptly remove ads or links that are selling cards; and
- Preserve the records and information about the ads and the people who are selling the cards.

The letter was sent by the attorneys general of more than 40 U.S. states and territories.<sup>68</sup>

Current law makes it unlawful to knowingly and willfully make a materially false or misleading statement, or to knowingly and willfully disseminate false or misleading information regarding the availability of or access to a vaccine for COVID-19.<sup>69</sup> However, Florida law does not specifically prohibit the manufacture or possession of a fraudulent COVID-19 Vaccination card.

### ***Laws on Fraudulent Acts***

Individuals counterfeiting COVID-19 vaccinations, which bear the CDC's seal would be subject to prosecution under federal law. Federal law makes it illegal to:

- Falsely make, forge, counterfeit, mutilate, or alter the seal of any department or agency of the United States, or any facsimile thereof;
- Knowingly use, affix, or impress any such fraudulently made, forged, counterfeited, mutilated, or altered seal or facsimile thereof to or upon any certificate, instrument, commission, document, or paper of any deception; or
- With fraudulent intent, possess, sell, offer for sale, furnish, offer to furnish, give away, offer to give away, transport, offer to transport, import, or offer to import any such seal or facsimile thereof, knowing the same to have been falsely made, forged, counterfeited, mutilated, or altered.<sup>70</sup>

A person who is guilty of such an offense is subject to a fine, imprisonment of up to five years, or both.<sup>71</sup>

Chapter 817, F.S., prohibits and punishes various fraudulent acts or practices. In general terms, fraud is the willful act of misrepresenting the truth to someone or concealing an important fact

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<sup>67</sup> Press Release, Office of Attorney General, *Attorney General Moody Asks Online Platforms to Block the Sale of Fake COVID-19 Vaccination Cards*, (Apr. 1, 2021), available at <http://www.myfloridalegal.com/newsrel.nsf/newsreleases/D91915AFE34C23E5852586AA006C4CF8> (last visited December 17, 2021).

<sup>68</sup> The letter was sent by the attorneys general of Alaska, Arkansas, California, Colorado, Connecticut, Delaware, the District of Columbia, Georgia, Guam, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Northern Mariana Islands, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, the U.S. Virgin Islands, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

<sup>69</sup> Section 817.504, F.S.

<sup>70</sup> 18 U.S.C. s. 506(a), and 18 USC s. 1017.

<sup>71</sup> *Id.*

from them for the purpose of inducing that person to act to his or her detriment.<sup>72</sup> Florida law does not specifically prohibit fraudulent vaccination documentation.

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

The bill creates s. 817.354, F.S., making it unlawful to counterfeit, forge, alter, clone, or possess a certificate, card, or other physical or electronic medium that falsely indicates that the holder has been vaccinated against a specific disease, with the intent to defraud. A person who commits such an act commits a felony of the third degree which is punishable by up to five years imprisonment and a fine of up to \$5,000.

The bill is effective October 1, 2022.

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

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

The bill appears to be 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.

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<sup>72</sup> Black's Law Dictionary (9th ed. 2009).

**C. Government Sector Impact:**

The Criminal Justice Impact Conference, which provides the final, official estimate of prison bed impact, if any, of legislation, has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "positive indeterminate" prison bed impact (unquantifiable increase in prison beds).<sup>73</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 817.354 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>73</sup> The EDR's preliminary estimate is on file with the Senate Committee on Criminal Justice.





885578

LEGISLATIVE ACTION

Senate	.	House
Comm: TP	.	
01/11/2022	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete lines 17 - 19

and insert:

a specific disease, with the intent to defraud, commits:

(1) For a first offense, a noncriminal violation, punishable by a fine of \$1,000.

(2) For a second offense, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) For a third or subsequent offense, a felony of the



885578

11 third degree, punishable as provided in s. 775.082, s. 775.083,  
12 or s. 775.084.

13

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

15 And the title is amended as follows:

16       Delete line 5

17 and insert:

18       providing that a first offense is a noncriminal  
19       violation; providing criminal penalties for subsequent  
20       offenses; providing an effective

By Senator Polsky

29-00400-22

2022284\_\_

1                           A bill to be entitled  
2           An act relating to fraudulent proof of vaccination;  
3           creating s. 817.354, F.S.; prohibiting specified  
4           actions involving fraudulent proof of vaccination;  
5           providing criminal penalties; providing an effective  
6           date.

7  
8   Be It Enacted by the Legislature of the State of Florida:

9

10           Section 1. Section 817.354, Florida Statutes, is created to  
11   read:

12           817.354 Fraudulent proof of vaccination.—A person who  
13           counterfeits, forges, alters, clones, or possesses a  
14           certificate, card, or other physical or electronic medium that  
15           falsely indicates that the holder of the certificate, card, or  
16           other physical or electronic medium has been vaccinated against  
17           a specific disease, with the intent to defraud, commits a felony  
18           of the third degree, punishable as provided in s. 775.082, s.  
19           775.083, or s. 775.084.

20           Section 2. This act shall take effect October 1, 2022.

## **SB 284 – Fraudulent Proof of Vaccination (Identical HB 47)**

This bill creates s. 817.354, F.S., stating that “a person who counterfeits, forges, alters, clones, or possesses a certificate, card, or other physical or electronic medium that falsely indicates that the holder of the certificate, card, or other physical or electronic medium has been vaccinated against a specific disease, with the intent to defraud, commits” an **unranked, 3<sup>rd</sup> degree felony (Level 1 by default)**.

Per Office of Attorney General, they have heard 3 complaints so far regarding fraudulent proof of vaccination. While it is currently a federal crime to produce or use fraudulent vaccination cards, the FBI does not have any data available on such offenses.

In FY 18-19, the incarceration rate for a Level 1, 3<sup>rd</sup> degree felony was 9.5%, and in FY 19-20 the incarceration rate was 8.2%. In FY 20-21, the incarceration rate for a Level 1, 3<sup>rd</sup> degree felony was 8.1%.

It is possible that a certain number of offenders will fall under Federal jurisdiction, thus limiting the pool of those potentially entering state prison. Also, it is not known how long such illicit activity will persist, especially once the vaccine has inoculated the population.

**EDR PROPOSED ESTIMATE: Positive Indeterminate**

**Requested by: Senate**

The Florida Senate  
**APPEARANCE RECORD**

284

Meeting Date

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Dave Aronberg

Phone

561-355-7246

Address

401 N. Dixie Hwy

Email

dave@sa15.org

Street

WAB FL 33401

City

State

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**



I am appearing without  
compensation or sponsorship.



I am a registered lobbyist,  
representing:



I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

01/11/2022

# APPEARANCE RECORD

SB 0284

Meeting Date

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Bill Number or Topic

**Criminal Justice**

Committee

Amendment Barcode (if applicable)

Name E. Ivonne Fernandez Phone 954-850-7262

Address 3750 NW 87th Avenue Suite 650 Email ifernandez@aarp.org

Street

Doral Florida  
City State Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

**AAARP**

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

*While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)*

# APPEARANCE RECORD

284

January 11, 2022

Meeting Date

Criminal Justice

Committee

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Barney Bishop III**

Phone **850/510-9922**

Address **2215 Thomasville Road**

Email **barney@barneybishop.com**

Street

**Tallahassee**

**FL**

**32308**

City

State

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

**Florida Smart Justice Alliance**

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

The Florida Senate

APPEARANCE RECORD

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Criminal 284  
Bill Number or Topic

1-11-22

Meeting Date

Criminal Justice

Committee

Amendment Barcode (if applicable)

Name

Barbara DeVane

Phone

251-4282

Address

625 E. Brevard St

Email

barbaradevane1@  
yahoo.com

Street

Tallahassee

City

FL 32308

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing: FL NOW

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)



1/11/22

Meeting Date

Criminal Justice

Committee

The Florida Senate

# APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

284

Bill Number or Topic

885578

Amendment Barcode (if applicable)

Name **Nancy Daniels**

Phone **850-488-6850**

Address **103 N Gadsden St**

Email **ndaniels@flpda.org**

Street

**Tallahassee**

**FL**

**32301**

City

State

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

**Florida Public Defender Association**

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Agriculture  
Appropriations Subcommittee on Education  
Community Affairs  
Education  
Ethics and Elections  
Judiciary

### SENATOR TINA SCOTT POLSKY

29th District

October 13, 2021

Chairman Jason Pizzo  
Committee on Criminal Justice  
510 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Chairman Pizzo,

I respectfully request that you place SB 284, relating to Fraudulent Proof of Vaccination, on the agenda of the Committee on Criminal Justice, at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Kindest Regards,

A handwritten signature in black ink, appearing to read "Tina S. Polsky".

Senator Tina S. Polsky  
Florida Senate, District 29

cc: Lauren Jones, Staff Director  
Sue Arnold, Administrative Assistant

#### REPLY TO:

- 5301 North Federal Highway, Suite 135, Boca Raton, Florida 33487 (561) 443-8170
- 222 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

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

---

BILL: SB 636

INTRODUCER: Senators Perry and Brandes

SUBJECT: State-Operated Institutions Inmate Welfare Trust Fund

DATE: January 10, 2022

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Jones	CJ	<b>Favorable</b>
2.			ACJ	
3.			AP	

---

**I. Summary:**

SB 636 amends s. 945.215, F.S., to increase the amount of funds generated from certain inmate purchases, commissions, and donations that is deposited into the State-Operated Institutions Inmate Welfare Trust Fund (Trust Fund) from \$2.5 million to \$30 million. Current law requires any funds collected from these sources in excess of \$2.5 million to be deposited into the General Revenue Fund.

The bill also authorizes the Department of Corrections (DOC) to expend funds from the Trust Fund on environmental health upgrades to its facilities, including fixed capital outlay repairs and maintenance, subject to legislative appropriation.

The bill may have a significant, negative impact on the General Revenue Fund, to the extent that these funds will be diverted from the General Revenue Fund to the Trust Fund. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2022.

**II. Present Situation:**

**State-Operated Institutions Inmate Welfare Trust Fund**

In 2020, the Legislature created the Trust Fund to benefit and provide for the welfare of inmates incarcerated in state-operated correctional facilities.<sup>1</sup> Certain proceeds from specified revenue streams or donations related to inmates in the DOC are deposited into the Trust Fund; however, such deposits may not exceed a total of \$2.5 million in any fiscal year.<sup>2</sup> Any funds collected in excess of \$2.5 million are deposited into the General Revenue Fund.

---

<sup>1</sup> Ch. 2020-97, Laws of Fla.

<sup>2</sup> Section 945.215(2)(b), F.S.

Funds from the following sources must be deposited into the Trust Fund, if deposits do not exceed \$2.5 million in any fiscal year:

- Proceeds from operating inmate canteens, vending machines used primarily by inmates and visitors, hobby shops, and other such facilities;<sup>3</sup>
- Proceeds from contracted telephone commissions;<sup>4</sup>
- Any funds that may be assigned by inmates or donated to the DOC by the general public or an inmate service organization;<sup>5</sup> and
- All proceeds from the following services:
  - The confiscation and liquidation of any contraband found upon, or in the possession of, any inmate;
  - Disciplinary fines imposed against inmates;
  - Forfeitures of inmate earnings; and
  - Unexpended balances in individual inmate trust fund accounts of less than \$1.<sup>6</sup>

Proceeds from the above-listed sources total approximately \$35 million per year, and all but \$2.5 million is deposited into the General Revenue Fund.<sup>7</sup>

Funds in the Trust Fund may only be used to provide for or to operate specified programming at correctional facilities operated by the DOC, which includes:

- Literacy programs, vocational training programs, and educational programs;
- Inmate chapels, faith-based programs, visiting pavilions, visiting services and programs, family services and programs, and libraries;
- Inmates substance abuse treatment programs and transition and life skills training programs;
- The purchase, rental, maintenance, or repair of electronic or audiovisual equipment, media, services, and programming used by inmates;
- The purchase, rental, maintenance, or repair of recreation and wellness equipment; and
- The purchase, rental, maintenance, or repair of bicycles used by inmates traveling to and from employment in the work-release program authorized under s. 945.091(1)(b), F.S.<sup>8</sup>

Trust Fund monies may only be expended pursuant to a legislative appropriation.<sup>9</sup> As required by the Florida Constitution, the Trust Fund will terminate on July 1, 2024, unless terminated sooner or recreated.<sup>10</sup> The Legislature must review the Trust Fund before its scheduled termination.

---

<sup>3</sup> Section 945.72(1)(a), F.S. Funds necessary to purchase items for resale at inmate canteens and vending machines are required to be deposited into local bank accounts designated by the DOC.

<sup>4</sup> Section 945.215(1)(b), F.S.

<sup>5</sup> Section 945.215(1)(c), F.S. However, the DOC may not accept any donation from, or on behalf of, any individual inmate.

<sup>6</sup> Section 945.215(1)(d), F.S.

<sup>7</sup> Department of Corrections, *2022 Agency Legislative Bill Analysis for SB 636*, p. 2, (Nov. 16, 2021) (on file with the Senate Committee on Criminal Justice).

<sup>8</sup> Section 945.215(2)(c), F.S.

<sup>9</sup> Section 945.215(2)(d), F.S.

<sup>10</sup> FLA. CONST. art. III, s. 19(f).

## Trust Fund Expenditures

In Fiscal Year 2020-2021, the DOC expended funds from the Trust Fund as follows:<sup>11</sup>

Program	Amount
Literacy and Education	\$202,638
Vocational Programs	\$430,977
Chaplaincy	\$63,636
Library Services	\$38,210
Substance Use Treatment	\$244,744
Wellness Programs	\$1,297,808
Work-Release Program Equipment	\$21,987

### *Literacy and Education*

The DOC funded 14 OPS positions to provide support to struggling readers and English Language Learners.<sup>12</sup> The DOC additionally procured the following classroom resources:

- Teacher’s kits including materials to prepare and deliver research-based instruction lessons;
- Skill-based lessons to teach students fundamental reading strategies; and
- Assessment-driven software programs to provide additional instruction on specific skills that inhibit students’ reading success.<sup>13</sup>

### *Vocational Programs*

The DOC procured training simulators to prepare inmates for employment in high-demand careers, such as commercial driving and heavy equipment operations.<sup>14</sup>

### *Chaplaincy and Library Services*

For chaplaincy services, the DOC upgraded chapel sound systems and procured electronic and audio-visual equipment.<sup>15</sup> For libraries, the DOC enhanced library services by obtaining literature enhancements to address the aging library collection and World Book Encyclopedia sets.

### *Substance Use Treatment*

The DOC’s in-prison substance use treatment programs utilized Trust Fund monies to enhance existing programming for the following substance use programs:

- Residential Therapeutic Community;
- Intensive Outpatient Program; and
- Outpatient programs.<sup>16</sup>

<sup>11</sup> Department of Corrections, *State-Operated Institutions Inmate Welfare Trust Fund Report*, (Oct. 1, 2021) (on file with the Senate Committee on Criminal Justice). The DOC remitted \$200,000 for the General Revenue service charge.

<sup>12</sup> *Id.* at pg. 1.

<sup>13</sup> *Id.* at pg. 2.

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

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

<sup>16</sup> *Id.*

Additionally, the DOC procured interactive journals for use in the Administrative Management Unit at the Jefferson Correctional Institution, Short Sentence correctional institutions and units (SSCIs), and re-entry centers statewide.<sup>17</sup> The SSCIs also received composition notebooks, electronic and audio-visual equipment for dorms, paint for murals, and computers for inmate use. Supplies to facilitate community model training were also purchased to support Peer-to-Peer program dorms statewide, as well as SSCIs.<sup>18</sup>

### ***Wellness Programs***

To support the 34 wellness education specialist positions appropriated during the 2020 Session, funds from the Trust Fund were utilized to equip wellness programs statewide, including:

- Building materials to repair and enhance recreation pavilions, running/walking tracks, and recreations fields;
- Wellness education material and equipment/furniture for wellness education programs;
- An OPS statewide wellness coordinator position to oversee newly established wellness education programs statewide;
- Board games, such as checkers, chess, and scrabble, for recreation and to be used during family visitation; and
- Recreation and sports equipment.<sup>19</sup>

### ***Work-Release Program Equipment***

The DOC purchased gender-appropriate bicycles in various sizes for inmates traveling to and from work-release employment.<sup>20</sup>

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

The bill amends s. 945.215, F.S., to increase the amount of funds generated from certain inmate purchases, commissions, and donations that is deposited into the Trust Fund from \$2.5 million to \$30 million. Current law requires any funds in excess of \$2.5 million to be deposited into the General Revenue Fund.

The bill also authorizes the DOC to expend funds from the Trust Fund on environmental health upgrades to its facilities, including fixed capital outlay repairs and maintenance, subject to legislative appropriation.

The bill takes effect July 1, 2022.

## **IV. Constitutional Issues:**

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

None.

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at pgs. 2-3.

<sup>20</sup> *Id.* at pg. 3.

**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 increases the amount of funds that may be redirected from the General Revenue Fund to the State-Operated Institutions Inmate Welfare Trust Fund from \$2.5 million in any fiscal year to \$30 million per fiscal year.

The bill may decrease the deposit of excess monies into the General Revenue Fund from approximately \$32.5 million per year to \$5 million per year.<sup>21</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 945.215 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 944.516, 944.73, and 946.002.

---

<sup>21</sup> *Supra* note 11.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

---

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

---



By Senator Perry

8-00655A-22

2022636\_\_

1 A bill to be entitled  
 2 An act relating to the State-Operated Institutions  
 3 Inmate Welfare Trust Fund; amending s. 945.215, F.S.;  
 4 increasing the maximum amount of funds that may be  
 5 deposited into the trust fund in a fiscal year; adding  
 6 environmental health upgrades to Department of  
 7 Corrections facilities as a permissible use for funds  
 8 in the trust fund; reenacting ss. 944.516(5),  
 9 944.73(2), and 946.002(4)(b), F.S., relating to the  
 10 disposition of unclaimed funds, the State-Operated  
 11 Institutions Inmate Welfare Trust Fund, and forfeiture  
 12 of a prisoner's earned funds, respectively, to  
 13 incorporate the amendment made to s. 945.215, F.S., in  
 14 references thereto; providing an effective date.  
 15  
 16 Be It Enacted by the Legislature of the State of Florida:  
 17  
 18 Section 1. Paragraphs (b) and (c) of subsection (2) of  
 19 section 945.215, Florida Statutes, are amended to read:  
 20 945.215 Inmate welfare and employee benefit trust funds.—  
 21 (2) STATE-OPERATED INSTITUTIONS INMATE WELFARE TRUST FUND.—  
 22 (b) Deposits into the trust fund may not exceed a total of  
 23 \$30 ~~\$2.5~~ million in any fiscal year. Any proceeds or funds that  
 24 would cause deposits into the trust fund to exceed this limit  
 25 must be deposited into the General Revenue Fund.  
 26 (c) Funds in the trust fund shall be used exclusively to  
 27 provide for or operate any of the following at correctional  
 28 facilities operated by the department:  
 29 1. Literacy programs, vocational training programs, and

Page 1 of 4

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

8-00655A-22

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30 educational programs.  
 31 2. Inmate chapels, faith-based programs, visiting  
 32 pavilions, visiting services and programs, family services and  
 33 programs, and libraries.  
 34 3. Inmate substance abuse treatment programs and transition  
 35 and life skills training programs.  
 36 4. The purchase, rental, maintenance, or repair of  
 37 electronic or audiovisual equipment, media, services, and  
 38 programming used by inmates.  
 39 5. The purchase, rental, maintenance, or repair of  
 40 recreation and wellness equipment.  
 41 6. The purchase, rental, maintenance, or repair of bicycles  
 42 used by inmates traveling to and from employment in the work-  
 43 release program authorized under s. 945.091(1)(b).  
 44 7. Environmental health upgrades to facilities, to include  
 45 fixed capital outlay repairs and maintenance that would improve  
 46 environmental conditions of the correctional facilities.  
 47 Section 2. For the purpose of incorporating the amendment  
 48 made by this act to section 945.215, Florida Statutes, in a  
 49 reference thereto, subsection (5) of section 944.516, Florida  
 50 Statutes, is reenacted to read:  
 51 944.516 Money or other property received for personal use  
 52 or benefit of inmate; deposit; disposition of unclaimed trust  
 53 funds.—The Department of Corrections shall protect the financial  
 54 interest of the state with respect to claims which the state may  
 55 have against inmates in state institutions under its supervision  
 56 and control and shall administer money and other property  
 57 received for the personal benefit of such inmates. In carrying  
 58 out the provisions of this section, the department may delegate

Page 2 of 4

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

8-00655A-22 2022636\_\_

59 any of its enumerated powers and duties affecting inmates of an  
60 institution to the warden or regional director who shall  
61 personally, or through designated employees of his or her  
62 personal staff under his or her direct supervision, exercise  
63 such powers or perform such duties.

64 (5) When an inmate is transferred between department  
65 facilities, is released from the custody of the department,  
66 dies, or escapes during incarceration, and the inmate has an  
67 unexpended inmate trust fund account balance of less than \$1,  
68 that balance shall be transferred to the State-Operated  
69 Institutions Inmate Welfare Trust Fund or, as provided in s.  
70 945.215(2)(b), into the General Revenue Fund.

71 Section 3. For the purpose of incorporating the amendment  
72 made by this act to section 945.215, Florida Statutes, in a  
73 reference thereto, subsection (2) of section 944.73, Florida  
74 Statutes, is reenacted to read:

75 944.73 State-Operated Institutions Inmate Welfare Trust  
76 Fund.—

77 (2) Moneys shall be deposited and the expenditures made  
78 from the trust fund as provided in s. 945.215.

79 Section 4. For the purpose of incorporating the amendment  
80 made by this act to section 945.215, Florida Statutes, in a  
81 reference thereto, paragraph (b) of subsection (4) of section  
82 946.002, Florida Statutes, is reenacted to read:

83 946.002 Requirement of labor; compensation; amount;  
84 crediting of account of prisoner; forfeiture; civil rights;  
85 prisoner not employee or entitled to compensation insurance  
86 benefits.—

87 (4)

8-00655A-22 2022636\_\_

88 (b) When any prisoner escapes, the department shall  
89 determine what portion of the prisoner's earnings shall be  
90 forfeited, and such forfeiture shall be deposited in the State  
91 Treasury in the State-Operated Institutions Inmate Welfare Trust  
92 Fund of the department or, as provided in s. 945.215(2)(b), into  
93 the General Revenue Fund.

94 Section 5. This act shall take effect July 1, 2022.



## 2022 AGENCY LEGISLATIVE BILL ANALYSIS

### AGENCY: Department of Corrections

<b><u>BILL INFORMATION</u></b>	
<b>BILL NUMBER:</b>	SB 636
<b>BILL TITLE:</b>	State-Operated Institutions Inmate Welfare Trust Fund
<b>BILL SPONSOR:</b>	Senator Perry
<b>EFFECTIVE DATE:</b>	July 1, 2022

<b><u>COMMITTEES OF REFERENCE</u></b>
1)
2)
3)
4)
5)

<b><u>CURRENT COMMITTEE</u></b>

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

<b><u>PREVIOUS LEGISLATION</u></b>	
<b>BILL NUMBER:</b>	SB 1116, SB 1118
<b>SPONSOR:</b>	
<b>YEAR:</b>	2020
<b>LAST ACTION:</b>	Signed into law

<b><u>IDENTICAL BILLS</u></b>	
<b>BILL NUMBER:</b>	HB 433
<b>SPONSOR:</b>	Representative Drake

<b><u>Is this bill part of an agency package?</u></b>
Yes

<b><u>BILL ANALYSIS INFORMATION</u></b>	
<b>DATE OF ANALYSIS:</b>	November 16, 2021
<b>LEAD AGENCY ANALYST:</b>	Patrick Mahoney and Jennifer Rechichi
<b>ADDITIONAL ANALYST(S):</b>	Jamie Newberry
<b>LEGAL ANALYST:</b>	Gretchen Brantley
<b>FISCAL ANALYST:</b>	Greg Holcomb

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## **POLICY ANALYSIS**

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### **1. EXECUTIVE SUMMARY**

The bill amends s. 945.215(2)(b), Florida Statutes, to authorize up to \$30 million of net proceeds/funds per s. 945.215(1), F.S., and shall be collected by the Florida Department of Corrections (FDC or Department) to be deposited into the State-Operated Institutions Inmate Welfare Trust Fund (Trust Fund) for the benefit and welfare of inmates incarcerated in state-operated institutions.

The bill also amends s. 945.215(2)(c), F.S., to allow funds from the Trust Fund to provide for environmental wellness upgrades to facilities which would improve environmental conditions of the facilities for the benefit of inmates.

The bill will enhance FDC's resources to improve inmate health and well-being, decrease inmate idleness and improve safety within Florida's prisons, enhance environmental conditions within facilities, and reduce recidivism. Studies have shown that inmates who are provided with programming such as education, vocation, and substance use along with wellness opportunities are better suited in an incarcerated environment with far less instances of inmate on inmate violence and are more likely to return to their communities upon release as productive citizens who engage in positive lifestyle habits.

### **2. SUBSTANTIVE BILL ANALYSIS**

#### **1. PRESENT SITUATION:**

Section 945.215(1), F.S., allows for net proceeds/funds to be collected by the Department from the following:

- Canteens and vending machines used by inmates
- Contracted telephone commissions (fees)
- Medical copayments
- Confiscated and liquidated contraband
- Forfeitures of inmate earnings
- Unexpended balances in individual inmate trust fund accounts of less than \$1

Proceeds from the items outlined in s. 945.215(1), F.S., total approximately \$35 million annually and are deposited into the General Revenue Fund. However, under s. 945.215(2)(b), F.S., deposits to the Trust Fund are capped at \$2.5 million. This fund is also currently assessed an 8% fee for the General Revenue Fund Service Charge.

Section 945.215(2)(c), F.S., authorizes funds in the Trust Fund shall be used exclusively for the following purposes:

- To provide literacy programs, vocational training programs, and educational programs;
- To operate and enhance inmate chapels, faith-based programs, visiting pavilions, visiting services and programs, family services and programs, and libraries;
- To provide inmate substance abuse treatment programs, transition and life skills training programs;
- To provide programs that target an inmate's individual criminogenic needs (i.e., risk factors)
- To provide for the purchase, rental, maintenance or repair of electronic and audio-visual equipment, media, services and programming used by inmates;
- To provide for the purchase, rental, maintenance or repair of recreation and wellness equipment; or
- To provide for the purchase, rental, maintenance, or repair of bicycles used by inmates traveling to and from employment in the work-release program authorized in s. 945.091(1)(b), F.S.

The Trust Fund enables the Department to purchase items to improve inmate health and well-being, decrease inmate idleness and improve safety within Florida's prisons, and reduce recidivism. The Trust Fund expands vital efforts to engage the incarcerated population in programming opportunities such as education, vocation, and substance use,

along with the opportunity to participate in recreation and wellness activities preparing them to return to their communities with positive lifestyle habits.

The following information highlights how the Department invested the resources provided by the Trust Fund during FY 20-21.

#### Literacy and Education Programming

To provide support to struggling readers and English Language Learners (ELL), 14 OPS Academic Teacher positions focused on Literacy/ELL were funded. Additionally, the following classroom resources were procured to enhance reading and ELL instruction:

- Teacher's Kits including materials to prepare and deliver research-based direct instruction lessons to struggling readers and ELL
- Skill-based lessons to teach students fundamental reading strategies
- Assessment-driven software programs to provide additional instruction on specific skills that inhibit students' reading success

#### Vocational Programs

Training simulators to prepare inmates for employment in high-demand careers such as commercial driving and heavy equipment operations were procured.

#### Inmate Chapels and Libraries

Chaplaincy Services provide the opportunity for inmates to participate in religious activities and programs. The following were procured to enhance chaplaincy programs:

- Upgrades to chapel sound systems
- Electronic and audio-visual equipment

The Department provides inmates with access to comprehensive library services to include current print and non-print materials, reference services, reading guidance, educational and cultural programming, extension services for inmates unable to visit the library, and resources and services to support activities of other education and treatment programs. The following additional resources were procured to enhance library services:

- Literature enhancements to address aging library collection
- World Book Encyclopedia sets

#### Substance Use Treatment Programs

Department operated in-prison Substance Use Treatment programs utilized the Trust Fund to enhance existing programming for the following substance use programs:

- Residential Therapeutic Community
- Intensive Outpatient Program
- Outpatient Programs

Interactive journals were also procured for use in the Administrative Management Unit at Jefferson CI, Short Sentence Correctional Institutions/Units (SSCIs) and Re-Entry Centers statewide. SSCIs also received composition notebooks, electronic and audio-visual equipment for dorms, paint for murals, and computers for inmate use. Supplies to facilitate community model training were also procured to support Peer-to-Peer program dorms statewide and SSCIs.

#### Wellness Programs

To support the 34 wellness education specialist positions appropriated during the 2020 Session, funds from the Trust Fund were utilized to equip wellness programs statewide. Items include:

- Building materials to repair and enhance recreation pavilions, running/walking tracks, and recreation fields
- Wellness education material and equipment/furniture for wellness education programs
- A statewide wellness coordinator position was provided in OPS status to oversee newly established wellness education programs statewide
- Board games (e.g., checkers, chess, scrabble) for recreation and to be used during family visitation with inmates' children and loved ones

- Recreation and sports equipment

Additionally, the Department implemented incentivized programs at four correctional institutions (CIs) during FY 20-21: Jefferson CI, Lowell CI, Madison CI, and Marion CI. The implementation of these programs involved the purchase of electronic and audio-visual equipment for dorms and recreational wellness equipment and supplies.

Work-Release Program Equipment

Gender-appropriate bicycles in various sizes were procured for inmates traveling to and from work-release employment.

**2. EFFECT OF THE BILL:**

Effective July 1, 2022, a total of up to \$30,000,000 of net proceeds shall be deposited into the Trust Fund. Proceeds collected in excess of this amount shall be deposited into the General Revenue Fund. Proceeds will be used at state-operated correctional institutions for the benefit and welfare of inmates.

The bill also amends s. 945.215(2)(c), F.S., creating an additional category to allow funds from the Trust Fund to be utilized to provide environmental wellness upgrades to facilities to include fixed capital outlay repairs and maintenance which would improve environmental conditions of the facilities.

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

If yes, explain:	
Is the change consistent with the agency's core mission?	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	

**4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

Proponents and summary of position:	The Florida Department of Corrections. The Trust Fund expands vital efforts to engage the incarcerated population in programming to develop, improve, and prepare them to return to their communities upon release as productive citizens who engage in positive lifestyle habits.
Opponents and summary of position:	N/A

**5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y  N**

If yes, provide a description:	Note, s. 945.215(2)(e), F.S., directs the Department to compile a report annually, at both statewide and institutional levels, documenting receipts and expenditures from the Trust Fund. The Department must submit the report to the Executive Office of the Governor and chairs of the appropriate substantive fiscal committees of the Senate and House of Representatives.
Date Due:	October 1 of each year
Bill Section Number(s):	

**6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y  N**

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

**FISCAL ANALYSIS**

**1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?** Y  N

Revenues:	
Expenditures:	
Does the legislation increase local taxes or fees? If yes, explain.	
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:	Deposits into the Trust Fund from current existing revenue streams shall be restricted to a specified amount of \$30 million in any fiscal year. Funds collected in excess of this limit shall be deposited into the General Revenue Fund.
Expenditures:	Expenditures may only be made pursuant to legislative appropriation and are capped at a specified amount of \$30 million.
Does the legislation contain a State Government appropriation?	Yes
If yes, was this appropriated last year?	\$2.5 million was appropriated in the re-establishment of the Trust Fund in FY 20-21, per s. 945.215(2)(b), F.S.

**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**

If yes, explain impact.	
Bill Section Number:	



**TECHNOLOGY IMPACT**

1. **DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?** Y  N

If yes, describe the anticipated impact to the agency including any fiscal impact.	
--	--

**FEDERAL IMPACT**

1. **DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?** Y  N

If yes, describe the anticipated impact including any fiscal impact.	
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**ADDITIONAL COMMENTS**

N/A

**LEGAL - GENERAL COUNSEL'S OFFICE REVIEW**

Issues/concerns/comments:	N/A
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FLORIDA  
DEPARTMENT of  
CORRECTIONS

Governor  
**RON DESANTIS**  
Secretary  
**MARK S. INCH**

501 South Calhoun Street, Tallahassee, FL 32399-2500

[www.dc.state.fl.us](http://www.dc.state.fl.us)

October 1, 2021

The Honorable Ron DeSantis  
Governor of Florida  
Executive Office of the Governor  
400 South Monroe Street  
Tallahassee, Florida 32399

The Honorable Kelli Stargel  
Chair, Senate Committee on Appropriations  
201 The Capitol  
404 South Monroe Street  
Tallahassee, Florida 32399

The Honorable Jason Pizzo  
Chair, Senate Criminal Justice  
510 Knott Building  
404 South Monroe Street  
Tallahassee, Florida 32399

The Honorable Jay Trumbull  
Chair, House Appropriations Committee  
221 The Capitol  
402 South Monroe Street  
Tallahassee, Florida 32399

The Honorable Robert Charles Brannan  
Chair, House Criminal Justice and Public  
Safety Subcommittee  
417 House Office Building  
402 South Monroe Street  
Tallahassee, Florida 32399

**Re: State-Operated Institutions Inmate Welfare Trust Fund**

Dear Governor DeSantis, Chairs Stargel, Pizzo, Trumbull and Brannan:

In accordance with Chapter 2020-98, Laws of Florida, the Florida Department of Corrections submits the enclosed report regarding the State-Operated Institutions Inmate Welfare Trust Fund.

Sincerely,

Mark S. Inch  
Secretary



## State-Operated Institutions Inmate Welfare Trust Fund Report

October 1, 2021

Chapter 2020-98, Laws of Florida, directs the Florida Department of Corrections (FDC or Department) to annually compile a report that documents State-Operated Institutions Inmate Welfare Trust Fund (Trust Fund) receipts and expenditures. This report must be compiled at both the statewide and institutional levels. The department must submit the report for the previous fiscal year by October 1 of each year to the Executive Office of the Governor and the chairs of the appropriate substantive and fiscal committees of the Senate and the House of Representatives.

### OVERVIEW

The State-Operated Institutions Inmate Welfare Trust Fund authorized under s. 945.215, Florida Statutes, enables FDC to purchase items to improve inmate health and well-being, decrease inmate idleness and improve safety within Florida's prisons, and reduce recidivism. Inmate idleness and violence are reduced when inmates are provided with programming opportunities such as education, vocation, and substance use, along with the opportunity to participate in recreation and wellness activities.

The Trust Fund expands vital efforts to engage the incarcerated population in programming to develop, improve, and prepare them to return to their communities upon release as productive citizens who engage in positive lifestyle habits.

The following table details the Trust Fund revenue and expenditures for Fiscal Year 20-21:

Total Revenues	\$2,500,000
8% General Revenue Service Charge	\$(200,000)
Total Expenditures	\$2,300,000

The following information highlights how FDC invested the resources provided by the Trust Fund during Fiscal Year 20-21.

### LITERACY AND EDUCATION PROGRAMMING

To provide support to struggling readers and English Language Learners (ELL), 14 OPS Academic Teacher positions focused on Literacy/ELL were funded. Additionally, the following classroom resources were procured to enhance reading and ELL instruction:

- Teacher's Kits including materials to prepare and deliver research-based direct instruction lessons to struggling readers and ELL
- Skill-based lessons to teach students fundamental reading strategies
- Assessment-driven software programs to provide additional instruction on specific skills that inhibit students' reading success

## VOCATIONAL PROGRAMS

Training simulators to prepare inmates for employment in high-demand careers such as commercial driving and heavy equipment operations were procured.

## INMATE CHAPELS AND LIBRARIES

Chaplaincy Services provide the opportunity for inmates to participate in religious activities and programs. The following were procured to enhance chaplaincy programs:

- Upgrades to chapel sound systems
- Televisions and DVD players

The Department provides inmates with access to comprehensive library services to include current print and non-print materials, reference services, reading guidance, educational and cultural programming, extension services for inmates unable to visit the library, and resources and services to support activities of other education and treatment programs. The following additional resources were procured to enhance library services:

- Literature enhancements to address aging library collection
- World Book Encyclopedia sets

## SUBSTANCE USE TREATMENT PROGRAMS

Department operated in-prison Substance Use Treatment programs utilized the Trust Fund to enhance existing programming for the following substance use programs:

- Residential Therapeutic Community
- Intensive Outpatient Program
- Outpatient Programs

Interactive journals were also procured for use in the Administrative Management Unit at Jefferson CI, Short Sentence Correctional Institutions/Units (SSCIs) and Re-Entry Centers statewide. SSCIs also received composition notebooks, televisions for dorm day rooms, paint for murals, and computers for inmate use. Supplies to facilitate community model training were also procured to support Peer-to-Peer program dorms statewide and SSCIs.

## WELLNESS PROGRAMS

To support the 34 wellness education specialist positions appropriated during the 2020 Session, funds from the Trust Fund were utilized to equip wellness programs statewide. Items include:

- Building materials to repair and enhance recreation pavilions, running/walking tracks, and recreation fields
- Wellness education material and equipment/furniture for wellness education programs

- A statewide wellness coordinator position was provided in OPS status to oversee newly established wellness education programs statewide
- Board games (e.g. checkers, chess, scrabble) for recreation and to be used during family visitation with inmates' children and loved ones
- Recreation and sports equipment

Additionally, FDC implemented incentivized programs at four correctional institutions (CIs) during FY 20-21: Jefferson CI, Lowell CI, Madison CI, and Marion CI. The implementation of these programs involved the purchase of televisions for dorms and recreational equipment and supplies.

## WORK-RELEASE PROGRAM EQUIPMENT

Gender-appropriate bicycles in various sizes were procured for inmates traveling to and from work-release employment.

## FISCAL YEAR 20-21 EXPENDITURES

The chart below details expenditures by statewide and institutional levels.

**FISCAL YEAR 20-21 EXPENDITURES**

Institutions	Literacy & Education	Vocational Programs	Chaplaincy	Library Services	Substance Use Treatment	Wellness Programs	Work-Release Program Equipment	Grand Total
Apalachee CI	\$291		\$2,180		\$979	\$47,065		\$50,516
Avon Park CI			\$537	\$1,479	\$966	\$44,147		\$47,128
Baker CI			\$1,871		\$477	\$22,348	\$3,354	\$28,049
Calhoun CI			\$1,431	\$599		\$1,874		\$3,903
Central Office	\$1,595	\$777			\$200,000	\$116,501		\$318,872
Century CI			\$935	\$599		\$11,688		\$13,222
CFRC	\$8,414		\$2,473	\$2,622	\$625	\$16,871	\$5,706	\$36,712
Charlotte CI			\$935	\$766		\$3,846		\$5,547
Columbia CI			\$1,871		\$477	\$48,360	\$1,919	\$52,626
Cross City CI			\$761	\$1,093	\$554	\$22,092		\$24,500
Dade CI			\$1,160	\$839		\$31,380		\$33,379
Desoto CI	\$6,661		\$1,160	\$839	\$765	\$39,956		\$49,381
Everglades CI	\$3,968		\$2,320	\$1,457		\$13,017		\$20,761
Franklin CI			\$935		\$1,438	\$19,537		\$21,910
FSP			\$1,871	\$2,025	\$1,244	\$29,469		\$34,610
FWRC			\$935	\$599	\$1,720	\$5,130		\$8,384
Gadsden Re-Entry			\$935			\$3,797		\$4,732
Gulf CI			\$537	\$599		\$1,050		\$2,185
Hamilton CI	\$14,877		\$1,073	\$2,228	\$10,743	\$37,639		\$66,559
Hardee CI	\$11,879		\$1,034			\$33,714		\$46,628
Hernando CI	\$15,343	\$147,850	\$440	\$1,264		\$5,384		\$170,281
Holmes CI			\$935		\$555	\$18,673		\$20,163
Homestead CI			\$935			\$6,025		\$6,961
Jackson CI			\$935		\$1,924	\$60,105		\$62,964
Jefferson CI	\$20,671		\$935	\$599		\$53,308	\$2,894	\$78,407
Lake CI			\$1,160	\$902	\$510	\$23,913		\$26,486
Lancaster CI			\$1,160	\$1,270	\$602	\$22,789	\$2,918	\$28,740
Lawtey CI			\$935	\$1,071		\$487		\$2,494

**FY20-21 EXPENDITURES (CONTINUED)**

Institutions	Literacy & Education	Vocational Programs	Chaplaincy	Library Services	Substance Use Treatment	Wellness Programs	Work-Release Program Equipment	Grand Total
Liberty CI			\$2,095	\$1,526	\$553	\$20,411		\$24,584
Lowell CI	\$14,701		\$1,871		\$681	\$121,068		\$138,321
Madison CI	\$24,247		\$935			\$26,165		\$51,347
Marion CI	\$26,918	\$147,850	\$537		\$751	\$80,513		\$256,568
Martin CI	\$16,549		\$1,334			\$15,459	\$2,223	\$35,564
Mayo Annex			\$935	\$599		\$1,624		\$3,158
New River			\$761	\$1,529	\$525	\$18,282		\$21,096
NWFRC	\$21,505		\$2,095	\$1,483	\$3,941	\$61,942	\$1,994	\$92,960
Okaloosa CI			\$935	\$1,050		\$6,028		\$8,013
Okeechobee CI			\$1,871	\$599		\$15,226		\$17,695
Polk CI	\$6,802		\$935		\$537	\$32,607		\$40,881
Putnam CI			\$935	\$599		\$2,394		\$3,929
RMC			\$2,095	\$1,438	\$555	\$27,236		\$31,324
Santa Rosa CI	\$8,217	\$134,500	\$2,095	\$1,438	\$93	\$15,495		\$161,839
SFRC			\$1,871		\$7,670	\$16,783		\$26,324
Sumter CI			\$935	\$1,775	\$2,334	\$5,736		\$10,781
Suwannee CI			\$2,095	\$1,438	\$1,487	\$21,603		\$26,623
Taylor CI			\$1,073		\$745	\$18,063		\$19,881
Tomoka CI			\$935			\$445		\$1,380
Union CI			\$1,160	\$2,692	\$743	\$14,474		\$19,069
Wakulla CI			\$1,871		\$553	\$27,609		\$30,032
Walton CI			\$935	\$599		\$2,349		\$3,883
Zephyrhills CI			\$935	\$599		\$6,135	\$980	\$8,650
<b>STATEWIDE</b>	<b>\$202,638</b>	<b>\$430,977</b>	<b>\$63,636</b>	<b>\$38,210</b>	<b>\$244,744</b>	<b>\$1,297,808</b>	<b>\$21,987</b>	<b>\$2,300,000</b>
							8% General Revenue Service Charge	\$200,000
							Grand Total	<b>\$2,500,000</b>

**Note:** Central Office totals include: educational software, uniforms and licenses for CDL program, curriculum for substance use treatment programs, and statewide wellness coordinator position costs.

The Florida Senate

# APPEARANCE RECORD

SB 636

1/11/22

Meeting Date

Bill Number or Topic

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Criminal Justice

Committee

Amendment Barcode (if applicable)

Name Nate Schaidt / Horizon Communities

Phone 386-684-8240

Address 2618 Lawson Rd.

Email nate@horizoncommunities.org

Street

Jalapa

City

FL

State

32808

Zip

Speaking:  For  Against  Information

**OR**

Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)



11/11/22

Meeting Date

CJ

Committee

Name

AARON WAYT ("WAYT") FACDL

Phone

850 681 7777

Address

Street

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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The Florida Senate  
**APPEARANCE RECORD**

Deliver both copies of this form to  
Senate professional staff conducting the meeting

SB636

Bill Number or Topic

Amendment Barcode (if applicable)

The Florida Senate  
**APPEARANCE RECORD**

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1/11/21

Meeting Date

636

Bill Number or Topic

CJ

Committee

Amendment Barcode (if applicable)

Name Chelsea Murphy

Phone 954 557 0014

Address 605 Middlebrook Ln

Email \_\_\_\_\_

Street

MI

City

FL

State

32312

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Right on Crime

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. § 11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

1/11/22

# APPEARANCE RECORD

SB 636

Meeting Date

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Bill Number or Topic

Senate Criminal Justice Committee

Committee

Amendment Barcode (if applicable)

Name **Scotti Vaughan**

Phone **850-717-3034**

Address **501 South Calhoun Street**

Email **scotti.vaughan@fdc.myflorida.com**

Street

**Tallahassee**

**FL**

**32399**

City

State

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

**Department of Corrections**

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)



The Florida Senate

## Committee Agenda Request

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

**Subject:** Committee Agenda Request

**Date:** November 22, 2021

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I respectfully request that **Senate Bill #636**, relating to State-Operated Institutions Inmate Welfare Trustfund , be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry".

---

Senator Keith Perry  
Florida Senate, District 8

**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 668

INTRODUCER: Criminal Justice Committee and Senator Cruz

SUBJECT: Custodial Interrogations of Minors

DATE: January 11, 2022

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	Fav/CS
2.			CF	
3.			RC	

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 668 creates s. 900.06, F.S., to prohibit deceptive tactics by a law enforcement officer during a custodial interrogation of a minor occurring at a place of detention. As an enforcement mechanism, the bill deems a resulting confession inadmissible in evidence unless the inadmissibility is overcome by the state attorney, by the preponderance of the evidence considering the totality of the circumstances.

The bill defines the terms “custodial interrogation,” “deception,” and “place of detention.”

There is no reported fiscal impact associated with the bill.

The bill becomes effective July 1, 2022.

**II. Present Situation:**

**Custodial Interrogation Legal Requirements**

The Fifth Amendment to the United States Constitution states that “[n]o person . . . shall be compelled in any criminal case to be a witness against himself.”<sup>1</sup> Similarly, the Florida Constitution extends the same protection.<sup>2</sup>

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<sup>1</sup> U.S. Const. amend. V.

<sup>2</sup> “No person shall be . . . compelled in any criminal matter to be a witness against himself.” FLA. CONST. article I, s. 9.

Whether a person, adult or minor, is in custody and under interrogation are the threshold questions that determine the need for a law enforcement officer to advise the person of his or her *Miranda* rights.<sup>3</sup> If the person is being questioned in a custodial interrogation situation, he or she “must be warned that he has the right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.”<sup>4</sup>

The test to determine if a person is *in custody* for the purposes of his or her *Miranda* rights is whether “a reasonable person placed in the same position would believe that his or her freedom of action was curtailed to a degree associated with actual arrest.”<sup>5</sup>

An *interrogation* occurs “when a person is subjected to express questions, or other words or actions, by a state agent that a reasonable person would conclude are designed to lead to an incriminating response.”<sup>6</sup>

Courts use a “reasonable person” standard in making the determination of whether a defendant was in custody at the time he or she made a statement.<sup>7</sup> The court considers, given the totality of the circumstances, whether a reasonable person in the defendant’s position would have believed he or she was free to terminate the encounter with law enforcement and, therefore, was not in custody.<sup>8</sup> Among the circumstances or factors the courts consider are:

- The manner in which the police summon the suspect for questioning;
- The purpose, place, and manner of the interrogation;
- The extent to which the suspect is confronted with evidence of his or her guilt;
- Whether the suspect is informed that he or she is free to leave the place of questioning;<sup>9</sup> and
- Whether any promises or misrepresentations were made by the interrogating officers.<sup>10</sup>

### **Admissibility of a Defendant’s Statement as Evidence**

The admissibility of a defendant’s statement is a mixed question of fact and law decided by the court during a pretrial hearing or during the trial outside the presence of the jury.<sup>11</sup>

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<sup>3</sup> In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Court established procedural safeguards to ensure the voluntariness of statements rendered during custodial interrogation.

<sup>4</sup> *Id.* at 444. See also *Traylor v. State*, 596 So.2d 957, 965-66 (Fla. 1992).

<sup>5</sup> *Traylor v. State*, 596 So.2d 957, n. 16; “Two discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was at liberty to terminate the interrogation and leave. Once the scene is set and the players’ lines and actions are reconstructed, the court must apply an objective test to resolve the ultimate inquiry: was there a formal arrest or restraint on freedom of movement of the degree associated with formal arrest.” *J.D.B. v. North Carolina*, 546 U.S.261 (2011), quoting *Thompson v. Keohane*, 516 U.S. 99 (1995).

<sup>6</sup> *Traylor v. State*, 596 So.2d 957n. 17.

<sup>7</sup> *Id.*, n. 16.

<sup>8</sup> *Voorhees v. State*, 699 So.2d 602, 608 (Fla. 1997).

<sup>9</sup> *Ramirez v. State*, 739 So.2d 568, 574 (Fla. 1999).

<sup>10</sup> *Frazier v. Cupp*, 394 U.S. 731, 739 (1969).

<sup>11</sup> *Nickels v. State*, 90 Fla. 659, 668 (Fla. 1925).

For a defendant's statement, obtained during custodial interrogation, to become evidence in a criminal trial, the judge must first determine whether the statement was given after a free and voluntary waiver of rights. Perhaps the defendant gave a statement during custodial interrogation without being informed of his or her rights at all. Here too the court looks to the totality of the circumstances surrounding the statement to make the admissibility determination.<sup>12</sup> For example, the court may consider issues surrounding the timing and manner in which the defendant was informed of his or her *Miranda* rights.

Specifically, the court may hear testimony from the defendant and any law enforcement officers involved, and review law enforcement officer's reports, and additional evidence such as audio or video recordings of the custodial interrogation. It is the State's burden to show by a preponderance of the evidence that there was no violation of the defendant's constitutional rights in obtaining the statement, and there was a free and voluntary waiver of rights.<sup>13</sup> A preponderance of evidence means that a party has shown that its version of facts is more likely than not the correct version.<sup>14</sup>

Even if the court deems the statement admissible and the jury hears the evidence, defense counsel will be able to cross-examine any witnesses who testify at trial and have knowledge of the circumstances surrounding the defendant's statement. Additionally, counsel may argue to the jury in closing argument that a law enforcement officer coerced the statement in some way, or that the defendant did not freely and voluntarily waive his or her rights.

### **Juvenile (Delinquency) – Specific Florida and Federal Law**

Section 985.03(7), F.S., defines a "child," "juvenile," or "youth" as any person under the age of 18 or any person who is alleged to have committed a violation of law occurring prior to the time that person reached the age of 18 years. A child is "taken into custody" immediately when temporary physical control over the child is attained by a person authorized by law, pending the child's release, detention, placement, or other disposition as authorized by law.<sup>15</sup>

The Florida Supreme Court has declined to adopt an exclusionary rule that would automatically exclude all confessions given by those who are still under the jurisdiction of the juvenile

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<sup>12</sup> To determine if a waiver is valid a court must make two inquiries. First, the court must determine if the waiver was voluntary in the sense that it was the product of free and deliberate choice rather than intimidation, coercion, or deception. *Fare v. Michael C.*, 442 U.S. 707, 725 (1979); *see also State v. Mallory*, 670 So.2d 103, 106 (Fla. 1st DCA 1996). Second, the court must determine whether the waiver was executed with a full awareness of the nature of the rights being abandoned and the consequences of their abandonment. *Fare*, 442 U.S. at 725; *Mallory*, 670 So.2d at 106. A court must use a totality of the circumstances analysis to determine whether a waiver of *Miranda* rights meets these criteria and is thus valid.

<sup>13</sup> *Colorado v. Connelly*, 479 U.S. 157 (1986), stating "[w]henver the State bears the burden of proof in a motion to suppress a statement that the defendant claims was obtained in violation of our *Miranda* doctrine, the State need prove waiver only by a preponderance of the evidence. *See Nix v. Williams*, 467 U.S. 431, 444, (1984); *United States v. Matlock*, 415 U.S. (1974). ("[T]he controlling burden of proof at suppression hearings should impose no greater burden than proof by a preponderance of the evidence ...")."

<sup>14</sup> The concept of "preponderance of the evidence" can be visualized as a scale representing the burden of proof, with the totality of evidence presented by each side resting on the respective trays on either side of the scale. If the scale tips ever so slightly to one side or the other, the weightier side will prevail. If the scale does not tip toward the side of the party bearing the burden of proof, that party cannot prevail. US Legal, available at <https://courts.uslegal.com/burden-of-proof/preponderance-of-the-evidence/> (last viewed December 17, 2021).

<sup>15</sup> Section 985.03(48), F.S.

delinquency court.<sup>16</sup> The U.S. Supreme Court has held that the admissibility of a juvenile's confession is based on the totality of the circumstances of the advisement of his or her rights and waiver of those rights, just as with adults.<sup>17</sup>

There is no statutory requirement that a law enforcement officer notify a juvenile's parent before interrogating the juvenile.<sup>18</sup> Once a juvenile has told a law enforcement officer that he or she does not want to speak with the officer until a parent arrives, however, all questioning must end.<sup>19</sup>

In cases of a juvenile's custodial interrogation, courts have considered the following objective factors when evaluating the totality of the circumstances:

- The point in time when the *Miranda* warnings were given and the waiver of rights, including right to counsel, obtained;<sup>20</sup>
- The suspect's age,<sup>21</sup> experience, education, background and intelligence;<sup>22</sup> and
- Despite the fact that it is not required, courts should consider whether the suspect's parents were contacted by law enforcement and whether the suspect was able to consult with them before questioning, if he or she desired.<sup>23</sup>

Deception by a law enforcement officer during custodial interrogation does not render a confession involuntary per se, but such deception should be made part of a court's totality of the circumstances analysis in judging the voluntariness and admissibility of a confession.<sup>24</sup>

### ***Other States' Laws***

Oregon enacted a law in 2021 prohibiting law enforcement officers from intentionally using information known by the officer to be false to elicit a statement from a juvenile suspect during custodial interrogation.<sup>25</sup> In the Oregon law such a statement made by the juvenile suspect is presumed to be involuntary. The presumption may be overcome by the state proving, by clear

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<sup>16</sup> *State v. Francois*, 197 So.2d 492 (Fla. 1967).

<sup>17</sup> *Gallegos v. Colorado*, 370 U.S. 49 (1962).

<sup>18</sup> Section 985.101(3), F.S., requires law enforcement to try to notify a juvenile's parent or guardian when the juvenile is taken into custody, but the failure to comply with this section or the inability to contact the parent or guardian does not render a confession involuntary. *Neely v. State*, 126 So.3d 342 (Fla. 2013). See also *Frances v. State*, 857 So.2d 1002, 1003-04 (Fla. 5th DCA 2003) citing *Brancaccio v. State*, 773 So.2d at 583-84 (Fla. 4th DCA 2000); and *McIntosh v. State*, 37 So.3d 914 (Fla. 3d DCA 2010) regarding the juvenile being unable to confer with a parent or guardian.

<sup>19</sup> *B.P. v. State*, 815 So.2d 728 (Fla. 5th DCA 2002).

<sup>20</sup> See *Ramirez v. State*, 739 So.2d 568, 574 (Fla. 1999) where "police began questioning Ramirez at the police station after failing to first administer the *Miranda* warnings. When the police finally administered the *Miranda* warnings, the administration was not careful and thorough. To the contrary, there was a concerted effort to minimize and downplay the significance of the *Miranda* rights."

<sup>21</sup> [W]e hold that so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test. This is not to say that a child's age will be a determinative or even a significant, factor in every case...it is, however, a reality that courts cannot simply ignore. *J.D.B. v. North Carolina*, 564 U.S. 261 (2011), (footnotes and citations omitted).

<sup>22</sup> See *Doerr v. State*, 348 So.2d 398 (Fla. 2d DCA 1977) where the suspect indicated that he had confessed because he "didn't want to hear [the detective's] mouth," and that "he was familiar with the *Miranda* warnings because he had heard them when the police had interrogated him on other occasions."

<sup>23</sup> *Doerr v. State*, 383 So.2d 905, 907 (Fla. 1980).

<sup>24</sup> *Frazier v. Cupp*, 394 U.S. 731, 738 (1969).

<sup>25</sup> 2021 Oregon Senate Bill 418A, signed by the Governor, July 14, 2021.



and convincing evidence that the statement was voluntary and not made in response to the false information. It means that the evidence is highly and substantially more likely to be true than untrue or that the fact finder must be convinced that the contention is highly probable.<sup>26</sup> In other words, the party alleging the contention must prove that the contention is substantially more likely than not, true.

Illinois enacted S.B. 2122 (P.A. 102-101), effective January 1, 2022,<sup>27</sup> which is virtually identical to the Oregon law. The Illinois law has a slightly different definition of the term “place of detention,” and requires that the presumption of inadmissibility of the confession be overcome by the preponderance of the evidence which is a lower standard than the Oregon law.<sup>28</sup>

Taking a different approach in Washington, new legislation taking effect in January 2022 will require an attorney to consult with a juvenile suspect before he or she can be questioned by law enforcement. With few exceptions, the juvenile’s statement made prior to consulting the attorney is inadmissible.<sup>29</sup>

### III. Effect of Proposed Changes:

The bill creates s. 900.06, F.S., which prohibits methods of juvenile “custodial interrogations” held at a “place of detention” which include the use of “deception.”

The term “custodial interrogation” is defined by the bill as questioning or other conduct by a law enforcement officer which is reasonably likely to elicit an incriminating response from an individual and which occurs under circumstances in which a reasonable individual in the same circumstances would consider himself or herself to be in the custody of a law enforcement agency.

“Deception” is defined as the knowing communication by a law enforcement officer to a subject of a custodial interrogation of false facts about evidence or unauthorized statements regarding leniency.

The bill defines “place of detention” as a police station, sheriff’s office, correctional facility, prisoner holding facility, county detention facility, or other governmental facility where a minor may be held in connection with a criminal charge or a petition for delinquency that has been or may be filed against the minor.<sup>30</sup>

The bill declares that an oral, written, or sign language confession of an individual who, at the time of the commission of the offense, was younger than 18 years of age, which is made as a result of a custodial interrogation conducted at a place of detention is presumed to be inadmissible as evidence against the minor making the confession in any criminal proceeding or

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<sup>26</sup> *Colorado v. New Mexico*, 467 U.S. 310 (1984); Legal Information Institute, available at [https://www.law.cornell.edu/wex/clear\\_and\\_convincing\\_evidence](https://www.law.cornell.edu/wex/clear_and_convincing_evidence) (last viewed December 17, 2021).

<sup>27</sup> 705 ILCS 405/5-401.6.

<sup>28</sup> 725 ILCS 5/5-103-2.2.

<sup>29</sup> Engrossed Substitute House Bill 1140, Chapter 328, Laws of 2021, RCW 13.40.

<sup>30</sup> Section 1.01(13), F.S., defines “minor” as including any person who has not attained the age of 18 years.

any juvenile court proceeding if, during the custodial interrogation, a law enforcement officer engages in deception.

The presumption of inadmissibility of the confession may be overcome by the state attorney by a preponderance of the evidence, based on the totality of the circumstances, that the confession was voluntarily made. If there is any objection by the minor that the state failed to call all material witnesses on the issue of the voluntariness of the confession, it must be made at the trial court level, not the appellate level.

The bill has an effective date of July 1, 2022.

**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:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 900.06 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 January 11, 2022:**

The committee substitute deletes the term “juvenile officer” from the bill to conform to current law in which the term is not found.

- B. **Amendments:**

None.



171948

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/11/2022	.	
	.	
	.	
	.	

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

**Senate Amendment**

Delete lines 28 - 43  
and insert:  
enforcement officer to a subject of a custodial interrogation of false facts about evidence or unauthorized statements regarding leniency.

(c) "Place of detention" means a police station, sheriff's office, correctional facility, prisoner holding facility, county detention facility, or other governmental facility where a minor



171948

11 may be held in connection with a criminal charge or a petition  
12 for delinquency that has been or may be filed against the minor.

13 (2) An oral, written, or sign language confession of an  
14 individual who, at the time of the commission of the offense,  
15 was younger than 18 years of age, which is made as a result of a  
16 custodial interrogation conducted at a place of detention is  
17 presumed to be inadmissible as evidence against the minor making  
18 the confession in any criminal proceeding or any juvenile court  
19 proceeding if, during the custodial interrogation, a law  
20 enforcement officer engages in deception.  
21

By Senator Cruz

18-00256-22

2022668\_\_

A bill to be entitled

An act relating to custodial interrogations of minors; creating s. 900.06, F.S.; defining terms; providing a presumption of inadmissibility for confessions of certain minors which are made as a result of a custodial interrogation at a place of detention if deceptive tactics are used; specifying circumstances under which the presumption may be rebutted; providing that the state attorney has the burden of proving that such confessions were voluntary; requiring that certain objections be made in the trial court; providing an effective date.

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

Section 1. Section 900.06, Florida Statutes, is created to read:

900.06 Deceptive tactics during custodial interrogations of minors prohibited; presumption of inadmissibility.-

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

(a) "Custodial interrogation" means questioning or other conduct by a law enforcement officer which is reasonably likely to elicit an incriminating response from an individual and which occurs under circumstances in which a reasonable individual in the same circumstances would consider himself or herself to be in the custody of a law enforcement agency.

(b) "Deception" means the knowing communication by a law enforcement officer or juvenile officer to a subject of a custodial interrogation of false facts about evidence or

Page 1 of 2

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

18-00256-22

2022668\_\_

unauthorized statements regarding leniency.

(c) "Place of detention" means a police station, sheriff's office, correctional facility, prisoner holding facility, county detention facility, or other governmental facility where a minor may be held in connection with a criminal charge or a petition for delinquency that has been or may be filed against the minor.

(2) An oral, written, or sign language confession of an individual who, at the time of the commission of the offense, was younger than 18 years of age, which is made as a result of a custodial interrogation conducted at a place of detention is presumed to be inadmissible as evidence against the minor making the confession in any criminal proceeding or any juvenile court proceeding if, during the custodial interrogation, a law enforcement officer or juvenile officer engages in deception.

(3) The presumption of inadmissibility of a confession under subsection (2) may be overcome by a preponderance of the evidence that the confession was voluntarily given, based on the totality of the circumstances.

(4) The state attorney has the burden of proving that a confession was voluntary. Any objection to the failure of the state to call all material witnesses on the issue of whether the confession was voluntary must be made in the trial court.

Section 2. This act shall take effect July 1, 2022.

Page 2 of 2

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# APPEARANCE RECORD

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1/1122

Meeting Date

**Criminal Justice**

Committee

668

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Nancy Daniels**

Phone **850-488-6850**

Address **103 N Gadsden St**

Email **ndaniels@flpda.org**

Street

**Tallahassee**

**FL**

**32301**

City

State

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

**Florida Public Defender Association**

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

*While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)*

The Florida Senate

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SB668

Bill Number or Topic

1/11/22

Meeting Date

CJ

Committee

Amendment Barcode (if applicable)

Name

AARON WAYT FACDL

Phone

(850) 681-7777

Address

Street

Email

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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The Florida Senate

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1/11/22

Meeting Date

SB 668

Bill Number or Topic

Criminal Justice

Committee

Amendment Barcode (if applicable)

Name Tracy Streckler

Phone 407-855-7604

Address 1747 Orlando Central Pwy.

Email resolutions@floridapta.org

Street

Orlando

FL

32809

City

State

Zip

Speaking:  For  Against  Information OR Waive Speaking:  In Support  Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

January 11, 2022

Meeting Date

Criminal Justice

Committee

# The Florida Senate APPEARANCE RECORD

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668

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Barney Bishop III**

Phone **850/510-9922**

Address **2215 Thomasville Road**

Email **barney@barneybishop.com**

Street

**Tallahassee**

**FL**

**32308**

City

State

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

### PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

**Florida Smart Justice Alliance**

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)



The Florida Senate

## Committee Agenda Request

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

**Subject:** Committee Agenda Request

**Date:** November 17, 2021

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I respectfully request that **Senate Bill # 668**, relating to Custodial Interrogations of Minors, be placed on the:

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

A handwritten signature in blue ink, appearing to read "Janet Cruz", written over a horizontal line.

Senator Janet Cruz  
Florida Senate, District 18

**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 752

INTRODUCER: Senator Gainer

SUBJECT: Probationary or Supervision Services for Misdemeanor Offenders

DATE: January 10, 2022

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

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

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**I. Summary:**

SB 752 removes a statutory prohibition on a private entity providing probationary or supervision services to misdemeanor offenders who are sentenced by a circuit court. Under current law, a private or a public entity may provide probation services to offenders sentenced by a county court. However, the Department of Corrections (DOC) must supervise felony and misdemeanor offenders who are sentenced to or placed on probation or other supervision by a circuit court.

The bill will have an indeterminate fiscal impact on the DOC. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

**II. Present Situation:**

**Court Jurisdiction**

Florida has a two-tiered trial court system that consists of circuit courts and county courts. The state Constitution requires a circuit court to be established in each judicial circuit established by the Legislature, of which there are twenty.<sup>1</sup>

Circuit courts have exclusive original jurisdiction over:

- All actions at law not cognizable by the county courts;
- Proceedings related to settling estates of decedents and minors, granting testamentary letters, guardianship, involuntary hospitalization, the determination of incompetency, and other jurisdiction usually pertaining to probate courts;

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<sup>1</sup> Art. V, ss. 1 and 5, FLA. CONST. A list of judicial circuits can be found at <https://www.flcourts.org/Florida-Courts/Trial-Courts-Circuit> (last visited January 7, 2022).

- All cases in equity including cases related to juveniles, except traffic offenses as provided in chs. 316 and 985, F.S.;
- All felonies and all misdemeanors arising out of the same circumstances as a felony which is also charged;
- All cases involving the legality of any tax assessment or toll or denial of refund, except as provided in s. 72.011, F.S.;
- Ejectment actions; and
- All actions involving the title and boundaries of real property.<sup>2</sup>

The state Constitution also establishes a county court in each county.<sup>3</sup> County courts have original jurisdiction over:

- Misdemeanor cases not cognizable by the circuit courts;
- Violations of municipal and county ordinances; and
- Actions at law, except those within the exclusive jurisdiction of the circuit courts, in which the matter in controversy does not exceed \$30,000, exclusive of interest, costs, and attorney fees.<sup>4</sup>

Generally, felony offenses are adjudicated by the circuit court and misdemeanor offenses are adjudicated by the county court. However, circuit courts routinely adjudicate misdemeanor charges when:

- A misdemeanor charge arises out of the same circumstances as a felony; or
- A felony charge is reduced or dismissed in circuit court and the court retains jurisdiction over the remaining misdemeanor charge.

### **Probation and Other Supervision**

Probation is a form of community supervision requiring specified contacts with probation officers and compliance with certain terms and conditions.<sup>5</sup> The court determines the terms and conditions of probation.<sup>6</sup> Section 948.03, F.S., provides standard conditions of probation; however, a court may sentence an offender to special terms and conditions at the time of sentencing, such as substance abuse treatment.

### ***County Court***

A defendant who is placed on probation after being found guilty of a misdemeanor may not be sentenced to a term of supervision exceeding six months, unless otherwise ordered by the court.<sup>7</sup> Any person sentenced to misdemeanor probation by the county court must pay at least \$40 per

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<sup>2</sup> Section 26.012(2), F.S.

<sup>3</sup> Art. V, s. 6, FLA. CONST.

<sup>4</sup> Section 34.01(1), F.S. The jurisdictional limit for civil actions was \$15,000 prior to January 1, 2020, at which time the jurisdictional limit was raised to \$30,000. The jurisdictional limit is scheduled to rise to \$50,000 on January 1, 2023. The law provides a process by which the jurisdictional limit is to be reviewed and adjusted every 10 years beginning July 1, 2030; however it may not be lower than \$50,000.

<sup>5</sup> Section 948.01(8), F.S.

<sup>6</sup> Section 948.03, F.S.

<sup>7</sup> Section 948.15(1), F.S.

month, as determined by the court, to the court approved public or private entity providing misdemeanor supervision.<sup>8</sup>

A private entity or public entity, including licensed substance abuse education and intervention programs, may provide probation services to offenders sentenced by a county court, when such services are provided under the supervision of the board of county commissioners or the court.<sup>9</sup> For example, the Salvation Army provides supervision services including drug testing, job assistance, community service placement, and substance abuse assistance and rehabilitation to misdemeanor probationers in multiple Florida counties.<sup>10</sup> Professional Probation Services and its affiliated company, Judicial Correction Services, provide services in a number of Florida counties.<sup>11</sup>

Any private entity providing supervision services for misdemeanor probationers must contract with the county in which the services will be provided.<sup>12</sup> In a county with a population of less than 70,000, the county court judge, or in a county with more than one county court judge, the administrative judge of the county court must approve the contract. The terms of the contract must include, but are not limited to:

- The extent of the services to be rendered by the entity providing supervision and rehabilitation.
- Staff qualifications and criminal record checks of staff.
- Staffing levels.
- The number of face-to-face contacts with probationers.
- Procedures for handling the collection of probationer fees and restitution.
- Procedures for handling indigent probationers that ensure placement irrespective of ability to pay.
- Circumstances under which revocation of a probationer's supervision may be recommended.
- Reporting and record keeping requirements.
- Default and contract termination procedures.
- Procedures that aid probationers with job assistance.
- Procedures for accessing criminal history records of probationers.<sup>13</sup>

On a quarterly basis, the entity must report to the chief judge a summary of the number of probationers supervised by the private entity, payment of the required contribution under supervision or rehabilitation, and the number of probationers for whom supervision will be terminated. The entity must permit its records to be inspected upon the request of the county, the court, the Auditor General, the Office of Program Policy Analysis and Government Accountability, or any agent thereof.<sup>14</sup>

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<sup>8</sup> Section 948.09(1)(b), F.S.

<sup>9</sup> Section 948.15(2), F.S.

<sup>10</sup> Such misdemeanor probation services are provided in Citrus, Dixie, Duval, Gilchrist, Highlands, and Marion counties. The Salvation Army, *Correctional Services*, available at <https://salvationarmyflorida.org/correctional-services/> (last visited January 7, 2022).

<sup>11</sup> See Professional Probation Services, *Our Companies*, available at <https://ppsfamily.com/our-companies/> (last visited January 7, 2022).

<sup>12</sup> Section 948.15(3), F.S.

<sup>13</sup> *Id.*

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

A private entity that charges a fee for providing supervision services to probationers must register with the board of county commissioners in the county in which the entity offers services. The entity must provide specified information for each program it operates, including:

- The length of time the program has been operating in the county;
- A list of the staff and a summary of their qualifications;
- A summary of the types of services that are offered under the program; and
- The fees the entity charges for court-ordered services and any procedures for indigent probationers.<sup>15</sup>

A private entity, including a licensed substance abuse education and intervention program, providing misdemeanor supervision services must comply with all other applicable provisions of law.<sup>16</sup>

### *Circuit Court*

If the circuit court places a defendant on probation for a felony, the DOC must supervise the defendant.<sup>17</sup> A defendant who is placed on probation for a misdemeanor may not be placed under the DOC's supervision unless the circuit court was the court of original jurisdiction.<sup>18</sup> The DOC currently supervises more than 164,000 offenders on probation or in community control throughout Florida.<sup>19</sup>

Any person placed on probation under ch. 948, F.S., must pay the DOC supervision fees equal to the total month or portion of a month of supervision times the court-ordered amount, but such amount cannot exceed the actual per diem cost of supervision.<sup>20</sup> The DOC must consider an offender's ability to pay in establishing a written pay plan. Any funds collected from felony probationers may be used by the DOC to offset the costs associated with community supervision programs.<sup>21</sup>

Subsections 948.01(1) and (5), F.S., prohibit a private entity from providing probationary or supervision services to felony or misdemeanor offenders sentenced to probation or other supervision by the circuit court. As such, a private entity is authorized to provide supervision services to a misdemeanor offender sentenced by the county court, but cannot provide such services to a misdemeanor offender sentenced by the circuit court.

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<sup>15</sup> Section 948.15(4), F.S.

<sup>16</sup> Section 948.15(5), F.S.

<sup>17</sup> Section 948.01(1)(a), F.S.

<sup>18</sup> Section 948.01(2), F.S.

<sup>19</sup> Florida Department of Corrections, *Probation Services*, available at <http://www.dc.state.fl.us/cc/index.html> (last visited January 7, 2022).

<sup>20</sup> Section 948.09(1)(a)1., F.S.

<sup>21</sup> *Id.* Additionally, a felony probationer must pay a \$2-per-month surcharge to be used by the DOC to pay for correctional probation officers' training and equipment, including radios, and firearms training, firearms, and similar equipment. Section 948.09(1)(a)2., F.S.

**III. Effect of Proposed Changes:**

The bill repeals the statutory prohibition on a private entity providing probationary or supervision services to misdemeanor offenders who are sentenced by a circuit court. The bill authorizes a private entity to provide probationary or supervision services to any misdemeanor offender who is placed on probation, regardless of whether such sentence is imposed by a county or circuit court.

The bill is effective July 1, 2022.

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

The bill may have an indeterminate impact on county governments that contract with private entities to provide misdemeanor probationary services. However, these provisions relate to the defense, prosecution, or punishment of criminal offenses, and criminal laws 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:**

Private entities who contract to provide probationary services to misdemeanor offenders may experience an increase in workload.



**C. Government Sector Impact:**

The bill may have an indeterminate fiscal impact on those counties that contract with private entities to provide probation and supervision services of misdemeanor offenders, due to a possible increase in probationers.

The bill will have an indeterminate fiscal impact on the DOC, as some probationers may be diverted away from the DOC's supervision.<sup>22</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 948.01 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>22</sup> Department of Corrections, *2022 Agency Legislative Analysis of SB 752*, pg. 3, (Dec. 10, 2021) (on file with the Senate Committee on Criminal Justice).

By Senator Gainer

2-00980-22

2022752\_\_

1 A bill to be entitled  
 2 An act relating to probationary or supervision  
 3 services for misdemeanor offenders; amending s.  
 4 948.01, F.S.; deleting a prohibition on private  
 5 entities providing probationary or supervision  
 6 services to certain misdemeanor offenders; providing  
 7 an effective date.

8  
 9 Be It Enacted by the Legislature of the State of Florida:

10  
 11 Section 1. Paragraph (a) of subsection (1) and subsection  
 12 (5) of section 948.01, Florida Statutes, are amended to read:  
 13 948.01 When court may place defendant on probation or into  
 14 community control.—

15 (1) Any state court having original jurisdiction of  
 16 criminal actions may at a time to be determined by the court,  
 17 with or without an adjudication of the guilt of the defendant,  
 18 hear and determine the question of the probation of a defendant  
 19 in a criminal case, except for an offense punishable by death,  
 20 who has been found guilty by the verdict of a jury, has entered  
 21 a plea of guilty or a plea of nolo contendere, or has been found  
 22 guilty by the court trying the case without a jury.

23 (a) If the court places the defendant on probation or into  
 24 community control for a felony, the department shall provide  
 25 immediate supervision by an officer employed in compliance with  
 26 the minimum qualifications for officers as provided in s.  
 27 943.13. A private entity may not provide probationary or  
 28 supervision services to felony ~~or misdemeanor~~ offenders  
 29 sentenced or placed on probation or other supervision ~~by the~~

Page 1 of 2

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

2-00980-22

2022752\_\_

30 ~~circu~~it court.

31 (5) The imposition of sentence may not be suspended and the  
 32 defendant thereupon placed on probation or into community  
 33 control unless the defendant is placed under the custody of the  
 34 department or another public or private entity. A private entity  
 35 may not provide probationary or supervision services to felony  
 36 ~~or misdemeanor~~ offenders sentenced or placed on probation or  
 37 other supervision ~~by the circuit court~~.

38 Section 2. This act shall take effect July 1, 2022.

Page 2 of 2

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



## 2022 AGENCY LEGISLATIVE BILL ANALYSIS

### AGENCY: Department of Corrections

<b><u>BILL INFORMATION</u></b>	
<b>BILL NUMBER:</b>	SB 752
<b>BILL TITLE:</b>	Probationary or Supervision Services for Misdemeanor Offenders
<b>BILL SPONSOR:</b>	Senator Gainer
<b>EFFECTIVE DATE:</b>	July 1, 2022

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

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

<b><u>CURRENT COMMITTEE</u></b>

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

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

<b>Is this bill part of an agency package?</b>
No.

<b><u>BILL ANALYSIS INFORMATION</u></b>	
<b>DATE OF ANALYSIS:</b>	December 10, 2021
<b>LEAD AGENCY ANALYST:</b>	Joe Winkler, Angella New
<b>ADDITIONAL ANALYST(S):</b>	
<b>LEGAL ANALYST:</b>	Todd Studley
<b>FISCAL ANALYST:</b>	Suzanne Hamilton

**POLICY ANALYSIS**

**1. EXECUTIVE SUMMARY**

Amends s. 948.01(1)(a) and (5), F.S., provides language deleting the prohibition on private entities from providing supervision to offenders placed on probation for misdemeanor offenses. Provides for an effective date of July 1, 2022.

**2. SUBSTANTIVE BILL ANALYSIS**

**1. PRESENT SITUATION:**

Section 948.01, F.S. provides when a court may place a defendant on probation or into community control. These instances include:

(1)(a): If the court places the defendant on probation or into community control for a felony, the Florida Department of Corrections (FDC or Department) shall provide immediate supervision by an officer employed in compliance with the minimum qualifications for officers as provided in s. 943.13, F.S. A private entity may not provide probationary or supervision services to felony or misdemeanor offenders sentenced or placed on probation or other supervision by the circuit court.

(5): The imposition of sentence may not be suspended and the defendant thereupon placed on probation or into community control unless the defendant is placed under the custody of the Department or another public or private entity. A private entity may not provide probationary or supervision services to felony or misdemeanor offenders sentenced or placed on probation or other supervision by the circuit court.

Over the past three fiscal years there has been an annual average of 3,984 probation admissions where the supervision type is coded as misdemeanor. These sentencing practices may have resulted from plea negotiations where there were no dispositions on included felony offenses in a case or felonies that were plead down to misdemeanors.

**2. EFFECT OF THE BILL:**

The bill continues to not allow felony offenders to be supervised by a private entity regardless of the court of sentence and allows offenders placed on supervision, regardless of the court delegation, for misdemeanor offenses, to be supervised by private entities. Based on the bill language courts will be able to, although are not required to, order that these offenders be supervised by private entities, instead of the Department.

The actual number of offenders that will be diverted away from FDC supervision by this bill are unknown, therefore the impact is indeterminate.

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

If yes, explain:	
Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	

**4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

Proponents and summary of position:	
Opponents and summary of position:	

**5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y  N**

If yes, provide a description:	
Date Due:	

Bill Section Number(s):	

**6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?** Y  N

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

**FISCAL ANALYSIS**

**1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?** Y  N

Revenues:	Unknown
Expenditures:	Unknown
Does the legislation increase local taxes or fees? If yes, explain.	
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:	Unknown
Expenditures:	The actual number of offenders that will be diverted away from FDC supervision by this bill are unknown, therefore the impact is indeterminate.  The technology impact is indeterminate.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	

**3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?** Y  N

Revenues:	Unknown
Expenditures:	Unknown
Other:	

**4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?**

Y  N

If yes, explain impact.	
Bill Section Number:	

**TECHNOLOGY IMPACT**

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y  N

If yes, describe the anticipated impact to the agency including any fiscal impact.	The technology impact is indeterminate.
--	---

**FEDERAL IMPACT**

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y  N

If yes, describe the anticipated impact including any fiscal impact.	
--	--

**ADDITIONAL COMMENTS**

N/A.

**LEGAL - GENERAL COUNSEL'S OFFICE REVIEW**

Issues/concerns/comments:	The bill does not conflict with other state or federal law. The bill would allow for the Department to supervise misdemeanor offenses in some situations, as is the current practice as authorized by State law. The language would authorize a private entity to supervise misdemeanor offenses as determined by the Chief Judge of the Circuit.
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# APPEARANCE RECORD

752

January 11, 2022

Meeting Date

Bill Number or Topic

Criminal Justice

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name **Barney Bishop III**

Phone **850/510-9922**

Address **2215 Thomasville Road**

Email **barney@barneybishop.com**

Street

**Tallahassee**

**FL**

**32308**

City

State

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

**Florida Smart Justice Alliance**

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)



1/11/22

Meeting Date

CU

Committee

# The Florida Senate APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

SB752

Bill Number or Topic

Amendment Barcode (if applicable)

Name AARON WAYT FACOL Phone \_\_\_\_\_

Address \_\_\_\_\_ Email \_\_\_\_\_  
*Street*

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

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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

S-001 (08/10/2021)

1/11/22

Meeting Date

Criminal Justice

Committee

The Florida Senate

# APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

752

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Nancy Daniels**

Phone **850-488-6850**

Address **103 N Gadsden St**  
*Street*

Email **ndaniels@flpda.org**

**Tallahassee**  
*City*

**FL**  
*State*

**32301**  
*Zip*

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

**Florida Public Defender Association**

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

*While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)*

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

S-001 (08/10/2021)

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

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

---

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

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BILL: CS/SB 760

INTRODUCER: Criminal Justice Committee and Senator Berman

SUBJECT: Human Trafficking

DATE: January 12, 2022

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

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

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 760 amends the human trafficking statute, s. 787.06, F.S., to expand the term “coercion.” Currently, s. 787.06, F.S., delineates the offenses of human trafficking between whether the victim is a child under 18 years old, an adult who is believed to be a child under 18 years old, or an adult. The human trafficking offenses against adult victims require the element of “coercion.” This bill amends s. 787.06, F.S., to expand the term “coercion,” in multiple ways.

The bill amends the prostitution statute, s. 796.07, F.S., to make it a second degree felony to knowingly or in reckless disregard of the facts, engage in the soliciting, recruiting, harboring, enticing, purchasing, or procuring of another person for the purpose of prostitution, and to benefit financially or receive anything of value, or intend to benefit financially or receive anything of value by engaging in such acts.

Additionally, the bill amends the prostitution statute to add to the list of prohibited acts. Specifically, the bill makes it unlawful for a person to *facilitate or enable the receiving* of any person into any place, building, or conveyance for the purpose of prostitution, lewdness, or assignation, or to *facilitate, enable,* or permit any person to remain there for such purpose.

This bill also increases the penalties of specified crimes relating to prostitution and removes language relating to the reclassification of owning, establishing, maintaining, or operating any place, structure, building, or conveyance for the purpose of lewdness, assignation, or prostitution because this language becomes obsolete due to the increased penalty provided in the bill.

Additionally, this bill amends ss. 456.074, 480.041, and 943.0433, F.S., to make applicable conforming and cross-reference changes.

This bill may have a positive indeterminate prison bed impact on the Department of Corrections. See Section V. Fiscal Impact Statement.

This bill is effective October 1, 2022.

## 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 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 force, 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>

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>7</sup> Approximately 24.9 million people are human trafficking victims in the world.<sup>8</sup> There are approximately 2.5 million victims of human trafficking in the United States.<sup>9</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>10</sup> The Act contains penalties and mandates restitution for victims of human trafficking.<sup>11</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, *Healthy Schools – Human Trafficking*, available at <http://www.fldoe.org/schools/healthy-schools/human-trafficking.stml> (last visited January 3, 2022).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> The Department of Education, *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 January 3, 2022).

<sup>7</sup> The Department of Education, *Healthy Schools – Human Trafficking*, available at <http://www.fldoe.org/schools/healthy-schools/human-trafficking.stml> (last visited January 3, 2022).

<sup>8</sup> National Human Trafficking Hotline, *What is Human Trafficking?* available at <https://humantraffickinghotline.org/what-human-trafficking> (last visited January 3, 2022).

<sup>9</sup> The Department of Education, *Healthy Schools – Human Trafficking*, available at <http://www.fldoe.org/schools/healthy-schools/human-trafficking.stml> (last visited January 3, 2022).

<sup>10</sup> 22 U.S.C. s. 7101.

<sup>11</sup> *Id.*

### ***Human Trafficking in Florida***

Florida is ranked the third highest state of reported human trafficking cases in the United States.<sup>12</sup> Florida law defines “human trafficking” as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining,<sup>13</sup> purchasing, patronizing, procuring, or obtaining<sup>14</sup> another person for the purpose of exploitation of that person.<sup>15</sup>

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<sup>16</sup> or services<sup>17</sup> of any child under the age of 18 or an adult believed by the person to be a child younger than the age of 18 commits a first degree felony;<sup>18</sup>
- Using coercion for labor or services of an adult commits a first degree felony;<sup>19</sup>
- Using coercion for commercial sexual activity<sup>20</sup> of an adult commits a first degree felony;<sup>21</sup>
- For labor or services of any child under the age of 18 or an adult believed by the person to be a child younger than the age of 18 who is an unauthorized alien commits a first degree felony;<sup>22, 23</sup>
- Using coercion for labor or services of an adult who is an unauthorized alien commits a first degree felony;<sup>24</sup>
- Using coercion for commercial sexual activity of an adult who is an unauthorized alien commits a first degree felony;<sup>25</sup>

<sup>12</sup> The Department of Education, *Presentation to the State Board of Education, Child Trafficking Prevention Education*, p. 3, September 20, 2019, available at <http://www.fl DOE.org/core/fileparse.php/5575/urlt/ChildTraffickingPres.pdf> (last visited January 3, 2022).

<sup>13</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>14</sup> Section 787.06(2)(g), F.S., provides “obtain” means, in relation to labor or services, to secure performance thereof.

<sup>15</sup> Section 787.06(2)(d), F.S.

<sup>16</sup> Section 787.06(2)(e), F.S., provides “labor” means work of economic or financial value.

<sup>17</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>18</sup> Section 787.06(3)(a)1., F.S. A first degree felony is generally punishable by up to 30 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S. However, when specifically provided by statute, a first degree felony may be punished by imprisonment for a terms of years not exceeding life imprisonment. Section 775.082, F.S.

<sup>19</sup> Section 787.06(3)(a)2., F.S.

<sup>20</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>21</sup> Section 787.06(3)(b), 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)(c)2., F.S.

<sup>25</sup> Section 787.06(3)(d), F.S.

- For labor or services who does so by the transfer or transport of any child under the age of 18 or an adult believed by the person to be a child younger than the age of 18 from outside the state of Florida to within the state of Florida commits a first degree felony;<sup>26</sup>
- Using coercion for labor or services who does so by the transfer or transport of an adult from outside the state of Florida to within the state of Florida commits a first degree felony;<sup>27</sup>
- For commercial sexual activity who does so by the transfer or transport of any child under the age of 18 or an adult believed by the person to be a child younger than the age of 18 from outside of the state of Florida to within the state of Florida commits a first degree felony punishable by imprisonment for a term of years not exceeding life;<sup>28</sup>
- Using coercion for commercial sexual activity who does so by the transfer or transport of an adult from outside the state of Florida to within the state of Florida commits a first degree felony;<sup>29</sup> or
- For commercial sexual activity in which any child under the age of 18 or an adult believed by the person to be a child younger than 18, or in which any person who is mentally defective<sup>30</sup> or mentally incapacitated<sup>31</sup> is involved commits a life felony.<sup>32</sup>

“Coercion,” is an element in proving all of the above listed acts of human trafficking of adult victims. Section 787.06(2)(a), F.S., provides that coercion means:

- Using or threatening to use physical force against any person;
- Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
- Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
- Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
- Causing or threatening to cause financial harm to any person;
- Enticing or luring any person by fraud or deceit; or
- Providing a controlled substance as outlined in Schedule I or Schedule II of s. 893.03, F.S., to any person for the purpose of exploitation of that person.

It is a life felony for any parent, legal guardian, or other person having custody or control of a minor to sell or otherwise transfer custody or control of such minor, or make such an offer, with

<sup>26</sup> Section 787.06(3)(e)1., F.S.

<sup>27</sup> Section 787.06(3)(e)2., F.S.

<sup>28</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.

<sup>29</sup> Section 787.06(3)(f)2., F.S.

<sup>30</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>31</sup> Section 794.011(1)(c), F.S., defines “mentally 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>32</sup> Section 787.06(3)(g), F.S. A life felony is generally punishable by life imprisonment or by a term of imprisonment not exceeding 40 years. Section 775.082, F.S.

knowledge or reckless disregard of the fact that, as a consequence of the sale or transfer, the minor will be subject to human trafficking.<sup>33</sup>

Additionally, any person who permanently brands, or directs such branding of a victim for purposes of human trafficking commits a second degree felony.<sup>34</sup>

The above-mentioned first degree felonies are reclassified as a life felony, and a second degree felony is reclassified to a first degree felony, if a person causes great bodily harm, permanent disability, or permanent disfigurement to another person during the commission of the offense.<sup>35</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>36</sup>

### **Prostitution and Other Prohibited Acts**

Prostitution is prohibited throughout the United States, except in Nevada. While laws relating to prostitution vary across jurisdictions, federal criminal laws address prostitution in the context of human trafficking.<sup>37</sup>

Prostitution rings are often hidden operations. As a result, police officers go undercover in an effort to conduct prostitution stings. In 2021, officers arrested more than 100 people in an undercover sting targeting human trafficking in central Florida. Thirty-eight people were arrested for prostitution.<sup>38</sup>

Another tool commonly employed by those engaging in prostitution is the Internet, which is utilized similarly in human trafficking operations. Thus, law enforcement agencies use the Internet to attempt to crack down on prostitution activity. In January 2019, four people were arrested in Tallahassee in conjunction with an undercover prostitution operation that was aimed at reducing street level prostitution in the capital city. After an undercover police officer contacted the suspects through an online advertisement that had indicators of being associated with prostitution activity and met with each suspect individually at an undisclosed hotel, the officer placed each of them under arrest.<sup>39</sup>

Florida Law defines prostitution as the giving or receiving of the body for sexual activity for hire.<sup>40</sup> Section 796.07(2)(f), F.S., prohibits the solicitation, inducement, enticement, or

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<sup>33</sup> Section 787.06(4)(a), F.S.

<sup>34</sup> Section 787.06(4)(b), F.S. A second degree felony is punishable by up to 15 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

<sup>35</sup> Section 787.06(8), F.S.

<sup>36</sup> Section 787.06(9), F.S.

<sup>37</sup> Justia, *Prostitution*, available at <https://www.justia.com/criminal/offenses/sex-crimes/prostitution/> (last visited January 4, 2022).

<sup>38</sup> Orlando Sentinel, *102 people arrested in Central Florida county during human trafficking sting*, (October 28, 2021) available at <https://www.orlandosentinel.com/news/florida/os-ne-102-people-arrested-in-florida-county-during-human-trafficking-sting-20211028-nisvj3byrrfhxj47bmoi3zjjn4-story.html> (last visited January 4, 2022).

<sup>39</sup> WTXL, *Four arrested in undercover prostitution sting in Tallahassee*, (January 14, 2019) available at [http://www.wtxl.com/news/four-arrested-in-undercover-prostitution-sting-in-tallahassee/article\\_47c5602a-182e-11e9-aa98-0bf1f95703cb.html](http://www.wtxl.com/news/four-arrested-in-undercover-prostitution-sting-in-tallahassee/article_47c5602a-182e-11e9-aa98-0bf1f95703cb.html) (last visited January 4, 2022).

<sup>40</sup> This definition excludes sexual activity between spouses. Section 796.07(1)(a), F.S.

procurement of another to commit prostitution, lewdness, or assignation.<sup>41</sup> Those terms are defined in the following ways:

- “Lewdness” means any indecent or obscene act; and
- “Assignation” means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement.<sup>42</sup>

A person who violates s. 796.07(2)(f), F.S., commits:

- A misdemeanor of the first degree<sup>43</sup> for a first violation;
- A felony of the third degree<sup>44</sup> for a second violation; and
- A felony of the second degree<sup>45</sup> for a third or subsequent violation.<sup>46</sup>

Additionally, Florida law provides that it is a second degree misdemeanor:<sup>47</sup>

- To own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness, assignation, or prostitution;
- To offer, or to offer or agree to secure, another for the purpose of prostitution or for any other lewd or indecent act.
- To receive, or to offer to agree to receive, any person into any place, structure, building, or conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose;
- To direct, take, or transport, or to offer or agree to direct, take, or transport, any person to any place, structure, or building, or to any other person, with knowledge or reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation;
- For a person 18 years of age or older to offer to commit, or to commit, or to engage in, prostitution, lewdness, or assignation;
- To reside in, enter, or remain in, any place, structure, or building, or to enter or remain in any conveyance, for the purpose of prostitution, lewdness, or assignation;
- To aid, abet, or participate in any of the acts or things listed above; or
- To purchase the services of any person engaged in prostitution.<sup>48</sup>

The above listed second degree misdemeanors are reclassified to a first degree misdemeanor for a second violation, and a third degree felony for any third or subsequent violation.<sup>49</sup>

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<sup>41</sup> Section 796.07(2)(f), F.S.

<sup>42</sup> Section 796.07(1)(b) and (c), F.S.

<sup>43</sup> A first degree misdemeanor is punishable by up to a year in county jail and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

<sup>44</sup> A third degree felony is punishable by up to five years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

<sup>45</sup> A second degree felony is punishable by up to 15 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

<sup>46</sup> Section 796.07(5)(a)1.-3., F.S.

<sup>47</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a fine not exceeding \$500. Sections 775.082, and 775.083, F.S.

<sup>48</sup> Section 796.07(2), F.S.

<sup>49</sup> Section 796.07(4), F.S.



Additionally, if the place, structure, building, or conveyance that is owned, established, maintained, or operated for the purpose of lewdness, assignation, or prostitution is a massage establishment that is or should be licensed under s. 480.043, F.S., the offense is reclassified as follows:

- A misdemeanor of the first degree for a first violation;
- A felony of the third degree for a second violation; and
- A felony of the second degree for a third or subsequent violation.<sup>50</sup>

### III. Effect of Proposed Changes:

Section 787.06, F.S., penalizes the illegal conduct of the perpetrators of human trafficking. Currently, s. 787.06, F.S., delineates the offenses of human trafficking between whether the victim is:

- A child under 18 years old;
- An adult who is believed to be a child under 18 years old; or
- An adult.

The human trafficking offenses against adult victims require the element of “coercion.” This bill amends s. 787.06, F.S., to expand the term “coercion,” in three ways. First, the bill removes the phrase “coercion means” and replaces it with the phrase “coercion includes but is not limited to.” This expands the term coercion to include behaviors not specified in s. 787.06(2)(a), F.S. Next, the bill expands the term “coercion” by including the “withholding earned income from a person” as a behavior that would constitute coercion. Lastly, the current definition of coercion specifies that providing a controlled substance outlined in *Schedule I or Schedule II* of s. 893.03, F.S., to any person for exploitation of that person constitutes coercion. The bill expands this behavior to include the providing of *any* controlled substance in s. 893.03, F.S., *alcohol or any other drug* for the purpose of exploitation of that person.

The bill amends the prostitution statute, s. 796.07, F.S., to make it a second degree felony to knowingly or in reckless disregard of the facts, engage in the soliciting, recruiting, harboring, enticing, purchasing, or procuring of another person for the purpose of prostitution, and to benefit financially or receive anything of value, or intend to benefit financially or receive anything of value by engaging in such acts.

Section 796.07(2)(c), F.S., currently provides that is unlawful to receive, or to offer or agree to receive, any person into any place, structure, building, or conveyance for the purpose of prostitution, lewdness or assignation, or to permit any person to remain there for such purpose. The bill amends this paragraph to include the *facilitating or enabling the receiving* of any person into any place, building, or conveyance for the purpose of prostitution, lewdness, or assignation, or the *facilitating, enabling, or permitting* any person to remain there for such purpose.

This bill increases the penalty from a second degree misdemeanor to a second degree felony for a first offense of owning, establishing, maintaining, or operating any place, structure, building, or conveyance for the purpose of lewdness, assignation, or prostitution. The bill removes language

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<sup>50</sup> Section 796.07(7)(a)-(c), F.S.

relating to the reclassification of this offense because this language becomes obsolete due to the increased penalty provided in the bill.

The bill also increases the penalty from a second degree misdemeanor to a second degree felony to direct, take, or transport, any person to any place, structure, or building, or to any other person, with knowledge or reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation. A second or subsequent violation of this crime is a first degree felony.

Additionally, this bill amends ss. 456.074, 480.041, and 943.0433, F.S., to make applicable conforming and cross-reference changes.

This bill is effective October 1, 2022.

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

A. Municipality/County Mandates Restrictions:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

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 prison bed impact, if any, of legislation, has not yet reviewed the bill. This bill creates two new felony human trafficking offenses in s. 787.06, F.S., and increases the penalties in the prostitution statute for ss. 796.07(2)(a), and 796.07(2)(d), F.S. Thus, the bill may have a positive indeterminate prison bed impact (unquantifiable increase in prison beds) on the Department of Corrections.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 787.06, 796.07, 456.074, 480.041, and 943.0433.

**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 January 11, 2022:**

The committee substitute:

- Removes the second degree felonies created in the human trafficking statutes and creates a second degree felony in the prostitution statutes that makes it a crime for a person to knowingly, or in reckless disregard of the facts, engage in the soliciting, recruiting, harboring, enticing, purchasing, or procuring of another person for the purpose of prostitution, and to benefit financially or receive anything of value, or intend to benefit financially or receive anything of value, by engaging in such acts.
- Removes language relating to the reclassification of owning, establishing, maintaining, or operating any place, structure, building, or conveyance for the purpose of lewdness, assignation, or prostitution because this language becomes obsolete due to the increased penalty provided in the bill.
- Makes technical conforming and cross-reference changes.

**B. Amendments:**

None.



817232

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/11/2022	.	
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The Committee on Criminal Justice (Berman) recommended the following:

**Senate Amendment (with directory and title amendments)**

Delete lines 83 - 325

and insert:

Section 2. Present subsections (5) and (6) of section 796.07, Florida Statutes, are redesignated as subsections (7) and (8), respectively, new subsections (5) and (6) and subsection (9) are added to that section, and subsections (2), (4), and (7) of that section are amended, to read:

796.07 Prohibiting prostitution and related acts.—



817232

- 11           (2) It is unlawful:
- 12           (a) To own, establish, maintain, or operate any place,  
13 structure, building, or conveyance for the purpose of lewdness,  
14 assignation, or prostitution.
- 15           (b) To offer, or to offer or agree to secure, another for  
16 the purpose of prostitution or for any other lewd or indecent  
17 act.
- 18           (c) To receive, or to offer or agree to receive, or  
19 facilitate or enable the receiving of any person into any place,  
20 structure, building, or conveyance for the purpose of  
21 prostitution, lewdness, or assignation, or to facilitate,  
22 enable, or permit any person to remain there for such purpose.
- 23           (d) To direct, take, or transport, or to offer or agree to  
24 direct, take, or transport, any person to any place, structure,  
25 or building, or to any other person, with knowledge or  
26 reasonable cause to believe that the purpose of such directing,  
27 taking, or transporting is prostitution, lewdness, or  
28 assignation.
- 29           (e) For a person 18 years of age or older to offer to  
30 commit, or to commit, or to engage in, prostitution, lewdness,  
31 or assignation.
- 32           (f) To solicit, induce, entice, or procure another to  
33 commit prostitution, lewdness, or assignation.
- 34           (g) To reside in, enter, or remain in, any place,  
35 structure, or building, or to enter or remain in any conveyance,  
36 for the purpose of prostitution, lewdness, or assignation.
- 37           (h) To aid, abet, or participate in any of the acts or  
38 things enumerated in this subsection.
- 39           (i) To purchase the services of any person engaged in



817232

40 prostitution.

41 (j) For a person to knowingly, or in reckless disregard of  
42 the facts:

43 1. Engage in the soliciting, recruiting, harboring,  
44 enticing, purchasing, or procuring of another person for the  
45 purpose of prostitution; and

46 2. Benefit financially or receive anything of value, or  
47 intend to benefit financially or receive anything of value, by  
48 participating in such soliciting, recruiting, harboring,  
49 enticing, purchasing, or procuring, of another person.

50 (4) (a) A person who violates any provision of this section,  
51 other than paragraph (2) (a), paragraph (2) (d), paragraph (2) (f),  
52 or paragraph (2) (j), ~~paragraph (2) (f),~~ commits:

53 1. A misdemeanor of the second degree for a first  
54 violation, punishable as provided in s. 775.082 or s. 775.083.

55 2. A misdemeanor of the first degree for a second  
56 violation, punishable as provided in s. 775.082 or s. 775.083.

57 3. A felony of the third degree for a third or subsequent  
58 violation, punishable as provided in s. 775.082, s. 775.083, or  
59 s. 775.084.

60 (b) A person who is charged with a third or subsequent  
61 violation of this section, other than paragraph (2) (a),  
62 paragraph (2) (d), paragraph (2) (f), or paragraph (2) (j),  
63 ~~paragraph (2) (f),~~ shall be offered admission to a pretrial  
64 intervention program or a substance abuse treatment program as  
65 provided in s. 948.08.

66 (5) A person who violates paragraph (2) (a) commits a felony  
67 of the second degree, punishable as provided in s. 775.082, s.  
68 775.083, or s. 775.084.



817232

69 (6) (a) A person who violates paragraph (2) (d) commits a  
70 felony of the second degree for a first violation, punishable as  
71 provided in s. 775.082, s. 775.083, or s. 775.084.

72 (b) A person who violates paragraph (2) (d) commits a felony  
73 of the first degree for a second or subsequent violation,  
74 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

75 (9) A person who violates paragraph (2) (j) commits a felony  
76 of the second degree, punishable as provided in s. 775.082, s.  
77 775.083, or s. 775.084.

78 ~~(7) If the place, structure, building, or conveyance that~~  
79 ~~is owned, established, maintained, or operated in violation of~~  
80 ~~paragraph (2) (a) is a massage establishment that is or should be~~  
81 ~~licensed under s. 480.043, the offense shall be reclassified to~~  
82 ~~the next higher degree as follows:~~

83 ~~(a) A misdemeanor of the second degree for a first~~  
84 ~~violation is reclassified as a misdemeanor of the first degree,~~  
85 ~~punishable as provided in s. 775.082 or s. 775.083.~~

86 ~~(b) A misdemeanor of the first degree for a second~~  
87 ~~violation is reclassified as a felony of the third degree,~~  
88 ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

89 ~~(c) A felony of the third degree for a third or subsequent~~  
90 ~~violation is reclassified as a felony of the second degree,~~  
91 ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

92 Section 3. Subsection (4) of section 456.074, Florida  
93 Statutes, is amended to read:

94 456.074 Certain health care practitioners; immediate  
95 suspension of license.—

96 (4) The department shall issue an emergency order  
97 suspending the license of a massage therapist or establishment



817232

98 as defined in chapter 480 upon receipt of information that the  
99 massage therapist, a person with an ownership interest in the  
100 establishment, or, for a corporation that has more than \$250,000  
101 of business assets in this state, the owner, officer, or  
102 individual directly involved in the management of the  
103 establishment has been convicted or found guilty of, or has  
104 entered a plea of guilty or nolo contendere to, regardless of  
105 adjudication, a violation of s. 796.07(2)(a) ~~which is~~  
106 ~~reclassified under s. 796.07(7)~~ or a felony offense under any of  
107 the following provisions of state law or a similar provision in  
108 another jurisdiction:

- 109 (a) Section 787.01, relating to kidnapping.
- 110 (b) Section 787.02, relating to false imprisonment.
- 111 (c) Section 787.025, relating to luring or enticing a  
112 child.
- 113 (d) Section 787.06, relating to human trafficking.
- 114 (e) Section 787.07, relating to human smuggling.
- 115 (f) Section 794.011, relating to sexual battery.
- 116 (g) Section 794.08, relating to female genital mutilation.
- 117 (h) Former s. 796.03, relating to procuring a person under  
118 the age of 18 for prostitution.
- 119 (i) Former s. 796.035, relating to the selling or buying of  
120 minors into prostitution.
- 121 (j) Section 796.04, relating to forcing, compelling, or  
122 coercing another to become a prostitute.
- 123 (k) Section 796.05, relating to deriving support from the  
124 proceeds of prostitution.
- 125 (l) Section 796.07(4)(a)3., relating to a felony of the  
126 third degree for a third or subsequent violation of s. 796.07,





817232

127 relating to prohibiting prostitution and related acts.

128 (m) Section 800.04, relating to lewd or lascivious offenses  
129 committed upon or in the presence of persons less than 16 years  
130 of age.

131 (n) Section 825.1025(2)(b), relating to lewd or lascivious  
132 offenses committed upon or in the presence of an elderly or  
133 disabled person.

134 (o) Section 827.071, relating to sexual performance by a  
135 child.

136 (p) Section 847.0133, relating to the protection of minors.

137 (q) Section 847.0135, relating to computer pornography.

138 (r) Section 847.0138, relating to the transmission of  
139 material harmful to minors to a minor by electronic device or  
140 equipment.

141 (s) Section 847.0145, relating to the selling or buying of  
142 minors.

143 Section 4. Subsection (7) of section 480.041, Florida  
144 Statutes, is amended to read:

145 480.041 Massage therapists; qualifications; licensure;  
146 endorsement.—

147 (7) The board shall deny an application for a new or  
148 renewal license if an applicant has been convicted or found  
149 guilty of, or enters a plea of guilty or nolo contendere to,  
150 regardless of adjudication, a violation of s. 796.07(2)(a) ~~which~~  
151 ~~is reclassified under s. 796.07(7)~~ or a felony offense under any  
152 of the following provisions of state law or a similar provision  
153 in another jurisdiction:

154 (a) Section 787.01, relating to kidnapping.

155 (b) Section 787.02, relating to false imprisonment.



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- 156 (c) Section 787.025, relating to luring or enticing a  
157 child.
- 158 (d) Section 787.06, relating to human trafficking.
- 159 (e) Section 787.07, relating to human smuggling.
- 160 (f) Section 794.011, relating to sexual battery.
- 161 (g) Section 794.08, relating to female genital mutilation.
- 162 (h) Former s. 796.03, relating to procuring a person under  
163 the age of 18 for prostitution.
- 164 (i) Former s. 796.035, relating to the selling or buying of  
165 minors into prostitution.
- 166 (j) Section 796.04, relating to forcing, compelling, or  
167 coercing another to become a prostitute.
- 168 (k) Section 796.05, relating to deriving support from the  
169 proceeds of prostitution.
- 170 (l) Section 796.07(4)(a)3., relating to a felony of the  
171 third degree for a third or subsequent violation of s. 796.07,  
172 relating to prohibiting prostitution and related acts.
- 173 (m) Section 800.04, relating to lewd or lascivious offenses  
174 committed upon or in the presence of persons less than 16 years  
175 of age.
- 176 (n) Section 825.1025(2)(b), relating to lewd or lascivious  
177 offenses committed upon or in the presence of an elderly or  
178 disabled person.
- 179 (o) Section 827.071, relating to sexual performance by a  
180 child.
- 181 (p) Section 847.0133, relating to the protection of minors.
- 182 (q) Section 847.0135, relating to computer pornography.
- 183 (r) Section 847.0138, relating to the transmission of  
184 material harmful to minors to a minor by electronic device or



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185 equipment.

186 (s) Section 847.0145, relating to the selling or buying of  
187 minors.

188 Section 5. Subsection (1) and paragraphs (a) and (b) of  
189 subsection (2) of section 943.0433, Florida Statutes, are  
190 amended to read:

191 943.0433 Soliciting for Prostitution Public Database.—

192 (1) The department shall create and administer the  
193 Soliciting for Prostitution Public Database. The clerk of the  
194 court shall forward to the department the criminal history  
195 record of a person in accordance with s. 796.07(7)(e) ~~s.~~  
196 ~~796.07(5)(e)~~, and the department shall add the criminal history  
197 record to the database.

198 (2)(a) The department shall automatically remove the  
199 criminal history record of a person from the database if, after  
200 5 years following the commission of an offense that meets the  
201 criteria set forth in s. 796.07(7)(e) ~~s. 796.07(5)(e)~~, such  
202 person has not subsequently committed a violation that meets  
203 such criteria or any other offense within that time that would  
204 constitute a sexual offense, including, but not limited to,  
205 human trafficking, or an offense that would require registration  
206 as a sexual offender.

207 (b) The department may not remove a criminal history record  
208 from the database if a person commits a violation that meets the  
209 criteria set forth in s. 796.07(7)(e) ~~s. 796.07(5)(e)~~ a second

210 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

211 And the directory clause is amended as follows:

212 Delete lines 21 - 22

213 and insert:



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214 Section 1. Subsection (2) of section 787.06, Florida  
215 Statutes, is amended to read:

216

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

218 And the title is amended as follows:

219 Delete lines 4 - 16

220 and insert:

221 "coercion"; amending s. 796.07, F.S.; prohibiting  
222 facilitating or enabling the receiving of persons in  
223 any place, structure, building, or conveyance for the  
224 purpose of prostitution, lewdness, or assignation, or  
225 facilitating or enabling any person to remain there  
226 for such purposes; providing a person may not procure,  
227 facilitate, or entice another to engage in  
228 prostitution for specified purposes; providing a  
229 criminal penalty; providing increased criminal  
230 penalties for specified prohibited acts relating to  
231 prostitution, lewdness, or assignation; deleting  
232 provisions relating to the reclassification of  
233 penalties if a massage establishment is used for  
234 lewdness, assignation, or prostitution; amending ss.  
235 456.074 and 480.041, F.S.: conforming provisions to  
236 changes made by the act; amending s. 943.0433, F.S.;

237 conforming

By Senator Berman

31-00326B-22

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1                                   A bill to be entitled  
 2       An act relating to human trafficking; amending s.  
 3       787.06, F.S.; revising the definition of the term  
 4       "coercion"; providing criminal penalties for engaging  
 5       in human trafficking or benefiting financially by  
 6       receiving value from human trafficking using the labor  
 7       or services or commercial sexual activity of an adult;  
 8       amending s. 796.07, F.S.; prohibiting facilitating or  
 9       enabling the receiving of persons in any place,  
 10       structure, building, or conveyance for the purpose of  
 11       prostitution, lewdness, or assignation, or  
 12       facilitating or enabling any person to remain there  
 13       for such purposes; providing increased criminal  
 14       penalties for specified prohibited acts relating to  
 15       prostitution, lewdness, or assignation; amending ss.  
 16       456.074, 480.041, and 943.0433, F.S.; conforming  
 17       cross-references; providing an effective date.  
 18  
 19   Be It Enacted by the Legislature of the State of Florida:  
 20  
 21       Section 1. Subsections (2) and (3) of section 787.06,  
 22       Florida Statutes, are amended to read:  
 23       787.06 Human trafficking.—  
 24       (2) As used in this section, the term:  
 25       (a) "Coercion" includes, but is not limited to ~~means~~:  
 26       1. Using or threatening to use physical force against any  
 27       person;  
 28       2. Restraining, isolating, or confining, or threatening to  
 29       restrain, isolate, or confine, any person without lawful

Page 1 of 12

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31-00326B-22

2022760\_\_

30       authority and against her or his will;  
 31       3. Using lending or other credit methods to establish a  
 32       debt by any person when labor or services are pledged as a  
 33       security for the debt, if the value of the labor or services as  
 34       reasonably assessed is not applied toward the liquidation of the  
 35       debt, the length and nature of the labor or services are not  
 36       respectively limited and defined;  
 37       4. Destroying, concealing, removing, confiscating,  
 38       withholding, or possessing any actual or purported passport,  
 39       visa, or other immigration document, or any other actual or  
 40       purported government identification document, of any person;  
 41       5. Causing or threatening to cause financial harm to any  
 42       person or withholding income from a person which he or she  
 43       earned;  
 44       6. Enticing or luring any person by fraud or deceit; or  
 45       7. Providing a controlled substance ~~as~~ outlined in ~~Schedule~~  
 46       ~~I or Schedule II~~ of s. 893.03, alcohol, or any other drug to any  
 47       person for the purpose of exploitation of that person.  
 48       (b) "Commercial sexual activity" means any violation of  
 49       chapter 796 or an attempt to commit any such offense, and  
 50       includes sexually explicit performances and the production of  
 51       pornography.  
 52       (c) "Financial harm" includes extortionate extension of  
 53       credit, loan sharking as defined in s. 687.071, or employment  
 54       contracts that violate the statute of frauds as provided in s.  
 55       725.01.  
 56       (d) "Human trafficking" means transporting, soliciting,  
 57       recruiting, harboring, providing, enticing, maintaining,  
 58       purchasing, patronizing, procuring, or obtaining another person

Page 2 of 12

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31-00326B-22

2022760\_\_

59 for the purpose of exploitation of that person.

60 (e) "Labor" means work of economic or financial value.

61 (f) "Maintain" means, in relation to labor or services, to  
62 secure or make possible continued performance thereof,  
63 regardless of any initial agreement on the part of the victim to  
64 perform such type service.

65 (g) "Obtain" means, in relation to labor, commercial sexual  
66 activity, or services, to receive, take possession of, or take  
67 custody of another person or secure performance thereof.

68 (h) "Services" means any act committed at the behest of,  
69 under the supervision of, or for the benefit of another. The  
70 term includes, but is not limited to, forced marriage,  
71 servitude, or the removal of organs.

72 (i) "Sexually explicit performance" means an act or show,  
73 whether public or private, that is live, photographed, recorded,  
74 or videotaped and intended to arouse or satisfy ~~the~~ sexual  
75 desires or appeal to ~~a the~~ prurient interest.

76 (j) "Unauthorized alien" means an alien who is not  
77 authorized under federal law to be employed in the United  
78 States, as provided in 8 U.S.C. s. 1324a(h)(3). The term shall  
79 be interpreted consistently with that section and any applicable  
80 federal rules or regulations.

81 (k) "Venture" means any group of two or more individuals  
82 associated in fact, whether or not a legal entity.

83 (3) Any person who knowingly, or in reckless disregard of  
84 the facts, engages in human trafficking, or attempts to engage  
85 in human trafficking, or benefits financially by receiving  
86 anything of value from participation in a venture that has  
87 subjected a person to human trafficking:

Page 3 of 12

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31-00326B-22

2022760\_\_

88 (a)1. For labor or services of any child younger than 18  
89 years of age or an adult believed by the person to be a child  
90 younger than 18 years of age commits a felony of the first  
91 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
92 775.084.

93 2. Using coercion for labor or services of an adult commits  
94 a felony of the first degree, punishable as provided in s.  
95 775.082, s. 775.083, or s. 775.084.

96 3. For labor or services of an adult commits a felony of  
97 the second degree, punishable as provided in s. 775.082, s.  
98 775.083, or s. 775.084.

99 (b)1. Using coercion for commercial sexual activity of an  
100 adult commits a felony of the first degree, punishable as  
101 provided in s. 775.082, s. 775.083, or s. 775.084.

102 2. For commercial sexual activity of an adult commits a  
103 felony of the second degree, punishable as provided in s.  
104 775.082, s. 775.083, or s. 775.084.

105 (c)1. For labor or services of any child younger than 18  
106 years of age or an adult believed by the person to be a child  
107 younger than 18 years of age who is an unauthorized alien  
108 commits a felony of the first degree, punishable as provided in  
109 s. 775.082, s. 775.083, or s. 775.084.

110 2. Using coercion for labor or services of an adult who is  
111 an unauthorized alien commits a felony of the first degree,  
112 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

113 (d) Using coercion for commercial sexual activity of an  
114 adult who is an unauthorized alien commits a felony of the first  
115 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
116 775.084.

Page 4 of 12

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31-00326B-22

2022760\_\_

117 (e)1. For labor or services who does so by the transfer or  
 118 transport of any child younger than 18 years of age or an adult  
 119 believed by the person to be a child younger than 18 years of  
 120 age from outside this state to within this state commits a  
 121 felony of the first degree, punishable as provided in s.  
 122 775.082, s. 775.083, or s. 775.084.

123 2. Using coercion for labor or services who does so by the  
 124 transfer or transport of an adult from outside this state to  
 125 within this state commits a felony of the first degree,  
 126 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

127 (f)1. For commercial sexual activity who does so by the  
 128 transfer or transport of any child younger than 18 years of age  
 129 or an adult believed by the person to be a child younger than 18  
 130 years of age from outside this state to within this state  
 131 commits a felony of the first degree, punishable by imprisonment  
 132 for a term of years not exceeding life, or as provided in s.  
 133 775.082, s. 775.083, or s. 775.084.

134 2. Using coercion for commercial sexual activity who does  
 135 so by the transfer or transport of an adult from outside this  
 136 state to within this state commits a felony of the first degree,  
 137 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

138 (g) For commercial sexual activity in which any child  
 139 younger than 18 years of age or an adult believed by the person  
 140 to be a child younger than 18 years of age, or in which any  
 141 person who is mentally defective or mentally incapacitated as  
 142 those terms are defined in s. 794.011(1), is involved commits a  
 143 life felony, punishable as provided in s. 775.082(3)(a)6., s.  
 144 775.083, or s. 775.084.

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31-00326B-22

2022760\_\_

146 For each instance of human trafficking of any individual under  
 147 this subsection, a separate crime is committed and a separate  
 148 punishment is authorized.

149 Section 2. Present subsections (5), (6), and (7) of section  
 150 796.07, Florida Statutes, are redesignated as subsections (6),  
 151 (7), and (8), respectively, a new subsection (5) is added to  
 152 that section, and subsections (2) and (4) of that section are  
 153 amended, to read:

154 796.07 Prohibiting prostitution and related acts.—

155 (2) It is unlawful:

156 (a) To own, establish, maintain, or operate any place,  
 157 structure, building, or conveyance for the purpose of lewdness,  
 158 assignation, or prostitution.

159 (b) To offer, or to offer or agree to secure, another for  
 160 the purpose of prostitution or for any other lewd or indecent  
 161 act.

162 (c) To receive, or to offer or agree to receive, or  
 163 facilitate or enable the receiving of any person into any place,  
 164 structure, building, or conveyance for the purpose of  
 165 prostitution, lewdness, or assignation, or to facilitate,  
 166 enable, or permit any person to remain there for such purpose.

167 (d) To direct, take, or transport, or to offer or agree to  
 168 direct, take, or transport, any person to any place, structure,  
 169 or building, or to any other person, with knowledge or  
 170 reasonable cause to believe that the purpose of such directing,  
 171 taking, or transporting is prostitution, lewdness, or  
 172 assignation.

173 (e) For a person 18 years of age or older to offer to  
 174 commit, or to commit, or to engage in, prostitution, lewdness,

31-00326B-22

2022760\_\_

175 or assignation.

176 (f) To solicit, induce, entice, or procure another to  
177 commit prostitution, lewdness, or assignation.

178 (g) To reside in, enter, or remain in, any place,  
179 structure, or building, or to enter or remain in any conveyance,  
180 for the purpose of prostitution, lewdness, or assignation.

181 (h) To aid, abet, or participate in any of the acts or  
182 things enumerated in this subsection.

183 (i) To purchase the services of any person engaged in  
184 prostitution.

185 (4) (a) A person who violates any provision of this section,  
186 other than paragraph (2) (a) or paragraph (2) (f), commits:

187 1. A misdemeanor of the second degree for a first  
188 violation, punishable as provided in s. 775.082 or s. 775.083.

189 2. A misdemeanor of the first degree for a second  
190 violation, punishable as provided in s. 775.082 or s. 775.083.

191 3. A felony of the third degree for a third or subsequent  
192 violation, punishable as provided in s. 775.082, s. 775.083, or  
193 s. 775.084.

194 (b) A person who is charged with a third or subsequent  
195 violation of this section, other than paragraph (2) (a) or  
196 paragraph (2) (f), shall be offered admission to a pretrial  
197 intervention program or a substance abuse treatment program as  
198 provided in s. 948.08.

199 (5) (a) A person who violates paragraph (2) (a) commits a  
200 felony of the second degree, punishable as provided in s.  
201 775.082, s. 775.083, or s. 775.084.

202 (b) 1. A person who violates paragraph (2) (d) commits a  
203 felony of the second degree for a first violation, punishable as

31-00326B-22

2022760\_\_

204 provided in s. 775.082, s. 775.083, or s. 775.084.

205 2. A person who violates paragraph (2) (d) commits a felony  
206 of the first degree for a second or subsequent violation,  
207 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

208 Section 3. Subsection (4) of section 456.074, Florida  
209 Statutes, is amended to read:

210 456.074 Certain health care practitioners; immediate  
211 suspension of license.—

212 (4) The department shall issue an emergency order  
213 suspending the license of a massage therapist or establishment  
214 as defined in chapter 480 upon receipt of information that the  
215 massage therapist, a person with an ownership interest in the  
216 establishment, or, for a corporation that has more than \$250,000  
217 of business assets in this state, the owner, officer, or  
218 individual directly involved in the management of the  
219 establishment has been convicted or found guilty of, or has  
220 entered a plea of guilty or nolo contendere to, regardless of  
221 adjudication, a violation of s. 796.07(2) (a) which is  
222 reclassified under s. 796.07(8) ~~s. 796.07(7)~~ or a felony offense  
223 under any of the following provisions of state law or a similar  
224 provision in another jurisdiction:

225 (a) Section 787.01, relating to kidnapping.

226 (b) Section 787.02, relating to false imprisonment.

227 (c) Section 787.025, relating to luring or enticing a  
228 child.

229 (d) Section 787.06, relating to human trafficking.

230 (e) Section 787.07, relating to human smuggling.

231 (f) Section 794.011, relating to sexual battery.

232 (g) Section 794.08, relating to female genital mutilation.



31-00326B-22

2022760\_\_

233 (h) Former s. 796.03, relating to procuring a person under  
 234 the age of 18 for prostitution.

235 (i) Former s. 796.035, relating to the selling or buying of  
 236 minors into prostitution.

237 (j) Section 796.04, relating to forcing, compelling, or  
 238 coercing another to become a prostitute.

239 (k) Section 796.05, relating to deriving support from the  
 240 proceeds of prostitution.

241 (l) Section 796.07(4)(a)3., relating to a felony of the  
 242 third degree for a third or subsequent violation of s. 796.07,  
 243 relating to prohibiting prostitution and related acts.

244 (m) Section 800.04, relating to lewd or lascivious offenses  
 245 committed upon or in the presence of persons less than 16 years  
 246 of age.

247 (n) Section 825.1025(2)(b), relating to lewd or lascivious  
 248 offenses committed upon or in the presence of an elderly or  
 249 disabled person.

250 (o) Section 827.071, relating to sexual performance by a  
 251 child.

252 (p) Section 847.0133, relating to the protection of minors.

253 (q) Section 847.0135, relating to computer pornography.

254 (r) Section 847.0138, relating to the transmission of  
 255 material harmful to minors to a minor by electronic device or  
 256 equipment.

257 (s) Section 847.0145, relating to the selling or buying of  
 258 minors.

259 Section 4. Subsection (7) of section 480.041, Florida  
 260 Statutes, is amended to read:  
 261 480.041 Massage therapists; qualifications; licensure;

Page 9 of 12

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31-00326B-22

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262 endorsement.-

263 (7) The board shall deny an application for a new or  
 264 renewal license if an applicant has been convicted or found  
 265 guilty of, or enters a plea of guilty or nolo contendere to,  
 266 regardless of adjudication, a violation of s. 796.07(2)(a) which  
 267 is reclassified under s. 796.07(8) ~~s. 796.07(7)~~ or a felony  
 268 offense under any of the following provisions of state law or a  
 269 similar provision in another jurisdiction:

270 (a) Section 787.01, relating to kidnapping.

271 (b) Section 787.02, relating to false imprisonment.

272 (c) Section 787.025, relating to luring or enticing a  
 273 child.

274 (d) Section 787.06, relating to human trafficking.

275 (e) Section 787.07, relating to human smuggling.

276 (f) Section 794.011, relating to sexual battery.

277 (g) Section 794.08, relating to female genital mutilation.

278 (h) Former s. 796.03, relating to procuring a person under  
 279 the age of 18 for prostitution.

280 (i) Former s. 796.035, relating to the selling or buying of  
 281 minors into prostitution.

282 (j) Section 796.04, relating to forcing, compelling, or  
 283 coercing another to become a prostitute.

284 (k) Section 796.05, relating to deriving support from the  
 285 proceeds of prostitution.

286 (l) Section 796.07(4)(a)3., relating to a felony of the  
 287 third degree for a third or subsequent violation of s. 796.07,  
 288 relating to prohibiting prostitution and related acts.

289 (m) Section 800.04, relating to lewd or lascivious offenses  
 290 committed upon or in the presence of persons less than 16 years

Page 10 of 12

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31-00326B-22

2022760\_\_

291 of age.

292 (n) Section 825.1025(2)(b), relating to lewd or lascivious  
 293 offenses committed upon or in the presence of an elderly or  
 294 disabled person.

295 (o) Section 827.071, relating to sexual performance by a  
 296 child.

297 (p) Section 847.0133, relating to the protection of minors.

298 (q) Section 847.0135, relating to computer pornography.

299 (r) Section 847.0138, relating to the transmission of  
 300 material harmful to minors to a minor by electronic device or  
 301 equipment.

302 (s) Section 847.0145, relating to the selling or buying of  
 303 minors.

304 Section 5. Subsection (1) and paragraphs (a) and (b) of  
 305 subsection (2) of section 943.0433, Florida Statutes, are  
 306 amended to read:

307 943.0433 Soliciting for Prostitution Public Database.—

308 (1) The department shall create and administer the  
 309 Soliciting for Prostitution Public Database. The clerk of the  
 310 court shall forward to the department the criminal history  
 311 record of a person in accordance with s. 796.07(6)(e) ~~s-~~  
 312 ~~796.07(5)(e)~~, and the department shall add the criminal history  
 313 record to the database.

314 (2)(a) The department shall automatically remove the  
 315 criminal history record of a person from the database if, after  
 316 5 years following the commission of an offense that meets the  
 317 criteria set forth in s. 796.07(6)(e) ~~s. 796.07(5)(e)~~, such  
 318 person has not subsequently committed a violation that meets  
 319 such criteria or any other offense within that time that would

Page 11 of 12

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31-00326B-22

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320 constitute a sexual offense, including, but not limited to,  
 321 human trafficking, or an offense that would require registration  
 322 as a sexual offender.

323 (b) The department may not remove a criminal history record  
 324 from the database if a person commits a violation that meets the  
 325 criteria set forth in s. 796.07(6)(e) ~~s. 796.07(5)(e)~~ a second  
 326 or subsequent time.

327 Section 6. This act shall take effect October 1, 2022.

Page 12 of 12

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The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

1/11/2022

Meeting Date

760

Bill Number or Topic

CJ

Committee

Amendment Barcode (if applicable)

Name Karen Woodall

Phone 850-321-9386

Address 579 E. Call

Email fcfc@yahoo.com

Street

Tallahassee FL 32301

City

State

Zip

Speaking:  For  Against  Information OR Waive Speaking:  In Support  Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing: FI Center for Fiscal & Economic Policy

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

01/11/2022  
Meeting Date

SB760  
Bill Number or Topic

Criminal Justice  
Committee

Amendment Barcode (if applicable)

Name Alan Johnson Phone 561 355 7265  
Address Office of the State Attorney  
401 N. Dixie Highway Email ajohnson@sa15.org  
West Palm Beach FL 33401  
City State Zip

Speaking:  For  Against  Information OR Waive Speaking:  In Support  Against

PLEASE CHECK ONE OF THE FOLLOWING:

- I am appearing without compensation or sponsorship.
- I am a registered lobbyist, representing:
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While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

The Florida Senate

APPEARANCE RECORD

1-11-22

Meeting Date

SB 760

Bill Number or Topic

Criminal Justice

Committee

Deliver both copies of this form to Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Commissioner Name Melissa McKinlay

Phone 561-355-2206

Address 301 N Olive Ave.

Email mmckinlay@pb.gov

WPB FL 33401

Street

City

State

Zip

Speaking: [ ] For [ ] Against [ ] Information OR Waive Speaking: [ ] In Support [ ] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[X] I am appearing without compensation or sponsorship.

[ ] I am a registered lobbyist, representing:

[ ] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

**APPEARANCE RECORD**

760

Bill Number or Topic

Deliver both copies of this form to  
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Amendment Barcode (if applicable)

1-11-22

Meeting Date

Criminal Justice

Committee

Name Barbara DeVane

Phone 251-4280

Address 625 E. Brevard St

Email barbadevane1@yahoo.com

Tallahassee FL 32308  
City State Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

FL NOW

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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The Florida Senate  
**APPEARANCE RECORD**

760

Meeting Date

Bill Number or Topic

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name

Dave Aronberg

Phone

561-355-7246

Address

401 N. Dixie Hwy

Email

dave@sals.org

Street

WDB

FL

33401

City

State

Zip

Speaking:

For

Against

Information

**OR**

Waive Speaking:

In Support

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without  
compensation or sponsorship.

I am a registered lobbyist,  
representing:

I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

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

S-001 (08/10/2021)



The Florida Senate

## Committee Agenda Request

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

**Subject:** Committee Agenda Request

**Date:** November 29, 2021

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I respectfully request that **Senate Bill #760**, relating to Human Trafficking, be placed on the:

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

A handwritten signature in cursive script, reading "Lori Berman", written over a horizontal line.

Senator Lori Berman  
Florida Senate, District 31

cc: Senator Jeff Brandes, Vice Chair  
Lauren Jones, Staff Director



**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 874

INTRODUCER: Senator Pizzo

SUBJECT: Arrests

DATE: January 10, 2022

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

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

---

**I. Summary:**

SB 874 authorizes a law enforcement officer to execute a warrantless arrest on a minor who unlawfully possesses a firearm.

Section 901.15, F.S., provides a list of offenses that permit a law enforcement officer to make a warrantless arrest when there is probable cause to believe that a person has committed one of the listed offenses.

The bill adds s. 790.22(3), F.S., to the list of offenses that allow for a warrantless arrest. Section 790.22(3), F.S., makes it a first degree misdemeanor for a minor to possess a firearm, unless:

- The minor is engaged in a lawful hunting activity and is at least 16 years old or supervised by an adult;
- The minor is engaged in a lawful marksmanship competition or practice or other lawful recreational shooting activity and is at least 16 years old or supervised by an adult; or
- The firearm is unloaded and being transported by a minor directly to or from one of the above specified events; or
- The firearm is an unloaded firearm at his or her home.

The bill is effective October 1, 2022.

**II. Present Situation:**

News articles have reported a number of recent incidents in which children and teens have been killed with a firearm. Recently, in south Miami-Dade, teens were playing with a firearm when a

15-year-old fired a shot that killed two of his friends with one bullet.<sup>1</sup> In Jacksonville, during a short period of time in 2018, two 7-year-old children died in separate incidents when they were caught in the crossfire of open-air gun battles; a 16-year-old was charged with murder in the point-blank shooting of a 19-year-old after a high school football game; and a 17-year-old high school student was critically wounded in a drive-by shooting while he waited to catch a school bus.<sup>2</sup> In a Broward County classroom, someone pointed a handgun at unsuspecting students. The act was captured on video and posted on a 16-year-old boy's social media account with a caption asking whether to "carry my pistol with me like last year" just before the 2019-20 school year started. He was later arrested.<sup>3</sup> Finally, the escalating levels of arrests for weapons offenses among young offenders has led Leon County prosecutors to seek adult penalties for young repeat offenders.<sup>4</sup>

### **Arrest without an Arrest Warrant**

Section 901.15, F.S., provides a list of circumstances that a law enforcement officer may arrest a person without a warrant. Specifically, a warrantless arrest can occur when:

- The person has committed a felony or misdemeanor or violated a local ordinance in the officer's presence; however, the arrest for a misdemeanor or local ordinance must be made immediately or in fresh pursuit.
- A felony has been committed, and the officer reasonably believes the person committed it.
- The officer reasonably believes that a felony has been or is being committed, and that the person has committed or is committing it.
- A warrant for the arrest has been issued and is held by another officer for execution.<sup>5</sup>

Section 901.15, F.S., also specifies that a law enforcement officer may make a warrantless arrest, where the officer has probable cause to believe the person has committed one of the following offenses:

- A violation of an injunction for protection against domestic violence, dating violence, sexual violence, repeat violence, exploitation of a vulnerable adult or a foreign protection order.<sup>6</sup>
- An act of domestic violence or dating violence.<sup>7</sup>
- Child abuse or luring or enticing a child for unlawful purposes.<sup>8</sup>

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<sup>1</sup> NBC 6 South Florida, *2 Teens Killed by Single Bullet in South Miami-Dade*, November 26, 2019, available at <https://www.nbcmiami.com/news/local/2-teens-killed-by-single-bullet-in-south-miami-dade-police/2129088/> (last visited December 22, 2021).

<sup>2</sup> David Bauerlein, The Florida Times-Union, Jacksonville.com, *Lessons from a Journey, Duval County faced again with how to stem a rising tide of crime*, September 29, 2018; available at <https://www.jacksonville.com/news/20180929/duval-county-faced-again-with-how-to-stem-rising-tide-of-crime> (last visited December 22, 2021).

<sup>3</sup> Paul Scicchitano, Patch.com, *Florida Teen Arrested After Posting Video Of Gun In Classroom*, August 15, 2019, available at <https://patch.com/florida/miami/amp/28237379/florida-teen-arrested-after-posting-video-of-gun-in-classroom> (last visited December 22, 2021).

<sup>4</sup> Karl Eters, Tallahassee Democrat, Tallahassee.com, *Guns and teens lead to adult criminal charges*, March 30, 2019, available at <https://www.tallahassee.com/story/news/2019/03/30/guns-and-teens-lead-adult-criminal-charges/3239891002/> (last visited December 22, 2021).

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

<sup>6</sup> Section 901.15(6), F.S.

<sup>7</sup> Section 901.15(7), F.S.

<sup>8</sup> Section 901.15(8), F.S.

- Battery.<sup>9</sup>
- Criminal mischief or graffiti-related offenses.<sup>10</sup>
- Violation of a safety zone, security zone, regulated navigation area, or naval vessel protection zone.<sup>11</sup>
- A racing violation.<sup>12</sup>
- An act that violates a condition of pretrial release when the original arrest was for an act of domestic violence or dating violence.<sup>13</sup>
- Trespass in a posted secure area of an airport.<sup>14</sup>
- Assault upon a law enforcement officer, a firefighter, an emergency medical care provider, public transit employee or agent, or other specified officer who is engaged in the lawful performance of his or her duties.<sup>15</sup>
- Assault or battery upon an employee of a receiving facility who is engaged in the lawful performance of his or her duties.<sup>16</sup>
- Sexual cyberharrassment.<sup>17</sup>

### Constitutional Law

Under the Fourth Amendment to the United States Constitution, a person has the right to be free from an unreasonable search or seizure, including an unreasonable arrest.<sup>18</sup> To be “reasonable,” an arrest in a public place must be based on probable cause, though no arrest warrant is required.<sup>19</sup> To make an arrest in a home, an officer generally needs an arrest warrant. However, the courts have recognized a number of exceptions to this warrant requirement, such as “exigent circumstances” or when the officer has consent to enter the home.<sup>20</sup>

Section 901.15, F.S., is not an exception to the arrest warrant inside a person’s home and does not supersede the constitutional requirements for a lawful arrest.<sup>21</sup> Accordingly, courts have held

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<sup>9</sup> Section 901.15(9), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Section 901.15(13), F.S.

<sup>14</sup> Section 901.15(14), F.S.

<sup>15</sup> Section 901.15(15), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> Section 901.15(16), F.S.

<sup>18</sup> U.S. CONST. amend. IV.

<sup>19</sup> *State v. Ramos*, 378 So. 2d 1294 (Fla. 3d DCA 1979).

<sup>20</sup> *See e.g., U.S. v. Standridge*, 810 F.2d 1034 (11 Cir. 1987) (citing *Payton v. New York*, 445 U.S. 573 (1980)). The court set forth the factors that indicate exigent circumstances:

(1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) a reasonable belief that the suspect is armed; (3) probable cause to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that delay could cause the escape of the suspect or the destruction of essential evidence, or jeopardize the safety of officers or the public.

*Id.* at 1037 (citing *Dorman v. United States*, 435 F.2d 385, 392–93 (D.C.Cir.1970) (en banc); *United States v. Campbell*, 581 F.2d 22, 25–27 (2d Cir.1978); *United States v. Newbern*, 731 F.2d 744, 748–49 (11th Cir.1984); *United States v. Roper*, 681 F.2d 1354, 1357 n. 1 (11th Cir.1982) (dictum), *cert. denied sub nom. Newton v. United States*, 459 U.S. 1207, 103 S.Ct. 1197, 75 L.Ed.2d 440 (1983)).

<sup>21</sup> *See e.g., Bratt v. Genovese*, 660 Fed Appx. 837 (11th Cir. 2016).

the statute unconstitutional *as applied* in situations in which s. 901.15, F.S., was proffered as a basis for a warrantless arrest in a home.<sup>22</sup>

### **Section 790.22, F.S.**

Section 790.22(3), F.S., prohibits a minor under the age of 18 from possessing a firearm, unless:

- The minor is engaged in a lawful hunting activity and is at least 16 years old or is under 16 years old and supervised by an adult;
- The minor is engaged in a lawful marksmanship competition or practice or other lawful recreational shooting activity and is at least 16 years old or under 16 years old and supervised by an adult who is acting with the consent of the minor's parent or guardian; or
- The firearm is unloaded and is being transported directly to or from an event described above; or
- The firearm is an unloaded firearm at his or her home.<sup>23</sup>

Section 790.22, F.S., as one court has stated, was “designed to get the immediate attention of all juveniles and to issue a ‘wake-up call’ that the state deems their firearm offenses to be serious enough to warrant the automatic deprivation of their liberty for a period of time, even on a first offense. Its intent clearly is to have a deterrent effect to hopefully prevent the juvenile’s escalation into the adult criminal justice system.”<sup>24</sup> As such, s. 790.22, F.S., contains a continuum of consequences for juveniles within the juvenile justice system, and their parents or guardians potentially in the criminal justice system, tailored to have a deterrent effect.

A minor who violates the prohibition against possession of a firearm commits a first degree misdemeanor.<sup>25</sup> For a first offense, the minor may serve up to 3 days in a Department of Juvenile Justice secure detention facility and will be required to perform 100 hours of community service.<sup>26</sup> Based upon his or her age and eligibility for a driving license or privilege, or the status of that license or privilege, the court may direct the Department of Highway Safety and Motor Vehicles to delay or withhold the license or privilege for up to 1 year.<sup>27</sup>

Any parent or guardian of a minor, or other adult responsible for the welfare of a minor, who knowingly and willfully permits the minor to possess a firearm under circumstances other than those listed above commits a felony of the third degree.<sup>28</sup>

Additionally, any natural parent or adoptive parent, whether custodial or noncustodial, or any legal guardian or legal custodian of a minor, if that minor possesses a firearm under

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<sup>22</sup> See e.g., *State v. Perez*, 277 So. 2d 778 (Fla. 1973).

<sup>23</sup> Section 790.22(3), F.S.

<sup>24</sup> *T.M. v. State*, 689 So.2d 443, 446 (Fla. 3d DCA, 1997).

<sup>25</sup> Section 790.22(5)(a), F.S.

<sup>26</sup> *Id.* A secure detention facility is a facility used pending court adjudication or disposition or execution of court order for the temporary care of a child alleged or found to have committed a violation of law. A detention center or facility may provide secure custody. Section 985.03, F.S. Community service shall be performed, if possible, in a manner involving a hospital emergency room or other medical environment that deals on a regular basis with trauma patients and gunshot wounds. Section 790.22(5)(a), F.S.

<sup>27</sup> Section 790.22(5)(a), F.S.

<sup>28</sup> Section 790.22(4)(b), F.S. A felony of the third degree is punishable by up to 5 years' imprisonment and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

circumstances other than those listed above, may be required by the court to participate in parenting education classes approved by the Department of Juvenile Justice, upon the minor's first conviction. Upon any subsequent conviction of the minor, the court may require the parent to attend further parent education classes or perform community service hours together with the child.<sup>29</sup>

Any firearm that is possessed or used by a minor in violation of this section shall be promptly seized by a law enforcement officer and disposed of in accordance with s. 790.08, F.S.<sup>30</sup>

For a second or subsequent offense, the minor commits a third degree felony and is required to serve a period of detention of up to 15 days in a secure detention facility and to perform between 100 and 250 hours of community service.<sup>31</sup> Based upon his or her age and eligibility for a driving license or privilege, or the status of that license or privilege, the court may direct the Department of Highway Safety and Motor Vehicles to delay or withhold the license or privilege for up to 2 years.<sup>32</sup>

If a minor is found to have committed an offense that involves the use or possession of a firearm *including a violation of s. 790.22(3), F.S.*, or any offense during the commission of which the minor possessed a firearm, unless the state attorney authorizes the release of the minor, the minor shall be detained in secure detention and shall be given a hearing within 24 hours after being taken into custody.<sup>33</sup> At the hearing, the court may order that the minor continue to be held in secure detention.<sup>34</sup>

### III. Effect of Proposed Changes:

The bill authorizes a law enforcement officer who has probable cause to believe that a minor is currently or was in the past unlawfully in possession of a firearm, to arrest the minor without a warrant.

The bill is effective October 1, 2022.

### IV. Constitutional Issues:

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

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

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<sup>29</sup> Section 790.22(4)(b), F.S.

<sup>30</sup> Section 790.22(6), F.S. Section 790.08, F.S., provides that a seized firearm must be kept until the case that the person was arrested for is resolved. Then, depending on the case's resolution, s. 790.08, F.S., specifies the manner in which the firearm should be returned or disposed of.

<sup>31</sup> Community service shall be performed, if possible, in a manner involving a hospital emergency room or other medical environment that deals on a regular basis with trauma patients and gunshot wounds. Section 790.22(5)(b), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> Section 790.22(8), F.S.

<sup>34</sup> In order to keep the minor in secure detention, the juvenile court must make certain findings according to ss. 985.26 and 985.255, F.S., which may also include finding by clear and convincing evidence that the minor is a clear and present danger to himself or herself or the community. Section 790.22(8), F.S.

**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:**

This bill appears likely to result in an indeterminate increase in costs associated with the criminal justice system.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 901.15 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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By Senator Pizzo

38-00825-22

2022874\_\_

1                           A bill to be entitled  
2       An act relating to arrests; amending s. 901.15, F.S.;  
3       authorizing warrantless arrests when a law enforcement  
4       officer has probable cause to believe that a person  
5       younger than 18 years of age has violated a specified  
6       provision related to possession of a firearm by a  
7       minor younger than 18 years of age; providing an  
8       effective date.  
9  
10    Be It Enacted by the Legislature of the State of Florida:  
11  
12           Section 1. Subsection (17) is added to section 901.15,  
13    Florida Statutes, to read:  
14           901.15 When arrest by officer without warrant is lawful.—A  
15    law enforcement officer may arrest a person without a warrant  
16    when:  
17           (17) There is probable cause to believe that the person is  
18    younger than 18 years of age and has committed a violation of s.  
19    790.22(3).  
20           Section 2. This act shall take effect October 1, 2022.



The Florida Senate  
**APPEARANCE RECORD**

874

Meeting Date  
Criminal Justice  
Committee

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Bill Number or Topic

Amendment Barcode (if applicable)

Name Lisa Henning

Phone 850-766-8808

Address 242 Office Plaza Dr  
Street

Email lisahenning@ad.com

Tallahassee FL 32301  
City State Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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

S-001 (08/10/2021)

**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 978

INTRODUCER: Senator Rouson

SUBJECT: Public Records/Applications for Certification as a Victim of Florida Reform School Abuse

DATE: January 10, 2022

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stokes</u>	<u>Jones</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	<u>ATD</u>	_____
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 978 is the public records exemption linked to SB 482. This bill creates a public records exemption to exempt any personal identifying information on an application submitted to the Department of State (DOS) by, or on behalf of, a person seeking certification as a victim of Florida reform school abuse, as defined in the Arthur G. Dozier School for Boys and Okeechobee School Abuse Victim Certification Act.

SB 482 creates the “Arthur G. Dozier School for Boys and Okeechobee School Abuse Victim Certification Act” which provides a process for former students from these schools who were abused to be certified as victims. The bill defines “victim of Florida reform school abuse,” as a living person who was confined at the Arthur G. Dozier School for Boys or the Okeechobee School at any time between 1940 and 1975 and who was subjected to mental, physical, or sexual abuse perpetrated by school personnel during the period of confinement. More than 500 former students have come forward with reports of physical, mental, and sexual abuse by school staff.

The bill further provides that the exemption is subject to the Open Government Sunset Review Act and will be repealed on December 31, 2023, unless reviewed and saved from repeal through 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. According to the statement, the release of personal identifying information contained in a certification application could subject victims to further trauma, and victims would be more likely to come forward to seek redress if such information were protected from public disclosure.

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 482 or similar legislation takes effect, if such 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 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., known as the Public Records Act, provides requirements for public records held by executive agencies.

### Executive Agency Records – The Public Records Act

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>

Section 119.011(12), F.S., defines “public records” to include:

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 connections with the transaction of official business by any agency.

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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.”

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”<sup>6</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 custodian of the public record.<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</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>9</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>10</sup>

General exemptions from the public records requirements are contained in the Public Records Act.<sup>11</sup> Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.<sup>12</sup>

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.<sup>13</sup> Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.<sup>14</sup> Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.<sup>15</sup>

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<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>7</sup> Section 119.07(1)(a), F.S.

<sup>8</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>9</sup> FLA. CONST. art. I, s. 24(c).

<sup>10</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>11</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>12</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>13</sup> *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

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

<sup>15</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

## Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act<sup>16</sup> (the Act), prescribe 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> The Act requires the 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> 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 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

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<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., provides that exemptions required by federal law or 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.

<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.

for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.<sup>26</sup>

### **The Dozier School**

From January 1, 1900, to June 30, 2011, the state operated the Florida State Reform School in Marianna.<sup>27</sup> Over the years, the school has operated under several different names: Florida State Reform School, Florida Industrial School for Boys, Florida School for Boys, and Arthur G. Dozier School for Boys (hereinafter, Dozier School). The school originally housed children as young as five years old, who had committed minor criminal offenses, such as incorrigibility and truancy. Additionally, many children who had not been charged with a crime were committed to the school as wards of the state and orphans.<sup>28</sup>

As early as 1901, reports surfaced of children being chained to walls in irons, brutal whippings, and peonage (involuntary servitude).<sup>29</sup> In the first 13 years of operation, six state-led investigations took place. Those investigations found that children as young as five years old were being hired out for labor, unjustly beaten, and were without education or proper food and clothing.<sup>30</sup>

In 1955, the state opened a new reform school in Okeechobee to address overcrowding at the Dozier School.<sup>31</sup> Staff members of the Dozier School were transferred to the Florida School for Boys at Okeechobee (hereinafter, Okeechobee School), where they instituted the same degrading policies and abusive practices as those implemented at the Dozier School.<sup>32</sup>

In 2005, former students of the Dozier School began to publish accounts of the abuse they experienced at the school.<sup>33</sup> These stories prompted Governor Charlie Crist to direct the Florida Department of Law Enforcement to investigate the Dozier School and the deaths that were alleged and occurred at the school.<sup>34</sup>

### **Victims of Florida Reform School Abuse**

SB 482 creates the “Arthur G. Dozier School for Boys and Okeechobee School Abuse Victim Certification Act.” The bill defines a “victim of Florida reform school abuse” as a living person who was confined at the Arthur G. Dozier School for Boys or the Okeechobee School at any time between 1940 and 1975 and who was subjected to mental, physical, or sexual abuse

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

<sup>27</sup> Erin H. Kimmerle, Ph.D., E. Christian Wells, Ph.D., and Antoinette Jackson, Ph.D.; Florida Institute for Forensic Anthropology & Applied Sciences, University of South Florida, *Report on the Investigation into the Deaths and Burials at the Former Arthur G. Dozier School for Boys in Marianna, Florida*, pg. 22 (January 18, 2016), available at: <http://mediad.publicbroadcasting.net/p/wusf/files/201601/usf-final-dozier-summary-2016.pdf> (last visited January 5, 2022).

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

<sup>29</sup> *Id.* at 12.

<sup>30</sup> *Id.* at 27.

<sup>31</sup> *Id.* at 22.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 30.

<sup>34</sup> *Id.*

perpetrated by personnel of the school during the period of confinement. More than 500 former students have come forward with reports of physical, mental, and sexual abuse by school staff.

The bill requires a person seeking to be certified as a victim of Florida reform school abuse to submit an application to the DOS by September 1, 2022. The application must include:

- An affidavit stating:
  - That the applicant was confined at the Dozier School or the Okeechobee School;
  - The beginning and ending days of the confinement; and
  - That the applicant was subjected to mental, physical, or sexual abuse perpetrated by school personnel during the confinement.
- Documentation from the State Archives of Florida, the Dozier School, or the Okeechobee School, demonstrating that the applicant was confined at the school for any length of time between 1940 and 1975; and
- Proof of identification, including a current form of photo ID.

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

This bill is the public records exemption linked to SB 482. This bill creates a public records exemption to exempt any personal identifying information on an application submitted to the DOS by, or on behalf of, a person seeking certification as a victim of Florida reform school abuse, as defined in the Arthur G. Dozier School for Boys and Okeechobee School Abuse Victim Certification Act. Such information shall be made exempt from s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution.

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 personal identifying information in applications for certification as a victim of Florida reform school abuse which are submitted to the Department of State be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature finds that the release of personal identifying information contained in a certification application could subject victims of Florida reform school abuse to further trauma. The Legislature further finds that such victims would be more likely to come forward to seek redress if personal identifying information in the application were protected from public disclosure. The Legislature finds that the harm that may result from the release of such information outweighs the public benefit that may be derived from the disclosure of the information.

The bill further provides that the exemption is subject to the Open Government Sunset Review Act and will be repealed on December 31, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill takes effect on the same date that SB 482 or similar legislation takes effect, if such 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.

## 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 enacts a new exemption for personal identifying information in an application submitted to the DOS by, or on behalf of, a person seeking certification as a victim of Florida reform school abuse, 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 victims of Florida reform school abuse. This bill exempts only the personal identifying information in an application submitted to the DOS from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.



B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates an undesignated section of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Rouson

19-01137-22

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1 A bill to be entitled  
 2 An act relating to public records; providing an  
 3 exemption from public records requirements for  
 4 personal identifying information in applications  
 5 submitted to the Department of State by persons  
 6 seeking certification as victims of Florida reform  
 7 school abuse; providing for future legislative review  
 8 and repeal of the exemption; providing a statement of  
 9 public necessity; providing a contingent effective  
 10 date.

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

14 Section 1. Applications for certification as a victim of  
 15 Florida reform school abuse; public records exemption.-Any  
 16 personal identifying information in an application submitted to  
 17 the Department of State by, or on behalf of, a person seeking  
 18 certification as a victim of Florida reform school abuse, as  
 19 defined in the Arthur G. Dozier School for Boys and Okeechobee  
 20 School Abuse Victim Certification Act, is exempt from s.  
 21 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
 22 State Constitution. This paragraph is subject to the Open  
 23 Government Sunset Review Act in accordance with s. 119.15,  
 24 Florida Statutes, and shall stand repealed on December 31, 2023,  
 25 unless reviewed and saved from repeal through reenactment by the  
 26 Legislature.

27 Section 2. The Legislature finds that it is a public  
 28 necessity that personal identifying information in applications  
 29 for certification as a victim of Florida reform school abuse

Page 1 of 2

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

19-01137-22

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30 which are submitted to the Department of State be made exempt  
 31 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of  
 32 the State Constitution. The Legislature finds that the release  
 33 of personal identifying information contained in a certification  
 34 application could subject victims of Florida reform school abuse  
 35 to further trauma. The Legislature further finds that such  
 36 victims would be more likely to come forward to seek redress if  
 37 personal identifying information in the applications were  
 38 protected from public disclosure. The Legislature finds that the  
 39 harm that may result from the release of such information  
 40 outweighs the public benefit that may be derived from the  
 41 disclosure of the information.

42 Section 3. This act shall take effect on the same date that  
 43 SB 482 or similar legislation takes effect, if such legislation  
 44 is adopted in the same legislative session or an extension  
 45 thereof and becomes a law.

Page 2 of 2

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

The Florida Senate

APPEARANCE RECORD

978

January 11, 2022

Meeting Date

Criminal Justice

Committee

Deliver both copies of this form to Senate professional staff conducting the meeting

Bill Number or Topic

Amendment Barcode (if applicable)

Name Barney Bishop III Phone 850/510-9922

Address 2215 Thomasville Road Email barney@barneybishop.com  
*Street*

Tallahassee FL 32308  
*City State Zip*

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Smart Justice Allaince

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)



The Florida Senate

## Committee Agenda Request

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

**Subject:** Committee Agenda Request

**Date:** December 22, 2021

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I respectfully request that **Senate Bill # 978**, relating to Public Records/Applications for Certification as a Victim of Florida Reform School Abuse, be placed on the:

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

A handwritten signature in green ink that reads "Darryl Ervin Rouson".

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Senator Darryl Ervin Rouson  
Florida Senate, District 19



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Appropriations Subcommittee on  
Transportation,  
Tourism, and Economic Development,  
*Chair*  
Appropriations  
Appropriations Subcommittee on Criminal  
and Civil Justice  
Criminal Justice  
Ethics and Elections  
Transportation

**SENATOR GEORGE B. GAINER**  
2nd District

January 7, 2022

Dear Chair Pizzo,

I am respectfully requesting a formal excusal for the upcoming Criminal Justice meetings on January 11<sup>th</sup> and January 18<sup>th</sup>. I regret that I will be unable to attend, as I am taking measured steps for an upcoming surgery. In addition, I request my bill presentation for SB 752 be temporarily postponed.

If there are any questions or concerns, please do not hesitate to call my office at (850) 487-5002.

Thank you,

A handwritten signature in blue ink that reads "George B. Gainer".

Senator George Gainer  
District 2

Florida 32578 (850) 747-5454

REPLY TO:

- 840 West 11th Street, Panama City, Florida 32401 (850) 747-5454
- Northwest Florida State College, 100 East College Boulevard, Building 330, Rooms 105 and 112, Niceville,
- 408 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5002

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

**WILTON SIMPSON**  
President of the Senate

**AARON BEAN**  
President Pro Tempore

# CourtSmart Tag Report

Room: SB 110

Case No.:

Type:

Caption: Criminal Justice Committee

Judge:

Started: 1/11/2022 1:30:57 PM

Ends: 1/11/2022 2:00:25 PM

Length: 00:29:29

1:30:56 PM Meeting called to order by Senator Pizzo  
1:30:59 PM Roll call by CAA Sue Arnold  
1:31:06 PM Quorum present  
1:31:13 PM Comments from Chair Pizzo regarding Senator Gainer being excused and Tab 5, SB 752 being temporarily postponed  
1:31:33 PM Introduction of Tab 1, SB 266 by Chair Pizzo  
1:31:45 PM Explanation of SB 266, Service as a Law Enforcement Office and Amendment Barcode No. 612690 by Senator Diaz  
1:33:11 PM Comments from Chair Pizzo  
1:33:19 PM Question from Senator Powell  
1:33:24 PM Response from Senator Diaz  
1:33:58 PM Follow-up question from Senator Powell  
1:34:04 PM Response from Senator Diaz  
1:34:22 PM Question from Senator Pizzo  
1:34:34 PM Response from Senator Diaz  
1:34:51 PM Closure waived  
1:34:53 PM Amendment adopted  
1:34:56 PM Comments from Senator Pizzo  
1:35:04 PM Barney Bishop, Florida Smart Justice Alliance waives in support  
1:35:10 PM Lisa Henning waives in support  
1:35:20 PM Felix Delrosario waives in support  
1:35:24 PM Comments from Chair Pizzo  
1:35:30 PM Closure waived  
1:35:33 PM Roll call by CAA  
1:35:37 PM CS/SB 266 reported favorably  
1:35:56 PM Introduction of Tab 3, SB 636 by Chair Pizzo  
1:36:09 PM Explanation of SB 636, State Operated Institutions Inmate by Senator Perry  
1:36:46 PM Comments from Chair Pizzo  
1:36:52 PM Scotti Vaughan, Department of Corrections waives in support  
1:36:54 PM Chelsea Murphy, Right on Crime waives in support  
1:37:03 PM Aaron Wayt, FACDL waives in support  
1:37:09 PM Nate Schaidt, Horizon Communities waives in support  
1:37:17 PM Closure waived  
1:37:19 PM Roll call by CAA  
1:37:23 PM SB 636 reported favorably  
1:37:34 PM Introduction of Tab 3, SB 284 by Chair Pizzo  
1:37:50 PM Explanation of SB 284, Fraudulent Proof of Vaccination by Senator Polsky  
1:38:53 PM Comments from Chair Pizzo regarding temporarily postponing the bill for a few minutes  
1:39:39 PM Introduction of Tab 4, SB 688 by Chair Pizzo  
1:39:59 PM Explanation of SB 688, Custodial Interrogations of Minors by Senator Cruz  
1:40:55 PM Comments from Chair Pizzo  
1:41:54 PM Introduction of Amendment Barcode No. 171948 by Chair Pizzo  
1:42:01 PM Explanation of Amendment by Senator Cruz  
1:42:07 PM Comments from Chair Pizzo  
1:42:24 PM Closure waived  
1:42:30 PM Amendment adopted  
1:42:34 PM Comments from Chair Pizzo  
1:42:40 PM Question from Senator Baxley  
1:42:48 PM Response from Senator Cruz  
1:43:25 PM Speaker Tracy Strecker, Florida PTA in support  
1:43:58 PM Barney Bishop, Florida Smart Justice Alliance waives in support  
1:44:00 PM Aaron Wayt, FACDL waives in support

1:44:02 PM Nancy Daniels, Florida Public Defender Association waives in support  
1:44:08 PM Comments from Chair Pizzo  
1:44:18 PM Senator Cruz in closure  
1:44:28 PM Roll call by CAA  
1:45:00 PM CS/SB 668 reported favorably  
1:45:23 PM Introduction of Tab 6, SB 760 by Chair Pizzo  
1:45:32 PM Question from Senator Berman  
1:45:45 PM Introduction of Amendment Barcode No. 817232 by Chair Pizzo  
1:45:52 PM Explanation of SB 760, Human Trafficking and Amendment Barcode No. 817232 by Senator Berman  
1:47:27 PM Comments from Chair Pizzo  
1:47:40 PM Closure waived  
1:47:42 PM Amendment adopted  
1:47:45 PM Comments from Chair Pizzo  
1:47:56 PM Dave Aronberg waives in support  
1:48:10 PM Barbara DeVane, FL NOW waives in support  
1:48:17 PM Speaker Commissioner Melissa McKinlay in support  
1:49:27 PM Alan Johnson, Office of the State Attorney waives in support  
1:49:35 PM Karen Woodall, Florida Center for Fiscal & Economic Policy waives in support  
1:49:48 PM Senator Baxley in debate  
1:51:34 PM Comments from Chair Pizzo  
1:51:41 PM Senator Powell in debate  
1:51:47 PM Comments from Chair Pizzo  
1:52:35 PM Senator Berman in closure  
1:52:43 PM Roll call by CAA  
1:53:42 PM CS/SB 760 reported favorably  
1:53:56 PM Chair passed to Senator Hooper  
1:54:13 PM Introduction of Tab 7, SB 874 by Chair Hooper  
1:54:17 PM Explanation of SB 864, Arrests by Senator Pizzo  
1:54:43 PM Comments from Chair Hooper  
1:54:49 PM Speaker Lisa Henning waives in support  
1:55:51 PM Comments from Chair Hooper  
1:55:59 PM Senator Pizzo in closure  
1:56:06 PM Roll call by CAA  
1:56:43 PM SB 874 reported favorably  
1:57:04 PM Chair returned to Senator Pizzo  
1:57:10 PM Introduction of Tab 8, SB 978 by Chair Pizzo  
1:57:23 PM Explanation of SB 978, Public Records/Applications for Certification as a Victim of Florida by Senator Rouson  
1:58:20 PM Comments from Chair Pizzo  
1:58:25 PM Barney Bishop, Florida Smart Justice Alliance waives in support  
1:58:28 PM Comments from Chair Pizzo  
1:58:35 PM Senator Rouson in closure  
1:58:53 PM Roll call by CAA  
1:59:00 PM SB 978 reported favorably  
1:59:15 PM Comments from Chair Pizzo regarding Tab 2, SB 284 being temporarily postponed  
1:59:18 PM Senator Perry would like to be shown voting in the affirmative on Tab 4, CS/SB 668 and Tab 6, CS/SB 760  
1:59:41 PM Comments from Senator Powell  
2:00:06 PM Senator Powell moves to adjourn  
2:00:15 PM Meeting adjourned