

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Burgess, Chair
Senator Gibson, Vice Chair

MEETING DATE: Monday, January 31, 2022**TIME:** 3:00—5:00 p.m.**PLACE:** Pat Thomas Committee Room, 412 Knott Building**MEMBERS:** Senator Burgess, Chair; Senator Gibson, Vice Chair; Senators Baxley, Boyd, Bradley, Broxson, Mayfield, Polsky, Rodrigues, and Rouson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 772 Children, Families, and Elder Affairs / Diaz (Compare CS/H 1439)	Protection of Victims and Witnesses; Revising the standard for orders to protect certain testifying victims and witnesses; prohibiting depositions of certain victims and witnesses in certain proceedings without a showing of good cause; requiring the court to appoint a guardian ad litem or other advocate for the deponent under certain circumstances; requiring the University of South Florida, in consultation with a specified organization, to develop and submit a proposal to the Attorney General for the creation of a unified statewide data repository for anonymous human trafficking data, etc. CF 01/11/2022 Fav/CS JU 01/31/2022 Favorable RC	Favorable Yeas 10 Nays 0
2	SB 1304 Gruters (Similar H 1229, Identical H 1363)	Public Records/Trust Proceedings; Making the identities of beneficiaries and specified individuals and certain documents in trust proceedings when a family trust company, licensed family trust company, or foreign licensed family trust company is a party confidential and exempt; requiring the court to seal any documents filed with the court in such proceedings; prohibiting the court from releasing to the public any of the sealed documents or information contained therein; providing a statement of public necessity, etc. JU 01/31/2022 Fav/CS GO RC	Fav/CS Yeas 10 Nays 0

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Judiciary

Monday, January 31, 2022, 3:00—5:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 1368 Gruters (Similar H 1001, Compare H 1229)	Trusts; Revising criteria for application of the rule against perpetuities to trusts created on or after a specified date; specifying that the terms of a trust do not prevail over a trustee's duty to account to qualified beneficiaries upon termination of the trust; clarifying circumstances under which notice, or the sending of a document, to a person under the Florida Trust Code is deemed satisfied; specifying circumstances under which a parent may represent and bind the unborn descendants of his or her unborn child or the minor or unborn descendants of his or her minor child, etc. JU 01/31/2022 Favorable BI RC	Favorable Yeas 10 Nays 0
4	SB 974 Gruters (Similar H 799, CS/H 985)	Sovereign Immunity; Revising the statutory limits on liability for tort claims against the state and its agencies and subdivisions; revising requirements for the state or an agency or a subdivision of the state to agree to settle a claim or judgment; prohibiting an insurance policy from conditioning the payment of benefits on the enactment of a claim bill; requiring the Department of Financial Services to adjust the limitations on tort liability every year after a specified date, etc. JU 01/31/2022 Fav/CS CA AP	Fav/CS Yeas 10 Nays 0
5	SB 654 Cruz (Identical H 905)	Protective Injunctions; Specifying a timeframe in which the clerk of the court must transmit specified documents relating to an injunction for protection against domestic violence to the appropriate local sheriff or law enforcement agency; providing for the electronic transmission of certain documents rather than by facsimile; specifying a timeframe in which the clerk of the court must transmit specified documents relating to injunctions for protection against repeat violence, sexual violence, or dating violence and against stalking, respectively, to the appropriate local sheriff or law enforcement agency, etc. JU 01/31/2022 Fav/CS CF RC	Fav/CS Yeas 10 Nays 0
6	SB 1664 Perry	Unlawful Assemblies; Prohibiting a person or persons from picketing or protesting before or about the residence or dwelling of any person with specified intent; providing criminal penalties, etc. JU 01/31/2022 Fav/CS CJ RC	Fav/CS Yeas 10 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 630 Jones (Identical H 363)	<p>Pregnant Women in Custody; Citing this act as "Ava's Law"; requiring that every female who is arrested and not released on bond within 72 hours after arrest be administered a pregnancy test within a specified timeframe, upon her request; requiring that, if a pregnant woman is convicted of a crime and sentenced to incarceration of any length, the sentencing judge provide the pregnant woman the opportunity to defer the imposed sentence until a specified time after delivery; authorizing sanctions for a new criminal conviction or violation of the terms and conditions ordered by the judge, etc.</p> <p>CJ 11/30/2021 Favorable JU 01/31/2022 Fav/CS AP</p>	Fav/CS Yeas 10 Nays 0
8	SB 702 Burgess (Identical H 179)	<p>Photographic Enforcement of School Bus Safety; Defining the terms "school bus" and "side stop signal arm enforcement system"; authorizing school districts to install and operate side stop signal arm enforcement systems on school buses; providing that recorded images evidencing a violation of this act are admissible in any judicial or administrative proceeding for a certain purpose; specifying requirements of and prohibitions on the use of recorded video and still images captured by the side stop signal arm enforcement system, etc.</p> <p>TR 01/18/2022 Favorable JU 01/31/2022 Fav/CS AP</p>	Fav/CS Yeas 9 Nays 1
9	SB 1012 Burgess (Similar H 697)	<p>Victims of Crimes; Requiring law enforcement personnel to ensure that victims are given information about their right to employ private counsel; encouraging The Florida Bar to develop a registry of attorneys willing to serve as crime victim advocates on a pro bono basis, etc.</p> <p>CJ 01/25/2022 Favorable JU 01/31/2022 Fav/CS RC</p>	Fav/CS Yeas 10 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	SB 1380 Rodriguez (Similar CS/H 219)	Real Property Rights; Revising rights that are not affected or extinguished by marketable record titles; revising the types of interests extinguished by marketable record titles; authorizing owners or operators of private property used for motor vehicle parking to establish rules, rates, and fines governing private persons parking on the property; prohibiting counties and municipalities from enacting any ordinance or regulation attempting to restrict or prohibit the owner or operator from adopting such rules, rates, or fines, etc. JU 01/31/2022 Favorable CA RC	Favorable Yeas 10 Nays 0
11	SB 262 Rodriguez (Similar H 6011)	Damages Recoverable by Parents of an Adult Child in Medical Negligence Actions; Deleting a provision prohibiting parents of an adult child from recovering damages for mental pain and suffering in a medical negligence suit, etc. JU 01/31/2022 Temporarily Postponed BI RC	Temporarily Postponed

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 772

INTRODUCER: Children, Families, and Elder Affairs Committee; and Senators Diaz and Perry

SUBJECT: Protection of Victims and Witnesses

DATE: January 31, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Moody</u>	<u>Cox</u>	<u>CF</u>	Fav/CS
2.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 772 revises a statute governing the authority of a court to protect a child, a person having an intellectual disability, or a sexual offense victim or witness from harm or abuse that may result from giving testimony in a court proceeding or at a deposition. Under existing law and court rules, courts have broad authority to fashion and order protections for victims and witnesses in these circumstances. But existing law identifies only a handful of examples of the kinds of protections that courts may require.

The bill preserves, and perhaps slightly expands, the broad authority of a court to protect those who give testimony. However, the bill expressly requires the court to consider whether or how that authority should be exercised in a proceeding involving a violent or sexual offense when a party seeks to depose a child, a person having an intellectual disability, or a sexual offense victim or witness. The new methods listed in the bill that a court may use to protect a vulnerable victim or witness include limiting the length and scope of a deposition, requiring a deposition to be taken by written questions, requiring a deposition to be taken in the presence of a judge or magistrate, and sealing the deposition records.

Additionally, the bill requires, for University of South Florida, in consultation with the Florida Alliance to End Human Trafficking, to develop and submit a proposal to the Attorney General for the creation of a unified statewide data repository for anonymous human trafficking data. This proposal must be submitted by October 1, 2022.

This bill does not appear to have a fiscal impact on state, county, or municipal governments. See V. Fiscal Impact Statement.

The bill is effective upon becoming law.

II. Present Situation:

Vulnerable Victims and Witnesses

Florida currently provides several protections relating to the protection of vulnerable victims and witnesses who are either underage or intellectually disabled, but does not specifically provide similar protections for other vulnerable victims or witnesses.

Section 92.55(2), F.S., authorizes the court, or any party, parent, guardian, attorney, guardian ad litem,¹ or other appointed advocate, to motion for any order to protect the following persons from severe emotional or mental harm due to the presence of the defendant, if the victim or witness (“vulnerable victim or witness”) is required to testify in open court:

- A victim or witness under the age of 18;
- A person with an intellectual disability;² or
- A victim or witness who was under the age of 18 at the time he or she was a victim of or witness to a sexual offense.^{3, 4}

¹ Section 39.820(1), F.S., states “guardian ad litem,” as referred to in any civil or criminal proceeding, includes the following: the Statewide Guardian Ad Litem Office, which includes circuit guardian ad litem programs; a duly certified volunteer, a staff member, a staff attorney, a contract attorney, or a pro bono attorney working on behalf of a guardian ad litem; a court-appointed attorney; or a responsible adult who is appointed by the court to represent the best interest of a child in a proceeding as provided for by law, including, but not limited to ch. 39, F.S., who is a party to any judicial proceeding as a representative of the child, and who serves until discharged by the court.

² Section 393.063, F.S., defines “intellectual disability” as significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which manifests before the age of 18 and can reasonably be expected to continue indefinitely. For the purpose of this definition, the term: (a) “adaptive behavior” means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, or community; (b) “Significantly subaverage general intellectual functioning” means performance that is two or more standard deviations from the mean score on a standardized intellectual test specified in the rules of the agency.

³ Section 92.55(2), F.S.

⁴ Section 92.55(1)(b), F.S., defines “sexual offense” as any offense which qualifies a person as a sexual predator under s. 775.21(4)(a)1., F.S., or a sexual offender under s. 943.0435(1)(h)1., F.S. Both the sexual predator and sexual offender provisions include s. 787.06(3)(b),(d),(f), or (g), F.S., as an enumerated offense that qualifies a person to such registration requirements. The specific provisions included relate to subjecting a person to specified types of human trafficking, including: using coercion for commercial sexual activity of an adult; using coercion for commercial sexual activity of an adult who is an unauthorized alien; for commercial sexual activity by the transferring or transporting a minor from outside this state to within the state; or for commercial sexual activity in which any minor or any person who is mentally defective or mentally incapacitated is involved. Section 787.06(2)(a), F.S. defines “coercion” as 1. Using or threatening to use force against a person; 2. Restraining, isolating, or confining a person without lawful authority and against his or her will, or threatening to do so; 3. Using lending or other credit methods to establish a debt by a person when labor or services are pledged as a security for the debt, if the reasonably assessed value of the labor or services is not applied toward the liquidation of the debt; 4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or government identification document; 5. Causing or threatening to cause financial harm; 6. Enticing or luring a person by fraud or deceit; or 7. Providing a Schedule I or II controlled substance to a person for the purpose of exploiting that person. *See* s. 893.03, F.S. for standards and schedules of control substances. Section 787.06(2)(b), F.S., defines “commercial sexual activity” as any violation of ch. 796, F.S., or an attempt to commit such an offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(i), F.S.,

Such orders must relate to the taking of testimony and include, but are not limited to:

- Interviewing or the taking of depositions as part of a civil or criminal proceeding;
- Examination and cross-examination for the purpose of qualifying as a witness or testifying in any proceeding;
- The use of testimony taken outside of the courtroom, including proceedings under ss. 92.53⁵ and 92.54, F.S.⁶

Depositions

Criminal

In felony⁷ criminal proceedings, after the filing of a charging document, the defendant may elect to participate in the discovery process, including the taking of depositions, by filing with the court and the prosecuting attorney a “Notice of Discovery.”⁸ A party must give reasonable notice in writing to the each other party and make a good faith effort to coordinate a date, time, and location of the deposition with the other parties and witness to be deposed.⁹ Except as provided in the Florida Rules of Criminal Procedure, the procedure for taking a deposition in a criminal proceeding is the same as that provided in the Florida Rules of Civil Procedure and s. 48.031, F.S.^{10, 11}

The parties in criminal proceedings are allowed to take the deposition of any witness listed by the prosecutor as a Category A witness or listed by a co-defendant, but must show good cause for Category B witnesses or to take depositions in a misdemeanor or criminal traffic offense case.¹² The Florida Rules of Criminal Procedure set out a list of factors that the court should consider

defines “sexually explicit performances” 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.

⁵ Section 92.53, F.S., relates to videotaping the testimony of a victim or witness under age 18 or who has an intellectual disability.

⁶ Section 92.54, F.S., relates to the use of closed-circuit television in proceedings involving a victim or witness under the age of 18 or who has an intellectual disability.

⁷ While a defendant charged with a misdemeanor or criminal traffic offense may request for a deposition to be taken, the Florida Rules of Criminal Procedure only allow for a deposition to take place upon a showing of good cause. Fla. R.

Crim.(h)(1)(D) P. 3.220(a)

⁸ Fla. R. Crim. P. 3.220(a).

⁹ Fla. R. Crim. P. 3.220(h)(1).

¹⁰ Section 48.031, F.S., provides that a criminal witness subpoena commanding the witness to appear for a deposition may be posted by a person authorized to serve process at the witness’s residence if one attempt to serve the subpoena has failed.

¹¹ Fla. R. Crim. P. 3.220(h)(1).

¹² Fla. R. Crim. P. 3.220(h)(1)(A), (B), and (D). Category C witnesses may not be deposed unless the court determines that the witness should be listed in another category. Category A witnesses include eye witnesses, alibi witnesses and rebuttal to alibi witnesses, witnesses who were present when a recorded or unrecorded statement was taken from or made by a defendant or codefendant, investigating officers, witnesses known by the prosecutor to have any material information that tends to negate the guilt of the defendant as to any offense charged, child hearsay witnesses, expert witnesses who have not provided a written report and a curriculum vitae or who are going to testify, and informant witnesses, whether in custody, who offer testimony concerning the statements of a defendant about the issues for which the defendant is being tried. Category C is all witnesses who performed only ministerial functions or whom the prosecutor does not intend to call at trial and whose involvement with and knowledge of the case is fully set out in a police report or other statement furnished to the defense. Category B witnesses include any witnesses not listed in either Category A or Category C.

when deciding whether good cause has been shown, such as the consequences to the defendant, the complexity of the issues involved, and complexity of the testimony of the witness.¹³ Depositions of children who are under 18 years of age must be videotaped unless otherwise ordered by the court, and the court has the discretion to order videotaping of a deposition or the taking of a deposition of a witness with a fragile emotional strength, or an intellectual disability to be in the presence of a trial judge or a special magistrate. Upon a showing of good cause, the court may also issue protective orders, for instance, limiting the scope of a deposition or sealing a deposition.¹⁴

Civil

In civil proceedings, after the commencement of an action, any party may take a deposition of any person, including a party, upon oral examination¹⁵ or upon written questions.¹⁶ A party who wishes to take a deposition of a person upon oral examination must give reasonable notice in writing to every party.¹⁷ Leave of court is required in limited circumstances, such as certain instances when a plaintiff seeks to take a deposition within 30 days after service of process or initial pleading upon the defendant.¹⁸ Any deposition may be recorded by videotape without leave of court or stipulation by the parties as long as the taking of the deposition complies with certain Rules, such as the party must include the intent to videotape the deposition and other related details in the notice of taking the deposition.¹⁹

For good cause shown, the court may enlarge or shorten the time for the taking of deposition.²⁰ On motion of a party or the deponent and a showing that the examination is being conducted in bad faith or other specified circumstances, the court in which the action is pending or the circuit court where the deposition is being taken may terminate or limit the scope of the deposition.²¹

Examination and Cross-Examination for Qualifying a Witness or Testifying

Every person is competent to be a witness except as otherwise provided by statute.²² A person is disqualified from testifying as a witness if the court finds that the person is:

- Incapable of expressing himself or herself concerning the matter in such a manner as to be understood; or
- Incapable of understanding the duty of a witness to tell the truth.²³

Further, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion if certain criteria is met.²⁴ Prior to an expert witness

¹³ See Fla. R. Crim. P. 3.200(h)(1)(B) and (D)

¹⁴ Fla. R. Crim. P. 3.220(l)(1)

¹⁵ Fla. R. Civ. P. 1.310(a)

¹⁶ Fla. R. Civ. P. 1.320(a)

¹⁷ Fla. R. Civ. P. 1.310(b)

¹⁸ Fla. R. Civ. P. 1.310(a)

¹⁹ Fla. R. Civ. P. 1.310(b)(4)

²⁰ Fla. R. Civ. P. 1.310(b)(3)

²¹ Fla. R. Civ. P. 1.310(d)

²² Section 90.601, F.S.

²³ Section 90.603, F.S.

²⁴ Section 90.702, F.S.

giving an opinion, the party against whom the opinion is offered may conduct a voir dire examination of the witness directed at the underlying facts or data for the witness's opinion.²⁵

Video Testimony

Sections 92.53 and 92.54, F.S., authorize a court to enter a protective order after a motion and hearing in camera if the court finds that a victim or witness under 18 years of age or who has an intellectual disability is substantially likely to suffer at least moderate emotional or mental harm due to the presence of the defendant if required to testify in open court.

The court may order the testimony of such a victim or witness be videotaped and used in lieu of testimony in open court. However, the defendant and his or her counsel must be allowed to be present at any videotaping, but the court may order the defendant to view the testimony from outside the presence of the protected individual.²⁶ Alternatively, the court may require that the protected individual's testimony be taken outside the courtroom and shown in the courtroom by means of closed circuit television.²⁷ Only specified parties are allowed in the room where the testimony is recorded. A court may require a defendant to view the testimony from the courtroom, but must permit the defendant to observe and hear the person's testimony.²⁸

Special Protections of Vulnerable Victims and Witnesses

The court must consider several factors when ruling upon a motion to protect a vulnerable victim or witness, including, but not limited to: the age of the vulnerable victim or witness, the nature of the offense or act, the relationship of the vulnerable victim or witness to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the vulnerable victim or witness as a consequence of the defendant's presence, and any other fact that the court deems relevant.²⁹

When a victim or witness meets specified criteria, the court may enter an order:

- Limiting the number of times protected individuals may be interviewed;
- Prohibiting depositions of a victim or witness;
- Requiring the submission of questions before examination of a victim or witness;
- Setting the place and conditions for interviewing a victim or witness or for conducting any other proceeding; or
- Allowing or prohibiting any person's attendance at any proceeding.³⁰

The court may also order any other conditions it finds just and appropriate including the use of a therapy animal or facility dog, in any proceeding involving a sexual offense or child abuse, abandonment, or neglect.³¹ The court must consider certain factors when deciding whether to permit a vulnerable victim or witness to testify with the assistance of a therapy animal or facility dog, including, but not limited to, the age and interests of the vulnerable victim or witness, the

²⁵ Section 90.705(2), F.S.

²⁶ Section 92.53(4), F.S.

²⁷ Section 92.54, F.S.

²⁸ Section 92.53(4), F.S.

²⁹ Section 92.55(3), F.S.

³⁰ Section 92.55(4), F.S.

³¹ Section 92.55(5), F.S.

rights of the parties to the litigation, and any other relevant factors that would facilitate the testimony of the vulnerable victim.³²

Section 92.55(5)(b), F.S., defines the following terms:

- “Facility dog” as a dog that has been trained, evaluated, and certified as a facility dog pursuant to industry standards and provides unobtrusive emotional support to children and adults in facility settings.
- “Therapy animal” as an animal that has been trained, evaluated, and certified as a therapy animal pursuant to industry standards by an organization that certifies animals as appropriate to provide animal therapy.

Human Trafficking

Human trafficking is a form of modern-day slavery.³³ Human trafficking victims are young children, teenagers, and adults who may be citizens that are trafficked domestically within the borders of the United States or smuggled across international borders worldwide.³⁴ 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.³⁵ Any minor who is younger than 18 years of age, and who is induced to perform a commercial sex act is a human trafficking victim even if there is no forced fraud or coercion.³⁶ Increasingly, criminal organizations, such as gangs, are enticing local school children into commercial sexual exploitation or trafficking.³⁷

Human Trafficking in Florida

Florida law defines “human trafficking” as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining,³⁸ purchasing, patronizing, procuring, or obtaining³⁹ another person for the purpose of exploitation of that person.⁴⁰ In Florida, any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for labor or services, or commercial sexual activity, commits a crime.⁴¹

³² Section 92.55(5)(a), F.S.

³³ Section 787.06(1)(a), F.S.

³⁴ *Id.*

³⁵ The Department of Education (the DOE), *Healthy Schools – Human Trafficking*, available at <http://www.fldoe.org/schools/healthy-schools/human-trafficking.stml> (last visited January 12, 2022).

³⁶ *Id.*

³⁷ *Id.*

³⁸ 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.

³⁹ Section 787.06(2)(g), F.S., provides “obtain” means, in relation to labor, commercial sexual activity, or services, to receive, take possession of, or take custody of another person or secure performance thereof. Section 787.06(2)(e), F.S., provides “labor” means work of economic or financial value.

⁴⁰ Section 787.06(2)(d), F.S.

⁴¹ Section 787.06(3), F.S.

Florida law sets out several circumstances which give rise to specified penalties including, in part:

- Labor or services of any child under the age of 18 commits a first degree felony;⁴²
- Labor or services of any child under the age of 18 who is an unauthorized alien⁴³ commits a first degree felony;⁴⁴
- Labor or services who does so by the transfer or transport of any child under the age of 18 from outside of Florida to within Florida commits a first degree felony;⁴⁵
- Commercial sexual activity⁴⁶ who does so by the transfer or transport of any child under the age of 18 from outside of Florida to within Florida commits a first degree felony;⁴⁷ or
- Commercial sexual activity in which any child under the age of 18, or in which any person who is mentally defective⁴⁸ or mentally incapacitated⁴⁹ is involved commits a life felony.⁵⁰

The above-mentioned first degree felonies are reclassified as a life felony if a person causes great bodily harm, permanent disability, or permanent disfigurement to another person during the commission of the offense.⁵¹ Ignorance of the human trafficking 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.⁵²

Florida is ranked the third highest state of reported human trafficking cases in the United States.⁵³ In 2020, the Florida Abuse Hotline received an increase in reports of commercially exploited children from 3,088 reports in 2019 to 3,181 reports in 2020.⁵⁴

⁴² Section 787.06(3)(a)1., F.S. A first degree felony is punishable by a state prison term not exceeding 30 years, a fine not exceeding \$10,000, or both. Sections 775.082 and 775.083, F.S.

⁴³ 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).

⁴⁴ Section 787.06(3)(c)1., F.S.

⁴⁵ Section 787.06(3)(e)1., F.S.

⁴⁶ 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.

⁴⁷ 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.

⁴⁸ 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.

⁴⁹ Section 794.011(1)(c), F.S., defines "mental incapacitated" as temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.

⁵⁰ A life felony is punishable by a term of life imprisonment, \$15,000 fine, or both as provided in ss. 775.082(3)(a)6., 775.083, or 775.084, F.S.

⁵¹ Section 787.06(8)(b), F.S.

⁵² Section 787.06(9), F.S.

⁵³ Florida Alliance to End Human Trafficking, *We need to End Human Trafficking in the State of Florida*, <https://floridaallianceendht.com/> (last visited January 12, 2022).

⁵⁴ Office of Program Policy Analysis and Gov't Accountability, *Annual Report on the Commercial Sexual Exploitation of Children in Florida*, Report No. 2106, p. 2, (July 2021), <https://oppaga.fl.gov/Documents/Reports/21-06.pdf> (last visited Jan. 12, 2022).

Human Trafficking Data Collection

Human trafficking data is primarily based on information provided by identified victims.⁵⁵ Data is typically collected by a range of different individuals, including law enforcement, courts, and non-governmental organizations offering protection and assistance to victims.⁵⁶ Federal law requires the FBI to collect human-trafficking data.⁵⁷ State programs and local law enforcement agencies that participate in federal data collection efforts provide counts of offenses, case clearances, and arrests for human trafficking for the purpose of commercial sex acts or involuntary servitude.⁵⁸

The University of South Florida (USF) recently developed a statewide central database to allow for tracking incidents of human trafficking down to specific neighborhoods and zip codes.⁵⁹ The lab is currently working with Hillsborough, Pinellas, and Pasco counties on sharing data collected from numerous entities, including law enforcement, courts, the DCF, and the Department of Health.⁶⁰ The lab also plans to provide real-time data on available vacancies within human trafficking shelters throughout the state.⁶¹

III. Effect of Proposed Changes:

Vulnerable Victims and Witnesses

The bill amends various provisions in s. 92.55, F.S., relating to judicial or other proceedings involving victims and witnesses younger than the age of 18, persons who have intellectual disabilities, or sexual offense victims or witnesses.

Upon a motion of any party, specified persons appointed to represent a vulnerable victim or witness, or on the court's own motion, the court may enter an order necessary to protect the person in any judicial or other proceeding from moderate emotional or mental harm, as opposed to severe as required under current law. The requirement under current law that the harm be "due to the presence of the defendant if the victim or witness is required to testify in open court" has been deleted.

⁵⁵ The UN Global Migration Data Analysis Centre, *Migration Data Portal: Human Trafficking*, (last updated May 6, 2021) available at <https://www.migrationdataportal.org/themes/human-trafficking#data-sources> (last visited Jan. 12, 2022).

⁵⁶ *Id.*

⁵⁷ The U.S. Department of Justice, *Human Trafficking Data Collection Activities, 2021*, p. 2 (October 2021), available at <https://bjs.ojp.gov/content/pub/pdf/htdca21.pdf> (last visited Jan. 12, 2022).

⁵⁸ *Id.*

⁵⁹ Briona Arradondo, *USF Creates First Centralized Human Trafficking Incident Database*, FOX 13, October 15, 2021, available at <https://www.fox13news.com/news/usf-creates-first-centralized-human-trafficking-incident-database> (last visited Jan. 12, 2022).

⁶⁰ *Id.*

⁶¹ *Id.*

The bill provides that depositions are prohibited, except upon a showing of good cause, of vulnerable victims or witnesses involving any of the following:

- Abuse,⁶² abandonment,⁶³ or neglect⁶⁴ of children under ch. 39, F.S.,⁶⁵
- Any offense constituting domestic violence;⁶⁶
- Murder;
- Manslaughter;
- Aggravated cyberstalking;⁶⁷
- Kidnapping;
- False imprisonment;⁶⁸
- Human trafficking;⁶⁹
- Sexual battery;
- Lewd or lascivious offenses;⁷⁰

⁶² Section 39.01(2), F.S., defines “abuse” as any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired.

⁶³ Section 39.01(1), F.S., defines “abandoned” or “abandonment” as a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child’s care and maintenance or has made no significant contribution to the child’s care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. “Establish or maintain a substantial and positive relationship” means, in part, frequent and regular contact with the child, and the exercise of parental rights and responsibilities.

⁶⁴ Section 39.01(50), F.S., states “neglect” occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child’s physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired, except when such circumstances are caused primarily by financial inability unless services have been offered and rejected by such person.

⁶⁵ Chapter 39, F.S., relates to dependency proceedings.

⁶⁶ Section 741.28(2), F.S., defines “domestic violence” as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

⁶⁷ Section 784.048(1)(d), F.S., states “cyberstalk” means: 1. To engage in a course of conduct to communicate, or to cause to be communicated, directly or indirectly, words, images, or language by or through the use of electronic mail or electronic communication, directed at or pertaining to a specific person; or 2. To access, or attempt to access, the online accounts or Internet-connected home electronic systems of another person without that person’s permission, causing substantial emotional distress to that person and serving no legitimate purpose.

⁶⁸ Section 787.02(1)(a), F.S., defines “false imprisonment” as forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against his or her will.

⁶⁹ Section 787.06(2)(d), F.S., defines “human trafficking” as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining another person for the purpose of exploitation of that person.

⁷⁰ Section 825.1025(2)(a), F.S., states that “lewd or lascivious battery upon an elderly person or disabled person” occurs when a person encourages, forces, or entices an elderly person or disabled person to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity, when the person knows or reasonably should know that the elderly person or disabled person either lacks the capacity to consent or fails to give consent. Section 825.1025(3)(a), F.S., states that “lewd or lascivious molestation of an elderly person or disabled person” occurs when a person intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of an elderly person or disabled person when the person knows or reasonably should know that the elderly person or disabled person either lacks the capacity to consent or fails to give consent. Section 825.1025(4)(a), F.S., states that “lewd or lascivious exhibition in the presence of an elderly person or disabled person” occurs when a person, in the presence of an elderly person or disabled person: 1. Intentionally masturbates; 2. Intentionally exposes his or her genitals in a lewd or lascivious manner; or 3. Intentionally commits any other lewd or lascivious act that does not involve actual physical or sexual contact with the elderly person or disabled person, including but not limited to, sadomasochistic abuse, sexual bestiality, or

- Child abuse or neglect;^{71, 72}
- Use of a child in a sexual performance;⁷³ or
- Computer pornography⁷⁴, or the transmission of pornography by electronic device or equipment.

The court may authorize the taking of a deposition and may order protections deemed necessary upon written motion and written findings that:

- A deposition is necessary to assist a trial;
- The evidence sought is not reasonably available by any other means; and
- The probative value of the testimony outweighs the potential detriment to the person to be deposed.

The bill also modifies current law to give the court discretion, rather than require, the court to consider certain factors when ruling on a motion to take a deposition under s. 92.55(4), F.S. Such factors are also amended, the last two points below of which have been relocated from s. 92.55(3)(b) and (c), F.S., to include:

- The complexity of the issues involved;
- The degree of emotional or mental harm, as opposed to trauma, that will result as a consequence of the examination;
- The functional capacity of the victim or witness if he or she has an intellectual disability; and
- The age of the sexual offense victim or witness when the sexual offense occurred.

The other factors listed under s. 92.55(3)(b) and (c), F.S., are removed under the bill.

Provisions related to determining when to permit the use of a facility dog or therapy animal found in s. 92.55(5)(a), F.S., are included, in part, under the renumbered s. 92.55(4), F.S., and that subsection is otherwise removed from the section. The factors that are removed include:

- The interests of the child victim or witness or sexual offense victim or witness; and

the simulation of any act involving sexual activity, when the person knows or reasonably should know that the elderly person or disabled person either lacks the capacity to consent or fails to give consent to having such act committed in his or her presence.

⁷¹ Section 827.03(1)(b), F.S., defines “child abuse” as: 1. Intentional infliction of physical or mental injury upon a child; 2. An intentional act that could reasonably be expected to result in physical or mental injury to a child; or 3. Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.

⁷² Section 827.03(1)(e), F.S., defines “neglect” as: 1. A caregiver’s failure or omission to provide a child with the care, supervision and services necessary to maintain the child’s physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child; or 2. A caregiver’s failure to make a reasonable effort to protect a child from abuse, neglect, or exploitation by another person.

⁷³ Section 827.071(1)(i), F.S., defines “sexual performance” as any performance or part thereof which includes sexual conduct by a child of less than 18 years of age.

⁷⁴ Section 847.0135(2), F.S., defines “computer pornography” as a person who: (a) knowingly compiles, enters into, or transmits by use of computer; (b) makes, prints, publishes, or reproduces by other computerized means; (c) knowingly causes or allows to be entered into or transmitted by use of computer; or (d) buys, sells, receives, exchanges, or disseminates, any notice, statement, or advertisement of any minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any minor, or the visual depiction of such conduct.

- The rights of the parties to the litigation.

The bill requires any orders the court makes to protect vulnerable victims or witnesses to be deemed just and appropriate. The bill also adds protections that the court may order, including:

- Limiting the length and scope of a deposition;
- Requiring a deposition to be taken only by written questions;
- Requiring a deposition to be in the presence of a trial judge or magistrate;
- Sealing the tape or transcript of a deposition until further order of the court; or
- Allowing the use of a therapy animal or facility dog.

The bill provides that s. 794.022, F.S., related to the rules of evidence in prosecutions, applies to depositions taken pursuant to s. 92.55, F.S. If a deposition is taken pursuant to s. 92.55, F.S., the court must appoint a guardian ad litem or other advocate pursuant to s. 914.17, F.S., to represent the deponent for purposes of the deposition if the deponent does not already have counsel. On its own motion or that of any party, the court may request the aid of an interpreter to aid in formulating methods of questioning and in interpreting his or her answers during proceedings conducted under s. 92.55, F.S. The bill requires the court to make specific findings of fact on the record as to the basis for its orders and rulings under s. 92.55, F.S.

The bill relocates the definitions of “facility dog” and “therapy animal” from s. 92.55(5)(b), F.S., to s. 92.55(1), F.S., and makes technical amendments to the section.

Human Trafficking Victim Data Collection

The bill requires, by October 1, 2022, the University of South Florida, in consultation with the Florida Alliance to End Human Trafficking, to develop and submit a proposal to the Attorney General for the creation of a unified statewide data repository for anonymous human trafficking data. The proposal:

- Must provide that the data repository will be housed within the University of South Florida’s Trafficking in Persons-Risk to Resilience Research Lab;
- Must outline the need for a unified data repository to serve as a portal to collect and analyze anonymous statewide human trafficking data, to inform statewide efforts to combat human trafficking, and to better serve victims of human trafficking; and
- Should consider and recommend various funding mechanisms to establish and operate the data repository, including the potential for use of institutional and privately-donated funds.

The bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article III, section 6 of the Florida Constitution provides that “[e]very law shall embrace but one subject and matter properly connected therewith.” When courts must assess whether a bill complies with this single-subject requirement, the “standard of review is highly deferential.”⁷⁵

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 772 requires the court to apply amended standards for when and what kind of protections to grant to vulnerable victims and witnesses. To the extent that the bill results in additional court hearings to determine good cause and appropriate protections for vulnerable victims and witnesses, the bill will result in an indeterminate negative impact on the courts, state attorneys, defense counsel, and civil litigators.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁷⁵ *Franklin v. State*, 887 So. 2d 1069, 1073 (Fla. 2004). However, the “accomplishment of several ‘purposes’ may be logically embraced in one ‘subject’ so long as all such purposes are germane to . . . the expressed general subject.” *Id.* at 1078 (citing *State ex rel. Crump v. Sullivan*, 128 So. 478, 480 (1930)).

VIII. Statutes Affected:

This bill substantially amends sections 92.55 and 943.0583 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 Children, Families, and Elder Affairs on January 11, 2022:

The committee substitute:

- Removes the amendment that expands the authorization of human trafficking victims to expunge a criminal history record;
- Requires, by October 1, 2022, the University of South Florida, in consultation with The Florida Alliance to End Human Trafficking to develop and submit a proposal to the Attorney General for the creation of a unified statewide data repository for anonymous human trafficking data; and
- Specifies certain content that must be included in the proposal.

B. Amendments:

None.

By the Committee on Children, Families, and Elder Affairs; and
Senators Diaz and Perry

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A bill to be entitled

An act relating to the protection of victims and witnesses; amending s. 92.55, F.S.; revising the standard for orders to protect certain testifying victims and witnesses; prohibiting depositions of certain victims and witnesses in certain proceedings without a showing of good cause; authorizing the court to allow such depositions under certain circumstances; revising factors to be considered by a court in a motion seeking to protect a victim or witness; revising provisions related to available relief; requiring the court to appoint a guardian ad litem or other advocate for the deponent under certain circumstances; authorizing the court to request the aid of an interpreter; requiring the court to make specific findings of fact on the record for certain orders and rulings; making technical changes; requiring the University of South Florida, in consultation with a specified organization, to develop and submit a proposal to the Attorney General for the creation of a unified statewide data repository for anonymous human trafficking data; providing requirements for the proposal; providing an effective date.

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

Section 1. Section 92.55, Florida Statutes, is amended to read:

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

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92.55 Judicial or other proceedings involving certain victims and witnesses ~~victim or witness under the age of 18, a person who has an intellectual disability, or a sexual offense victim or witness~~; special protections; use of therapy animals or facility dogs.—

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

(a) "Facility dog" means a dog that has been trained, evaluated, and certified as a facility dog pursuant to industry standards and provides unobtrusive emotional support to children and adults in facility settings.

(c) ~~(a)~~ "Sexual offense victim or witness" means a person who was under the age of 18 when he or she was the victim of or a witness to a sexual offense.

(b) "Sexual offense" means any offense specified in s. 775.21(4)(a)1. or s. 943.0435(1)(h)1.a.(I).

(d) "Therapy animal" means an animal that has been trained, evaluated, and certified as a therapy animal pursuant to industry standards by an organization that certifies animals as appropriate to provide animal therapy.

(2) Upon motion of any party; ~~7~~ upon motion of a parent, guardian, attorney, guardian ad litem, or other advocate appointed by the court ~~under s. 914.17~~ for a victim or witness under the age of 18, a person who has an intellectual disability, or a sexual offense victim or witness; ~~7~~ or upon its own motion, the court may enter any order necessary to protect the person ~~victim or witness~~ in any judicial proceeding or other official proceeding from moderate ~~severe~~ emotional or mental harm ~~due to the presence of the defendant if the victim or witness is required to testify in open court~~. Such orders must

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relate to the taking of testimony and include, but are not limited to:

(a) Interviewing or the taking of depositions as part of a civil or criminal proceeding.

(b) Examination and cross-examination for the purpose of qualifying as a witness or testifying in any proceeding.

(c) The use of testimony taken outside of the courtroom, including proceedings under ss. 92.53 and 92.54.

(3) (a) Depositions are not allowed, except upon a showing of good cause, of victims or witnesses younger than the age of 18, persons who have intellectual disabilities, or sexual offense victims or witnesses in proceedings involving any of the following:

1. Abuse, abandonment, or neglect of children under chapter 39.

2. Any offense constituting domestic violence as defined in s. 741.28.

3. Murder under s. 782.04.

4. Manslaughter under s. 782.07.

5. Aggravated cyberstalking under s. 784.048.

6. Kidnapping under s. 787.01.

7. False imprisonment under s. 787.02.

8. Human trafficking under s. 787.06.

9. Sexual battery under s. 794.011.

10. Lewd or lascivious offenses under s. 825.1025.

11. Child abuse or neglect of a child under s. 827.03.

12. Use of a child in a sexual performance under s. 827.071.

13. Computer pornography under s. 847.0135 or the

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transmission of pornography by electronic device or equipment under s. 847.0137.

(b) Upon written motion and written findings that a deposition is necessary to assist a trial, that the evidence sought is not reasonably available by any other means, and that the probative value of the testimony outweighs the potential detriment to the person to be deposed, the court may authorize the taking of a deposition and may order protections deemed necessary, including those provided in this section.

(4) ~~(3)~~ In ruling upon a ~~the~~ motion filed under this section, the court may ~~shall~~ consider:

(a) The age of the victim or witness. ~~child,~~

(b) The nature of the offense or act. ~~7~~

(c) The complexity of the issues involved.

(d) The relationship of the victim or witness ~~child~~ to the parties in the case or to the defendant in a criminal action. ~~7~~

(e) The degree of emotional or mental harm ~~trauma~~ that will result ~~to the child~~ as a consequence of the examination, interview, or testimony. ~~defendant's presence, and~~

(f) The functional capacity of the victim or witness if he or she has an intellectual disability.

(g) The age of the sexual offense victim or witness when the sexual offense occurred.

(h) Any other fact that the court deems relevant. ~~7~~

~~(b) The age of the person who has an intellectual disability, the functional capacity of such person, the nature of the offenses or act, the relationship of the person to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the person as~~

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117 ~~a consequence of the defendant's presence, and any other fact~~
 118 ~~that the court deems relevant; or~~

119 ~~(e) The age of the sexual offense victim or witness when the~~
 120 ~~sexual offense occurred, the relationship of the sexual offense~~
 121 ~~victim or witness to the parties in the case or to the defendant~~
 122 ~~in a criminal action, the degree of emotional trauma that will~~
 123 ~~result to the sexual offense victim or witness as a consequence~~
 124 ~~of the defendant's presence, and any other fact that the court~~
 125 ~~deems relevant.~~

126 ~~(5)(4)~~ In addition to such other relief provided by law,
 127 the court may enter orders it deems just and appropriate for the
 128 protection of limiting the number of times that a child, a
 129 person who has an intellectual disability, or a sexual offense
 130 victim or witness, including limiting the number of times a
 131 victim or witness may be interviewed, limiting the length and
 132 scope of a deposition, requiring a deposition to be taken only
 133 by written questions, requiring a deposition to be in the
 134 presence of a trial judge or magistrate, sealing the tape or
 135 transcript of a deposition until further order of the court,
 136 allowing use of a therapy animal or facility dog ~~prohibiting~~
 137 ~~depositions of the victim or witness,~~ requiring the submission
 138 of questions before the examination of the victim or witness,
 139 setting the place and conditions for interviewing the victim or
 140 witness or for conducting any other proceeding, or permitting or
 141 prohibiting the attendance of any person at any proceeding. The
 142 court shall enter any order necessary to protect the rights of
 143 all parties, including the defendant in any criminal action.

144 (6) Section 794.022 applies to depositions taken pursuant
 145 to this section. If a deposition is taken pursuant to this

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146 section, the court must appoint a guardian ad litem or other
 147 advocate pursuant to s. 914.17 to represent the deponent for the
 148 purposes of the deposition if the deponent does not already have
 149 counsel.

150 (7) The court, on its own motion or that of any party, may
 151 request the aid of an interpreter, as provided in s. 90.606, to
 152 aid the parties in formulating methods of questioning the person
 153 who has an intellectual disability or the sexual offense victim
 154 or witness and in interpreting his or her answers during
 155 proceedings conducted under this section.

156 (8) The court shall make specific findings of fact on the
 157 record as to the basis for its orders and rulings under this
 158 section

159 ~~(5) The court may set any other conditions it finds just~~
 160 ~~and appropriate when taking the testimony of a victim or witness~~
 161 ~~under the age of 18, a person who has an intellectual~~
 162 ~~disability, or a sexual offense victim or witness, including the~~
 163 ~~use of a therapy animal or facility dog, in any proceeding~~
 164 ~~involving a sexual offense or child abuse, abandonment, or~~
 165 ~~neglect.~~

166 ~~(a) When deciding whether to permit a victim or witness~~
 167 ~~under the age of 18, a person who has an intellectual~~
 168 ~~disability, or a sexual offense victim or witness to testify~~
 169 ~~with the assistance of a therapy animal or facility dog, the~~
 170 ~~court shall consider the age of the child victim or witness, the~~
 171 ~~age of the sexual offense victim or witness at the time the~~
 172 ~~sexual offense occurred, the interests of the child victim or~~
 173 ~~witness or sexual offense victim or witness, the rights of the~~
 174 ~~parties to the litigation, and any other relevant factor that~~

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175 ~~would facilitate the testimony by the victim or witness under~~
176 ~~the age of 18, person who has an intellectual disability, or~~
177 ~~sexual offense victim or witness.~~

178 ~~(b) For purposes of this subsection the term:~~

179 ~~1. "Facility dog" means a dog that has been trained,~~
180 ~~evaluated, and certified as a facility dog pursuant to industry~~
181 ~~standards and provides unobtrusive emotional support to children~~
182 ~~and adults in facility settings.~~

183 ~~2. "Therapy animal" means an animal that has been trained,~~
184 ~~evaluated, and certified as a therapy animal pursuant to~~
185 ~~industry standards by an organization that certifies animals as~~
186 ~~appropriate to provide animal therapy.~~

187 Section 2. By October 1, 2022, the University of South
188 Florida, in consultation with the Florida Alliance to End Human
189 Trafficking, shall develop and submit a proposal to the Attorney
190 General for the creation of a unified statewide data repository
191 for anonymous human trafficking data. The proposal must house
192 the data repository within the University of South Florida's
193 Trafficking in Persons-Risk to Resilience Research Lab and must
194 outline the need for a unified data repository to serve as a
195 portal to collect and analyze anonymous statewide human
196 trafficking data, to inform statewide efforts to combat human
197 trafficking, and to better serve victims of human trafficking.
198 The proposal should consider and recommend various funding
199 mechanisms to establish and operate the data repository,
200 including the potential for use of institutional and privately-
201 donated funds.

202 Section 3. This act shall take effect upon becoming a law.

Georgiades, Celia

From: Ruiz, Judith
Sent: Wednesday, January 12, 2022 6:32 PM
To: Burgess, Danny; Georgiades, Celia; Cibula, Thomas; Brown, Natalie
Subject: SB 772 Vulnerable Victims and Witnesses be placed in the next committee agenda

January 12, 2022

Honorable Senator Danny Burgess
Chair
Judiciary Committee

Honorable Chair Burgess,

I respectfully request that SB 772 Vulnerable Victims and Witnesses be placed in the next committee agenda.

Vulnerable Victims and Witnesses; Revising the standard for orders to protect certain testifying victims and witnesses; prohibiting depositions of certain victims and witnesses in certain proceedings without a showing of good cause; requiring the court to appoint a guardian ad litem or other advocate for the deponent under certain circumstances; revising the applicability of provisions relating to human trafficking victims seeking expunction of certain records.

Sincerely,



Senator Manny Diaz, Jr.
Florida Senate, District 36

CC: Tom Cibula, Staff Director
Celia Geogiades, Committee Administrative Assistant
Natalie Brown, Legislative Assistant

Senior Legislative Assistant/Chief of Staff
District 36
Senator Manny Diaz Jr.
10001 NW 87 Avenue
Hialeah, Florida 33016
305-364-3073

306 Senate Building

The Florida Senate

APPEARANCE RECORD

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

1/31/22

Meeting Date

772

Bill Number or Topic

Judiciary

Committee

Amendment Barcode (if applicable)

Name

Nancy Daniels

Phone

850 228-7444

Address

103 N. Gadsden St.

Email

ndaniels@flpda.org

Street

Tallahassee

City

State

FL

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

APPEARANCE RECORD

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

1/31/22
Meeting Date

JUDICIARY
Committee

CS/SB 772
Bill Number or Topic

Amendment Barcode (if applicable)

Name THEODORE MANNELLI

Phone 850-212-5372

Address 1350 NW 12 AVE
Street

Email tmannelli45@gmail.com

MIAMI FL 33136
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:

STATE ATTY, 11th CIR

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 Judiciary

BILL: CS/SB 1304

INTRODUCER: Judiciary Committee and Senator Gruters

SUBJECT: Public Records/Trust Proceedings

DATE: February 1, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	Fav/CS
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1304 creates a public records exemption for certain trust proceedings and other filings held by a court. The bill provides that, in trust proceedings in which a family trust company, licensed family trust company, or foreign licensed family trust company is a party, the identities of those who establish, administer, or benefit from a trust and any information relating to the trust are confidential and exempt. The court may not release to the public any of the sealed documents or information contained therein, but must make them available to the settlor, a fiduciary or beneficiary and his or her attorney, or any other person if the court determines there is a compelling need for releasing the information requested.

This exemption is not subject to the Open Government Sunset Review Act because it applies solely to judicial branch records.

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 July 1, 2022.

II. Present Situation:

A trust is a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another

person. A trust arises as a result of a manifestation of an intention to create it.¹ Trusts are governed by statute.²

Trust companies are for-profit business organizations that are authorized to engage in trust business and to act as a fiduciary for the general public. A family may form and operate private or family trust companies that provide trust services similar to those that can be provided by an individual trustee or a financial institution. However, these family trust companies are owned exclusively by family members and may not provide fiduciary services to the public. These private, family trust companies are generally formed to manage the wealth of high net-worth families in lieu of traditional individual or institutional trustee arrangements for a variety of personal, investment, regulatory, and tax reasons. In 2014, Florida statutes were amended to authorize the formation of family trust companies, licensed family trust companies, and foreign licensed family trust companies.³ The Florida Office of Financial Regulation may investigate applications for licensure or registration, require annual renewals and other regulatory filings from licensees and registrants, and conduct periodic examinations of family trust companies, licensed family trust companies, and foreign licensed family trust companies.

The books and records of a family trust company, licensed family trust company, or foreign licensed family trust company are confidential, with limited exceptions.⁴ Willful violation of the confidentiality is a third degree felony.⁵

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.⁶ 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.⁷

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.⁸ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁹ Lastly, ch. 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies. Chapter 119, F.S., does not apply to judicial branch records.¹⁰

¹ 55A Fla. Jur 2d Trusts § 1.

² See generally, ch. 736, F.S.

³ Chapter 2014-97, L.O.F., creating chapter 662, F.S.

⁴ Section 662.146, F.S.

⁵ Section 662.146(2)(c), F.S.

⁶ FLA. CONST. art. I, s. 24(a).

⁷ *Id.*

⁸ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022).

⁹ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

¹⁰ *Times Pub. Co. v. Ake*, 660 So.2d 255 (Fla. 1995).

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act¹¹ (the Act), prescribe a legislative review process for newly created or substantially amended¹² public records or open meetings exemptions, with specified exceptions. The Act does not apply to an exemption that applies solely to the State Court System.¹³

III. Effect of Proposed Changes:

CS/SB 1304 creates a public records exemption for certain trust proceedings and other filings held by a court. The bill provides that, in trust proceedings in which a family trust company, licensed family trust company, or foreign licensed family trust company is a party, the identities of those who establish, administer, or benefit from a trust and any information relating to the trust are confidential and exempt from article I, section 24(a) of the State Constitution and must be protected in any court proceeding or filing related to the trust. The court must seal any document filed with the court in the trust proceeding, including, but not limited to, the instrument on which the trust is based; any petitions, briefs, or inventories; any statement or report filed by a fiduciary; any court orders; and any other document in the court case file.

The court may not release to the public any of the sealed documents or information contained therein, but shall make them available to the following individuals:

- The settlor.
- Any fiduciary for the trust.
- Any beneficiary of the trust.
- An attorney for the settlor, a fiduciary, or a beneficiary of the trust.
- Any other person if, upon a showing of a specific interest in the trust or a transaction relating to the trust or an asset held or previously held by the trust, the court determines there is a compelling need for releasing the information requested.

This bill provides a public necessity statement as required by article I, section 24(c) of the State Constitution. The public necessity statement provides that:

The Legislature finds that it is a public necessity that trust proceedings involving family trust companies, licensed family trust companies, or foreign licensed family trust companies be made confidential and exempt from s. 24(a), Article I of the State Constitution. Public disclosure in trust proceedings of information relating to the clients, family members, members, or stockholders of a family trust company, licensed family trust company, or foreign licensed family trust company would vitiate other protections granted by law to such companies and their constituents. In addition, trust proceedings often involve large sums of money or vulnerable people who could be targeted for exploitation or abuse. Public disclosure of sensitive family and financial information in trust proceedings can result in

¹¹ Section 119.15, F.S.

¹² 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.

¹³ Section 119.15(2)(b), F.S.

specific harm to beneficiaries and other interested parties in such cases. Therefore, the Legislature finds that the need to protect the identities of beneficiaries of trusts and the sensitive financial information contained in such proceedings is sufficiently compelling to override the state's public policy of open government and that the protection of such information cannot be accomplished without this exemption.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, section 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 certain court records related to a family trust company, licensed family trust company, or foreign licensed family trust company, thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, section 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, section 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 confidential financial information contained in certain court files. 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:

CS/SB 1304 does not appear to have a fiscal impact on state or local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 662.1465 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Judiciary on January 31, 2022:

The committee substitute narrowed the exemption by clarifying that it only applies to the three forms of family trust companies, not to all trusts.

B. Amendments:

None.



848676

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/31/2022	.	
	.	
	.	
	.	

The Committee on Judiciary (Gruters) recommended the following:

Senate Amendment

Delete lines 19 - 61
and insert:

662.1465 Confidentiality of family trust company
proceedings and other filings.—In trust proceedings in which a
family trust company, licensed family trust company, or foreign
licensed family trust company is a party, the identities of
those who establish, administer, or benefit from a trust and any
information relating to the trust are confidential and exempt
from s. 24(a), Art. I of the State Constitution and must be



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protected in any court proceeding or filing related to the
trust. The court shall seal any document filed with the court in
a trust proceeding in which a family trust company, licensed
family trust company, or foreign licensed family trust company
is a party, including, but not limited to, the instrument on
which the trust is based; any petitions, briefs, or inventories;
any statement or report filed by a fiduciary; any court orders;
and any other document in the court case file. The court may not
release to the public any of the sealed documents or information
contained therein, but shall make them available to the
following individuals:

(1) The settlor.

(2) Any fiduciary for the trust.

(3) Any beneficiary of the trust.

(4) An attorney for the settlor, a fiduciary, or a
beneficiary of the trust.

(5) Any other person if, upon a showing of a specific
interest in the trust or a transaction relating to the trust or
an asset held or previously held by the trust, the court
determines there is a compelling need for releasing the
information requested.

Section 2. The Legislature finds that it is a public
necessity that trust proceedings involving family trust
companies, licensed family trust companies, or foreign licensed
family trust companies be made confidential and exempt from s.
24(a), Article I of the State Constitution. Public disclosure in
such trust proceedings of information relating to the clients,
family members, members, or stockholders of a family trust
company, licensed family trust company, or foreign licensed



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41 family trust company would vitiate other protections granted by
42 law to such companies and their constituents. In addition, such
43 trust proceedings often involve large sums of money or
44 vulnerable people who could be targeted for exploitation or
45 abuse. Public disclosure of sensitive family and financial
46 information in trust proceedings can result in specific harm to
47 beneficiaries and other interested parties in these cases.
48 Therefore, the Legislature finds that the need to protect the
49 identities of beneficiaries of trusts for which a family trust
50 company, licensed family trust company, or foreign licensed
51 family trust company is a trustee and the sensitive financial
52 information contained in

By Senator Gruters

23-00530A-22

20221304__

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 662.1465, F.S.; making the identities of beneficiaries
 4 and specified individuals and certain documents in
 5 trust proceedings when a family trust company,
 6 licensed family trust company, or foreign licensed
 7 family trust company is a party confidential and
 8 exempt; requiring the court to seal any documents
 9 filed with the court in such proceedings; prohibiting
 10 the court from releasing to the public any of the
 11 sealed documents or information contained therein;
 12 providing exceptions; providing a statement of public
 13 necessity; providing an effective date.
 14
 15 Be It Enacted by the Legislature of the State of Florida:
 16
 17 Section 1. Section 662.1465, Florida Statutes, is created
 18 to read:
 19 662.1465 Confidentiality of certain trust proceedings and
 20 other filings.—In trust proceedings in which a family trust
 21 company, licensed family trust company, or foreign licensed
 22 family trust company is a party, the identities of those who
 23 establish, administer, or benefit from a trust and any
 24 information relating to the trust are confidential and exempt
 25 from s. 24(a), Art. I of the State Constitution and must be
 26 protected in any court proceeding or filing related to the
 27 trust. The court shall seal any document filed with the court in
 28 the trust proceeding, including, but not limited to, the
 29 instrument on which the trust is based; any petitions, briefs,

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

23-00530A-22

20221304__

30 or inventories; any statement or report filed by a fiduciary;
 31 any court orders; and any other document in the court case file.
 32 The court may not release to the public any of the sealed
 33 documents or information contained therein, but shall make them
 34 available to the following individuals:
 35 (1) The settlor.
 36 (2) Any fiduciary for the trust.
 37 (3) Any beneficiary of the trust.
 38 (4) An attorney for the settlor, a fiduciary, or a
 39 beneficiary of the trust.
 40 (5) Any other person if, upon a showing of a specific
 41 interest in the trust or a transaction relating to the trust or
 42 an asset held or previously held by the trust, the court
 43 determines there is a compelling need for releasing the
 44 information requested.
 45 Section 2. The Legislature finds that it is a public
 46 necessity that trust proceedings involving family trust
 47 companies, licensed family trust companies, or foreign licensed
 48 family trust companies be made confidential and exempt from s.
 49 24(a), Article I of the State Constitution. Public disclosure in
 50 trust proceedings of information relating to the clients, family
 51 members, members, or stockholders of a family trust company,
 52 licensed family trust company, or foreign licensed family trust
 53 company would vitiate other protections granted by law to such
 54 companies and their constituents. In addition, trust proceedings
 55 often involve large sums of money or vulnerable people who could
 56 be targeted for exploitation or abuse. Public disclosure of
 57 sensitive family and financial information in trust proceedings
 58 can result in specific harm to beneficiaries and other

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

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20221304__

59 interested parties in such cases. Therefore, the Legislature
60 finds that the need to protect the identities of beneficiaries
61 of trusts and the sensitive financial information contained in
62 such proceedings is sufficiently compelling to override the
63 state's public policy of open government and that the protection
64 of such information cannot be accomplished without this
65 exemption.

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



The Florida Senate

Committee Agenda Request

To: Senator Danny Burgess, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 25, 2022

I respectfully request that **Senate Bill #1304**, relating to Public Records/Trust Proceedings, be placed on the:

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

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Joe Gruters". The signature is written in a cursive, flowing style.

Joe Gruters

Cc: Tom Cibula, Staff Director
Celia Georgiades, Committee Administrative Assistant

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1368

INTRODUCER: Senator Gruters

SUBJECT: Trusts

DATE: January 28, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	Favorable
2.			BI	
3.			RC	

I. Summary:

SB 1368 amends trust law to:

- Extend the alternative perpetuities limit on the life of a trust from 360 years to 1,000 years.
- Allow a trustee to elect a simplified form of periodic accounting, provided that the accounting contains sufficient notice of trust assets, debts, and transactions during the accounting period.
- Simplify service of trust notices furnished by e-mail, including waiver of the current law requirement that the recipient annually agree to electronic notice.
- Expand the scope of representation by a parent to include unborn descendants of an unborn child.
- Extend the allowable life of a noncharitable trust to 1,000 years.
- Extend the authority of a trust to reimburse the grantor for certain tax liabilities to apply to a trust formed under the laws of a foreign jurisdiction if the trust has a principal place of administration in the state.

The bill takes effect July 1, 2022.

II. Present Situation:

Trusts - In General

A trust is a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person. A trust arises as a result of a manifestation of an intention to create it. Except as otherwise provided, the Florida Trust Code applies to express trusts, charitable or noncharitable, and trusts created pursuant to a law, judgment, or decree that requires the trust to be administered in the manner of an express trust. The Code does not apply to: constructive or resulting trusts; conservatorships; custodial arrangements pursuant to the Florida Uniform Transfers to Minors

Act; business trusts providing for certificates to be issued to beneficiaries; common trust funds; trusts created by the form of the account or by the deposit agreement at a financial institution; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another. The Code does not apply to any land trust under statute except to the extent as otherwise provided by statute.¹

The Trust Code provides a comprehensive administrative framework for operation of a trust. However, the express terms of a trust agreement prevail over a conflicting provision in statute, except for provisions that are deemed mandatory.² The following statutory terms of a trust are mandatory:

- The requirements for creating a trust.
- The duty of the trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.
- The requirement that a trust have a purpose that is lawful, not contrary to public policy, and possible to achieve.
- The periods of limitation for commencing a judicial proceeding.
- The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice.
- The requirements for designation of a principal place of administration of the trust and the requirements for the designation of a jurisdiction the law of which determines the meaning and effect of the terms of a trust.
- The jurisdiction and venue provisions.
- The restrictions on the designation of representative.
- The formalities required for the execution of a trust.
- The power of the court to modify or terminate a trust.
- The ability to modify a trust under the requirements for nonjudicial modification of an irrevocable trust, except as provided in the Code for certain trusts created after December 31, 2000.
- The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust.
- The trustee's duty to pay expenses and obligations of the settlor's estate.
- The trustee's duty to file a notice of trust at the settlor's death.
- The right of a trustee to decline a trusteeship and the right of a trustee to resign a trusteeship.
- The power of the court to require, dispense with, modify, or terminate a bond.
- The power of the court to adjust a trustee's compensation specified in the terms of the trust that is unreasonably low or high.
- The duty of the trustee to notify qualified beneficiaries of an irrevocable trust of the existence of the trust, of the identity of the trustee, and of their rights to trust accountings.
- The duty of the trustee to provide a complete copy of the trust instrument and to account to qualified beneficiaries.

¹ 55A FLA. JUR. 2D TRUSTS § 1.

² Section 736.0105, F.S.

- The duty of the trustee to respond to the request of a qualified beneficiary of an irrevocable trust for relevant information about the assets and liabilities of the trust and the particulars relating to trust administration.
- The effect of an exculpatory term.
- The rights of a person other than a trustee or beneficiary.
- The effect of a penalty clause for contesting a trust.

Furthermore, the common law of trusts and principles of equity supplement the Code except to the extent modified by the Code or another law of Florida.

Allowable Lifetime of a Trust

The maximum allowable life of a trust depends on the type of trust. There is no statutory minimum life of a trust and no limit on creation of a trust term of less than the maximum.

Private Trusts and the Rule Against Perpetuities

The legal life of a private trust was until recently governed solely by the common law Rule Against Perpetuities. The rule originated from an English court decision in 1682. The rule provides that a nonvested (also known as contingent) interest³ in property or a power of appointment in a trust is invalid unless it can be said, with absolute certainty, that it will either vest or terminate no later than 21 years after the death of an individual alive at the creation of the trust interest. The primary objective of the rule is to prevent perpetual control and unreasonable restraints upon the alienation of property by invalidating, after a specific time, any future nonvested interest created either by a will, deed, or power of appointment.⁴

In 1988, the Florida Legislature enacted the Florida Uniform Statutory Rule Against Perpetuities⁵ which essentially codified the common law Rule Against Perpetuities.⁶ However, the uniform act also includes a “wait and see” provision that alternatively allows the valid duration of a trust to be 90 years⁷ from the date of the trust’s creation. Under the 1988 law, a property interest or the power of appointment must vest or terminate within a “life in being plus 21 years” or within the 90-year period in order to be valid. The simplicity of the 90-year rule avoids the difficult interpretations of the common law rule.

There has been a trend among states⁸ to eliminate or limit the rule against perpetuities in order to facilitate the establishment of long-term, multi-generational trusts (sometimes referred to as

³ Contingent remainders, executory interests, vested remainders subject to open (class gifts), options to purchase (not attached to a leasehold), and rights of first refusal are subject to the Rule Against Perpetuities. Vested interests, reversion, possibilities of reverter, charity to charity dispositions, and rights of entry are not subject to the rule.

⁴ A power of appointment is a power delegated to another to exercise prescribed powers on behalf of the person who delegated the powers.

⁵ Thirty states (including Florida) have adopted the National Conference of Commissioners on Uniform State Law’s Uniform Statutory Rule Against Perpetuities. <https://www.uniformlaws.org/committees/community-home?CommunityKey=addf3263-af92-4421-a83c-2ef7bc9a1b94>

⁶ Chapter 88-40, Laws of Fla; s. 689.225, F.S.

⁷ The 90-year period was intended to approximate an average time period that would apply in a 21-years plus a life in being situation. See USRAP comments, 8B ULA 342.

⁸ E.g., Delaware, Illinois, Kentucky, Mississippi, Ohio, Pennsylvania, Rhode Island, Vermont and Virginia.

“dynasty trusts”) and to assist individuals in limiting federal estate and generation-skipping transfer taxes.⁹ However, Congress has reacted accordingly. Although it is possible to shield a trust from federal estate and generation-skipping transfer taxes, as long as the interests of the trust are valid for an ascertainable period, there are limits on how much can be placed into these trusts, and taxes may be owed upon transfer at some point or upon termination. Overall, the federal tax laws have been interpreted to mean that if a trust has no limit on its existence and the beneficiary exercises power in such a way to extend the trust forever, the exercise by a beneficiary of a power of appointment could potentially and immediately trigger the gift or estate tax.¹⁰ In 2000, Florida avoided this potential tax issue and addressed the desire to allow longer legacy trusts by extending the allowable length of a private trust from 90 years to 360 years for trusts created after December 31, 2000.¹¹

Charitable and Noncharitable Trusts

A charitable trust is created for the benefit of one or more charitable purposes such as the relief of poverty; the advancement of arts, sciences, education, or religion; or the promotion of health, governmental, or municipal purposes.¹² A charitable trust is not governed by the Rule Against Perpetuities and thus may have an unlimited life.¹³

A noncharitable trust is a trust with a purpose that is not charitable and no individual beneficiaries. Noncharitable trusts are limited to 21 years existence.¹⁴

Mandatory Duty to Account to Qualified Beneficiaries

A trustee of an irrevocable trust must provide an accounting to the qualified beneficiaries at least annually and upon termination of the trust or upon a change in trustee.¹⁵ This duty may not be modified by the trust agreement.¹⁶ An accounting must be a reasonably understandable report from the date of the last accounting or, if none, from the date on which the trustee became accountable, and it must adequately disclose:

- All cash and property transactions.
- All significant transactions affecting administration during the accounting period.
- Compensation paid to the trustee and the trustee’s agents.
- Gains and losses realized during the accounting period.

⁹ The federal generation-skipping transfer tax was designed to diminish the ability to avoid successive transfer taxes. See s. 2601 et seq. Internal Revenue Code.

¹⁰ For example, Delaware enacted law that allowed trust beneficiaries to avoid federal estate taxes through a manipulation of the rule against perpetuities and essentially create a trust in perpetual existence. As long as the beneficiaries of each generation took the necessary action to extend the period in the rule against perpetuities and the assets remained inside the trust, the trust would not violate the Rule Against Perpetuities. In response, Congress enacted sections 2041(a)(3) and 2514(d) of the Internal Revenue Code, also known as the “Delaware tax trap,” to address the Delaware law. The “Delaware tax trap” states that if a beneficiary exercises a power that allows vesting of the trust property to be postponed “for a period ascertainable without regard to the date of the creation of the [beneficiary’s] power,” the exercise of the beneficiary’s power triggers a gift tax or estate tax.

¹¹ Chapter 2000-245, Laws of Fla.; s. 689.225(2)(f), F.S.

¹² Section 736.0405(1), F.S.

¹³ Section 689.225(5)(e), F.S.

¹⁴ Section 736.0409(1), F.S.

¹⁵ Section 736.0813(1)(d), F.S.

¹⁶ Section 736.0105(2)(s), F.S.

- All receipts and disbursements.
- Trust assets on hand at the close of the accounting period, showing the asset acquisition value or carrying value and the estimated current value.
- Known noncontingent liabilities.
- Significant transactions that do not affect the amount for which the trustee is accountable, including name changes in investment holdings, adjustments to carrying value, a change of custodial institutions, and stock splits.
- The allocation of receipts, disbursements, accruals, or allowances between income and principal when the allocation affects the interest of any beneficiary of the trust.¹⁷

A qualified beneficiary may waive the accounting requirement.¹⁸

Notices from a Trust by Electronic Means

Numerous provisions in the Trust Code require that a notice or document be given to a person related to a trust. In general, notice “must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document.”¹⁹ While still allowing traditional notice by mail or personal delivery, the Trust Code has been modernized to allow notice and delivery by “electronic means” without preference for any specific technology. Where delivery is solely by posting on an electronic account or website, the following requirements must be met:

- The recipient must have signed a written authorization for electronic notice.
- A notice must be provided upon every posting to the online account.
- The recipient must be given an annual notice of his or her legal rights regarding electronic posting, including a notice regarding applicable statutes of limitation.
- The electronic posting must be available for at least 4 years.²⁰

Grantor Trust Reimbursement

If a trust is treated as being owned by a person under the Internal Revenue Code or any similar federal, state, or other tax law, the trustee may, in the trustee’s sole discretion, reimburse the person being treated as the owner for any amount of the person’s personal federal, state, or other income tax liability which is attributable to the inclusion of the trust’s income, capital gains, deductions, or credits in the calculation of the person’s taxable income.²¹ With limited exceptions, this law applies to all trusts.

¹⁷ Section 736.08135, F.S.

¹⁸ Section 736.0813(2), F.S.

¹⁹ Section 736.0109(1), F.S.

²⁰ Section 736.0109(3), F.S.

²¹ Section 736.08145(1), F.S.

III. Effect of Proposed Changes:

Rule Against Perpetuities (Section 1)

Applicable to a trust created on or after July 1, 2022, the 360 year limit on private trusts is extended to 1,000 years. The 360 year limit applies to trusts created after December 31, 2000, and through June 30, 2022.

Mandatory Duty to Account to Qualified Beneficiaries (Sections 2 and 6)

The bill creates an exception to the mandatory comprehensive annual accounting requirement. The bill allows a trustee to furnish a beneficiary a summary statement in lieu of the current comprehensive annual accounting. The statement must show:

- The name of the trust, the trustee furnishing the accounting, and the time period covered by the accounting.
- If a final accounting, a plan for distribution of the remaining assets.
- A summary of the other information currently required to be set out in detail, provided that the summary contains sufficient information to put the beneficiary on notice of the trust assets, liabilities, and transactions during the accounting period.

Where a trustee makes this election, the trustee must, upon request of any beneficiary, make available the detailed information that was used in preparation of the summary accounting.

The ability of a trustee to elect simplified accounting created by this bill is not a mandatory requirement of the Trust Code. Accordingly, a grantor can, when creating the terms of the trust, limit or prohibit the trustee from taking this option and thereby compel comprehensive annual accounting.

This change applies to any accounting period beginning on or after January 1, 2021.

Notices from a Trust by Electronic Means (Section 3)

The bill adds e-mail as an optional form of notice from a trust to an interested person. The notice can be in an attachment to the e-mail or a hyperlink in the e-mail. Any necessary user name, password, or authentication must be furnished to or made available to the person receiving notice by e-mail. Service by e-mail is not subject to the requirements for written authorization, an annual notice of legal rights and applicable statutes of limitation, or for 4 years' availability.

Representation of Future Beneficiaries (Section 4)

The bill expands the authority of a parent to represent and bind the parent's minor child and any unborn child to also give parents the authority to represent and bind an unborn child or unborn descendant, but only if a guardian has not been appointed for the child or descendant.

Life of a Noncharitable Trust (Section 5)

The bill provides that a noncharitable trust may exist up to 1,000 years.

Grantor Trust Reimbursement (Section 7)

The bill expands application of the grantor trust reimbursement for income tax liability to add that a trustee of a foreign trust that has a principal place of administration within the state may agree to grantor trust reimbursement.

Effective Date

The bill takes effect July 1, 2022.

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

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

SB 1368 appears to simplify trust administration and thus could lower the cost of maintaining a trust in the state.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 689.225, 736.0105, 736.0109, 736.0303, 736.0409, 736.08135, and 736.08145.

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 Gruters

23-00531C-22

20221368__

A bill to be entitled

An act relating to trusts; amending s. 689.225, F.S.; revising criteria for application of the rule against perpetuities to trusts created on or after a specified date; amending s. 736.0105, F.S.; specifying that the terms of a trust do not prevail over a trustee's duty to account to qualified beneficiaries upon termination of the trust; providing construction; amending s. 736.0109, F.S.; clarifying circumstances under which notice, or the sending of a document, to a person under the Florida Trust Code is deemed satisfied; amending s. 736.0303, F.S.; specifying circumstances under which a parent may represent and bind the unborn descendants of his or her unborn child or the minor or unborn descendants of his or her minor child; amending s. 736.0409, F.S.; revising the timeframe for which certain noncharitable trusts may be enforced; amending s. 736.08135, F.S.; providing an alternate procedure for trust accountings for trustees under certain circumstances; specifying requirements and applicability; amending s. 736.08145, F.S.; clarifying the application of law governing grantor trust reimbursement; providing an effective date.

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

Section 1. Paragraph (f) of subsection (2) of section 689.225, Florida Statutes, is amended, and paragraph (g) is added to that subsection, to read:

Page 1 of 7

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

23-00531C-22

20221368__

689.225 Statutory rule against perpetuities.—

(2) STATEMENT OF THE RULE.—

(f) As to any trust created after December 31, 2000, through June 30, 2022, this section shall apply to a nonvested property interest or power of appointment contained in a trust by substituting 360 years in place of "90 years" in each place such term appears in this section unless the terms of the trust require that all beneficial interests in the trust vest or terminate within a lesser period.

(g) As to any trust created on or after July 1, 2022, this section shall apply to a nonvested property interest or power of appointment contained in a trust by substituting 1,000 years in place of "90 years" in each place such term appears in this section unless the terms of the trust require that all beneficial interests in the trust vest or terminate within a lesser period.

Section 2. Paragraph (s) of subsection (2) of section 736.0105, Florida Statutes, is amended to read:

736.0105 Default and mandatory rules.—

(2) The terms of a trust prevail over any provision of this code except:

(s) The duty under s. 736.0813(1)(c) and (d) to provide a complete copy of the trust instrument and to account to qualified beneficiaries on termination of the trust. However, this paragraph may not be construed to:

1. Prevent a trustee from voluntarily accounting to qualified beneficiaries of the trust annually or at other times selected by the trustee; or

2. Relieve a trustee from the duty to account to the

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59 qualified beneficiaries annually or at less frequent intervals.

60 Section 3. Subsections (1) and (4) of section 736.0109,
61 Florida Statutes, are amended to read:

62 736.0109 Methods and waiver of notice.—

63 (1) Notice to a person under this code or the sending of a
64 document to a person under this code must be accomplished in a
65 manner reasonably suitable under the circumstances and likely to
66 result in receipt of the notice or document. Permissible methods
67 of notice or for sending a document include first-class mail,
68 personal delivery, delivery to the person's last known place of
69 residence or place of business, a properly directed facsimile or
70 other electronic message including, but not limited to, e-mail,
71 or posting on a secure electronic account or website in
72 accordance with subsection (3). A properly directed e-mail
73 message with an attached notice or document or an included
74 hyperlink through which the recipient can view a notice or
75 document is a permissible method of notice, regardless of
76 whether compliance with subsection (3) is achieved, provided
77 that to the extent access to such attachment or hyperlink
78 requires a username, password, or other specific instructions,
79 the username, password, or other specific instructions are
80 communicated to the recipient of the notice either
81 contemporaneously or upon request.

82 (4) Notice to a person under this code, or the sending of a
83 document to a person under this code by electronic message,
84 including e-mail with an attached notice or document or an
85 included hyperlink through which the recipient can access the
86 notice or document, is complete when the notice or document is
87 sent.

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88 (a) An electronic message is presumed received on the date
89 that the message is sent.

90 (b) If the sender has knowledge that an electronic message
91 did not reach the recipient, the electronic message is deemed to
92 have not been received. The sender has the burden to prove that
93 another copy of the notice or document was sent by electronic
94 message or by other means authorized by this section.

95 Section 4. Subsection (5) of section 736.0303, Florida
96 Statutes, is amended to read:

97 736.0303 Representation by fiduciaries and parents.—To the
98 extent there is no conflict of interest between the
99 representative and the person represented or among those being
100 represented with respect to a particular question or dispute:

101 (5) A parent may represent and bind the parent's unborn
102 child and the unborn descendants of that unborn child, or the
103 parent's minor child and the minor or unborn descendants of the
104 minor child, if a guardian of the property for the unborn child,
105 minor child, or their descendants has not been appointed.

106 Section 5. Subsection (1) of section 736.0409, Florida
107 Statutes, is amended to read:

108 736.0409 Noncharitable trust without ascertainable
109 beneficiary.—Except as otherwise provided in s. 736.0408 or by
110 another provision of law, the following rules apply:

111 (1) A trust may be created for a noncharitable purpose
112 without a definite or definitely ascertainable beneficiary or
113 for a noncharitable but otherwise valid purpose to be selected
114 by the trustee. The trust may not be enforced for more than
115 1,000 ~~21~~ years.

116 Section 6. Present subsection (3) of section 736.08135,

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Florida Statutes, is redesignated as subsection (4) and amended, and a new subsection (3) is added to that section, to read:

736.08135 Trust accountings.—

(3) Notwithstanding subsections (1) and (2), a trustee may elect, for any accounting period, to provide a statement to any beneficiary which indicates that the trustee has made such an election for that period and which includes the following:

(a) The information required by paragraph (2)(a) and, if applicable, the information required by paragraph (2)(f); and

(b) A financial statement for the trust prepared by a certified public accountant which summarizes the information specified in paragraphs (2)(b)-(e), provided that such financial statement contains sufficient information to put the beneficiary on notice of the trust's comprehensive assets and liabilities as well as of the transactions occurring during the accounting period. For example, the financial statement may report the aggregate amounts of all cash and property transactions, gains, losses, receipts, expenses, disbursements, accruals, or allowances occurring within the accounting period for each such category rather than report each individual transaction or accounting item as a separate entry.

For purposes of this chapter, a statement that a trustee provides to a beneficiary of the trust pursuant to this subsection is deemed to be a trust accounting that adequately discloses the information required in subsection (2). Any trustee that makes the election provided in this subsection shall, upon request of any beneficiary of the trust within the limitations period under s. 736.1008, make available the

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detailed information necessary for preparation of the statement to the beneficiary within 30 days after such request.

~~(4)-(3)~~ Subsections (1) and (2) govern the form and content of all trust accountings rendered for any accounting periods beginning on or after January 1, 2003, and all trust accountings rendered on or after July 1, 2018. The election provided in subsection (3) for trustees is available for any accounting periods beginning on or after January 1, 2021. This subsection does not affect the beginning period from which a trustee is required to render a trust accounting.

Section 7. Subsection (2) of section 736.08145, Florida Statutes, is amended to read:

736.08145 Grantor trust reimbursement.—

(2) This section applies to all trusts that are governed by the laws of this state or that have a principal place of administration within this state, whether created on, before, or after July 1, 2020, unless:

(a) The trustee provides written notification that the trustee intends to irrevocably elect out of the application of this section, at least 60 days before the effective date of such election, to the person treated as the owner of all or a portion of the trust under s. 671 of the Internal Revenue Code or any similar federal, state, or other tax law and to all persons who have the ability to remove and replace the trustee.

(b) Applying this section would prevent a contribution to the trust from qualifying for, or would reduce, a federal tax benefit, including a federal tax exclusion or deduction, which was originally claimed or could have been claimed for the contribution, including:

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- 175 1. An exclusion under s. 2503(b) or s. 2503(c) of the
176 Internal Revenue Code;
177 2. A marital deduction under s. 2056, s. 2056A, or s. 2523
178 of the Internal Revenue Code;
179 3. A charitable deduction under s. 170(a), s. 642(c), s.
180 2055(a), or s. 2522(a) of the Internal Revenue Code; or
181 4. Direct skip treatment under s. 2642(c) of the Internal
182 Revenue Code.
183 Section 8. This act shall take effect July 1, 2022.



The Florida Senate

Committee Agenda Request

To: Senator Danny Burgess, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 25, 2022

I respectfully request that **Senate Bill #1368**, relating to Trusts, be placed on the:

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

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Joe Gruters". The signature is written in a cursive, flowing style.

Joe Gruters

Cc: Tom Cibula, Staff Director
Celia Georgiades, Committee Administrative Assistant

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 974

INTRODUCER: Judiciary Committee and Senator Gruters

SUBJECT: Sovereign Immunity

DATE: February 1, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	Fav/CS
2.			CA	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 974 increases the limits of the state's waiver of sovereign immunity from \$200,000 per injured person and \$300,000 per incident to \$300,000 per injured person and \$400,000 per incident. The limits must be adjusted for inflation every ten years in the future.

The bill appears to have an indeterminate negative fiscal impact on state and local governments.

The bill is effective July 1, 2022.

II. Present Situation:

Overview of Sovereign Immunity

Sovereign immunity is defined as: "A government's immunity from being sued in its own courts without its consent."¹ The doctrine had its origin with the judge-made law of England. The basis of the existence of the doctrine of sovereign immunity in the United States was explained as follows:

A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be

¹ BLACK'S LAW DICTIONARY (8th ed. 2004)

no legal right as against the authority that makes the law on which the right depends.²

The State Constitution authorizes the Legislature to enact laws that permit suits against the state and its subdivisions. Currently, tort suits against the state and its subdivisions are allowed, but collectability of judgments is limited to \$200,000 per person and \$300,000 per incident. Damaged persons seeking to recover amounts in excess of the limits may request that the Legislature enact a claim bill.

Florida Sovereign Immunity Law

Florida has adopted the common law of England as it existed on July 4, 1776.³ This adoption of English common law includes the doctrine of sovereign immunity. The doctrine of sovereign immunity was in existence centuries before the Declaration of Independence.⁴

The Legislature was first expressly authorized to waive the state's sovereign immunity under s. 19, Art. IV, State Const. (1868).⁵ The Legislature again was expressly authorized to waive the state's sovereign immunity under s. 13, Art. X, State Const. (1968). Section 13, Art. X, State Const. (1968) states:

Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.

Although the first general waiver of the state's sovereign immunity was not adopted until 1969, "one . . . could always petition for legislative relief by means of a claims bill."⁶ The first claim bill was passed by the Legislative Council of the Territory of Florida in 1833.⁷ The claim bill authorized payment to a person who supplied labor and building materials for the first permanent capitol building.⁸

Statutory Waivers of Sovereign Immunity

The 1969 Legislature enacted s. 768.15, F.S., the state's first general waiver of sovereign immunity.⁹ The 1969 Legislature also adopted another law that provided for the repeal of s. 768.15, F.S., after a year in effect.¹⁰

² *Cauley v. City of Jacksonville*, 403 So. 2d 379, 381 (Fla. 1981) (quoting *Kawananakoa v. Polyblank*, 205 U.S. 349, 353 (1907)).

³ Section 2.01, F.S. English common law that is inconsistent with state or federal law is not included.

⁴ *North Carolina Dept. of Transp. v. Davenport*, 432 S.E.2d 303, 305 (N.C. 1993).

⁵ Section 19, Art. VI, State Const. (1868), states: "Provision may be made by general law for bringing suit against the State as to all liabilities now existing or hereafter originating."

⁶ *Cauley*, 403 So. 2d at note 5.

⁷ D. Stephen Kahn, *Legislative Claim Bills: A Practical Guide to a Potent(ial) Remedy*, THE FLORIDA BAR JOURNAL, 23 (April, 1988).

⁸ *Id.*

⁹ Chapter 69-116, Laws of Fla.

¹⁰ Chapter 69-357, Laws of Fla.

In 1973, the Legislature again adopted a law that acted as a general waiver to the state's sovereign immunity.¹¹ The statute, s. 768.28, F.S., was modeled after the Federal Tort Claims Act and remains substantially the same today. Section 768.28(1), F.S. (1973), states:

In accordance with s. 13, Art. X, state constitution, the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, but only to the extent specified in this act. Actions at law against the state or any of its agencies or subdivisions to recover damages in tort for money damages against the state or its agencies or subdivisions for 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 his office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant in accordance with the general laws of this state, may be prosecuted subject to the limitations specified in this act.

Under s. 768.28(5), F.S. (1973), the collectability of tort judgments against the state was limited to \$50,000 per person and \$100,000 per incident. Attorney fees were also limited to 25 percent of the proceeds of judgments or settlements.¹² In 1981, the Legislature increased the amount of damages that could be collected to \$100,000 per person and \$200,000 per incident.¹³ In 2010, the Legislature increased the limits to \$200,000 per person and \$300,000 per incident.¹⁴

Cost of Florida's Waiver of Sovereign Immunity

The exact cost of the state's waiver of sovereign immunity under s. 768.28, F.S., is unknown. No centralized location exists for local government entities, such as cities, counties, school boards, sheriff's offices, special districts, and other entities to record the value of the total claims paid under the current sovereign immunity waiver. Information documenting the cost of the sovereign immunity waiver to state government entities is available from the Division of Risk Management (Division). The Division provides general liability insurance to state agencies up to the amount of the sovereign immunity waiver.¹⁵ The Division also settles and defends tort suits filed against the agencies.

In Fiscal Year 2020-21, the Division paid \$4,189,287 for the resolution of 2,588 general liability claims.¹⁶ Additionally, the Division provides auto liability insurance to state agencies for claims arising out of the use of state vehicles. In Fiscal Year 2020-21, the Division paid \$5,884,341 for the resolution of 478 automobile liability claims.¹⁷

¹¹ Chapter 73-313, Laws of Fla.

¹² Section 768.28(8), F.S. (1973).

¹³ Chapter 81-317, Laws of Fla.

¹⁴ Chapter 2010-26, Laws of Fla.

¹⁵ Section 284.30, F.S.

¹⁶ Department of Financial Services, Division of Risk Management, *Fiscal Year 2021 Annual Report*, at 24 (2021).

¹⁷ *Id.* at 22.

Claim Bill Process

Persons who wish to seek the payment of claims in excess of the statutory limits must have a state legislator introduce a claim bill in the Legislature, which must pass both houses. Once a claim bill is filed, the presiding officer of each house of the Legislature may refer the bill to a Special Master, as well as to one or more committees, for review. Senate and House Special Masters typically hold a joint hearing to determine whether the elements of negligence have been satisfied: duty, breach, causation, and damages.

III. Effect of Proposed Changes:

The bill changes the limits of the waiver of sovereign immunity to \$300,000 per injured person and \$400,000 per incident. The bill provides for adjustment of the limits based on the Consumer Price Index for the Southeast or a successor index of the United States Department of Labor, every 10 years, starting October 1, 2032. The adjustment must be to the nearest \$10,000. By July 1 in the year of an adjustment date, the Department of Financial Affairs must calculate the adjusted values and publish them on its website.

The bill is effective October 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:

Those individuals obtaining judgments from or settlements with the state and its agents and subdivisions may receive additional compensation because of the increase in the liability limits for claims arising on or after October 1, 2022. There is typically a significant time lag from injury to case resolution that will delay the fiscal impact of the bill in the short term.

C. Government Sector Impact:

The potential fiscal impact of increasing the liability limits of state and local governments will be contingent upon the number of claims filed and the value of those claims. The state and its subdivisions may experience an increase in insurance premiums for liability coverage in response to the increase in liability limits. There is typically a significant time lag from injury to case resolution that will delay the fiscal impact of the bill in the short term.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 768.28 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 Judiciary Committee on January 31, 2022:

The committee substitute changed the liability limits, changed the inflation adjustment period, and provided that inflationary adjustments are rounded to the nearest \$10,000. The committee substitute also removed provisions for retroactivity, the ability of an entity to voluntarily pay a claim above the limits without a claim bill, the prohibition on claim bill clauses in insurance contracts, and the extension of a statute of limitations.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/31/2022	.	
	.	
	.	
	.	

The Committee on Judiciary (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (5) of section 768.28, Florida
Statutes, is amended to read:

768.28 Waiver of sovereign immunity in tort actions;
recovery limits; civil liability for damages caused during a
riot; limitation on attorney fees; statute of limitations;
exclusions; indemnification; risk management programs.—

(5) (a) The state and its agencies and subdivisions are



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12 ~~shall be~~ liable for tort claims in the same manner and to the
13 same extent as a private individual under like circumstances,
14 but liability does ~~shall~~ not include punitive damages or
15 interest for the period before judgment. ~~Neither~~ The state, ~~nor~~
16 its agencies, and its ~~or~~ subdivisions are not ~~shall be~~ liable to
17 pay a claim or a judgment by any one person which exceeds the
18 sum of \$300,000 ~~\$200,000~~ or any claim or judgment, or portions
19 thereof, which, when totaled with all other claims or judgments
20 paid by the state or its agencies or subdivisions arising out of
21 the same incident or occurrence, exceeds the sum of \$400,000
22 ~~\$300,000~~. However, a judgment or judgments may be claimed and
23 rendered in excess of these amounts and may be settled and paid
24 pursuant to this section ~~act~~ up to \$300,000 ~~\$200,000~~ or
25 \$400,000, as applicable. The ~~\$300,000, as the case may be, and~~
26 ~~that~~ portion of the judgment that exceeds these amounts may be
27 reported to the Legislature, but may be paid in part or in whole
28 only by further act of the Legislature.

29 (b) Notwithstanding the limited waiver of sovereign
30 immunity under paragraph (a) ~~provided herein~~, the state or an
31 agency or subdivision thereof may agree, within the limits of
32 insurance coverage provided, to settle a claim made or a
33 judgment rendered against it without further action by the
34 Legislature, but the state or agency or subdivision thereof does
35 ~~shall~~ not waive ~~be deemed to have waived~~ any defense of
36 sovereign immunity or increase ~~to have increased~~ the limits of
37 its liability as a result of its obtaining insurance coverage
38 for tortious acts in excess of the \$300,000 ~~\$200,000~~ or \$400,000
39 ~~\$300,000~~ waiver provided in paragraph (a) ~~above~~.

40 (c) The limitations of liability set forth in this



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subsection ~~shall~~ apply to the state and its agencies and subdivisions whether or not the state or its agencies or subdivisions possessed sovereign immunity before July 1, 1974.

(d) Beginning July 1, 2032, and on July 1 every 10 years thereafter, the Department of Financial Services shall adjust the limitations of liability in this subsection, rounded to the nearest \$10,000, to reflect changes in the Consumer Price Index for the Southeast or a successor index as calculated by the United States Department of Labor. After each adjustment, the department must publish the adjusted liability limitation amounts on its website which amounts shall apply to causes of action accruing on or after the October 1 following the adjustment date.

(e) ~~(b)~~ A municipality has a duty to allow the municipal law enforcement agency to respond appropriately to protect persons and property during a riot or an unlawful assembly based on the availability of adequate equipment to its municipal law enforcement officers and relevant state and federal laws. If the governing body of a municipality or a person authorized by the governing body of the municipality breaches that duty, the municipality is civilly liable for any damages, including damages arising from personal injury, wrongful death, or property damages proximately caused by the municipality's breach of duty. The sovereign immunity recovery limits in paragraph (a) do not apply to an action under this paragraph.

Section 2. Sections 45.061, 110.504, 111.071, 163.01, 190.043, 213.015, 252.51, 252.89, 252.944, 260.0125, 284.31, 284.38, 322.13, 337.19, 341.302, 373.1395, 375.251, 381.0056, 393.075, 395.1055, 403.706, 409.993, 455.221, 455.32, 456.009,



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456.076, 471.038, 472.006, 497.167, 513.118, 548.046, 556.106,
589.19, 723.0611, 760.11, 766.1115, 766.112, 768.1355, 768.295,
944.713, 946.5026, 946.514, 961.06, 1002.33, 1002.333, 1002.34,
1002.55, 1002.83, 1002.88, 1006.24, and 1006.261, Florida
Statutes, are reenacted for the purpose of incorporating the
amendments made by this act to s. 768.28, Florida Statutes, in
references thereto.

Section 3. This act applies to claims arising on or after
October 1, 2022.

Section 4. This act shall take effect October 1, 2022.

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to sovereign immunity; amending s.
768.28, F.S.; increasing the statutory limits on
liability for tort claims against the state and its
agencies and subdivisions; requiring the Department of
Financial Services to adjust the limitations on tort
liability every 10 years after a specified date and
publish the adjustments on its website; reenacting ss.
45.061, 110.504, 111.071, 163.01, 190.043, 213.015,
252.51, 252.89, 252.944, 260.0125, 284.31, 284.38,
322.13, 337.19, 341.302, 373.1395, 375.251, 381.0056,
393.075, 395.1055, 403.706, 409.993, 455.221, 455.32,
456.009, 456.076, 471.038, 472.006, 497.167, 513.118,
548.046, 556.106, 589.19, 723.0611, 760.11, 766.1115,



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99 766.112, 768.1355, 768.295, 944.713, 946.5026,
100 946.514, 961.06, 1002.33, 1002.333, 1002.34, 1002.55,
101 1002.83, 1002.88, 1006.24, and 1006.261, F.S., to
102 incorporate the amendments made to s. 768.28, F.S., in
103 references thereto; providing applicability; providing
104 an effective date.

By Senator Gruters

23-00780A-22

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A bill to be entitled

An act relating to sovereign immunity; amending s. 768.28, F.S.; revising the statutory limits on liability for tort claims against the state and its agencies and subdivisions; revising requirements for the state or an agency or a subdivision of the state to agree to settle a claim or judgment; prohibiting an insurance policy from conditioning the payment of benefits on the enactment of a claim bill; specifying that the limitations in effect on the date a final judgment is entered apply to that claim; requiring the Department of Financial Services to adjust the limitations on tort liability every year after a specified date; revising exceptions relating to instituting actions on claims against the state or one of its agencies and to the statute of limitations for such claims; reenacting ss. 45.061, 110.504, 111.071, 163.01, 190.043, 213.015, 252.51, 252.89, 252.944, 260.0125, 284.31, 284.38, 322.13, 337.19, 341.302, 373.1395, 375.251, 381.0056, 393.075, 395.1055, 403.706, 409.993, 455.221, 455.32, 456.009, 456.076, 471.038, 472.006, 497.167, 513.118, 548.046, 556.106, 589.19, 723.0611, 760.11, 766.1115, 766.112, 768.1355, 768.295, 944.713, 946.5026, 946.514, 961.06, 1002.33, 1002.333, 1002.34, 1002.55, 1002.83, 1002.88, 1006.24, and 1006.261, F.S., to incorporate the amendments made to s. 768.28, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (5), paragraph (a) of subsection (6), and subsection (14) of section 768.28, Florida Statutes, are amended to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; civil liability for damages caused during a riot; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.—

(5) (a) The state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, but liability shall not include punitive damages or interest for the period before judgment. Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of \$1 million ~~\$200,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of \$300,000.~~ However, a judgment or judgments may be claimed and rendered in excess of this amount ~~these amounts and may be settled~~ and paid pursuant to this act up to \$1 million per person, \$200,000 or \$300,000, as the case may be, and that portion of the judgment that exceeds this amount ~~these amounts~~ may be reported to the Legislature, and ~~but~~ may be paid in part or in whole ~~only~~ by further act of the Legislature.

(b) Notwithstanding the limited waiver of sovereign immunity provided in paragraph (a) herein, ~~herein~~, the state or an agency or subdivision thereof may agree, ~~within the limits of~~

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59 ~~insurance coverage provided~~, to settle a claim made or a
 60 judgment rendered against it in excess of the waiver provided in
 61 paragraph (a) without further action by the Legislature, but the
 62 state or agency or subdivision thereof shall not be deemed to
 63 have waived any defense of sovereign immunity or to have
 64 increased the limits of its liability as a result of its
 65 obtaining insurance coverage for tortious acts in excess of the
 66 ~~\$200,000 or \$300,000~~ waiver provided in paragraph (a) above. An
 67 insurance policy may not condition the payment of benefits, in
 68 whole or in part, on the enactment of a claim bill.

69 (c) The limitations of liability set forth in this
 70 subsection shall apply to the state and its agencies and
 71 subdivisions whether or not the state or its agencies or
 72 subdivisions possessed sovereign immunity before July 1, 1974.

73 (d) When determining liability limits for a claim, the
 74 limitations of liability in effect on the date a final judgment
 75 is entered shall apply to the claim.

76 (e) Beginning July 1, 2023, and every July 1 thereafter,
 77 the Department of Financial Services shall adjust the
 78 limitations of liability in this subsection to reflect changes
 79 in the Consumer Price Index for the Southeast or a successor
 80 index as calculated by the United States Department of Labor.

81 ~~(f)(b)~~ A municipality has a duty to allow the municipal law
 82 enforcement agency to respond appropriately to protect persons
 83 and property during a riot or an unlawful assembly based on the
 84 availability of adequate equipment to its municipal law
 85 enforcement officers and relevant state and federal laws. If the
 86 governing body of a municipality or a person authorized by the
 87 governing body of the municipality breaches that duty, the

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88 municipality is civilly liable for any damages, including
 89 damages arising from personal injury, wrongful death, or
 90 property damages proximately caused by the municipality's breach
 91 of duty. The sovereign immunity recovery limits in paragraph (a)
 92 do not apply to an action under this paragraph.

93 (6) (a) An action may not be instituted on a claim against
 94 the state or one of its agencies or subdivisions unless the
 95 claimant presents the claim in writing to the appropriate
 96 agency, and also, except as to any claim against a municipality,
 97 county, or the Florida Space Authority, presents such claim in
 98 writing to the Department of Financial Services, within 3 years
 99 after such claim accrues and the Department of Financial
 100 Services or the appropriate agency denies the claim in writing;
 101 except that, if:

102 1. Such claim is for contribution pursuant to s. 768.31, it
 103 must be so presented within 6 months after the judgment against
 104 the tortfeasor seeking contribution has become final by lapse of
 105 time for appeal or after appellate review or, if there is no
 106 such judgment, within 6 months after the tortfeasor seeking
 107 contribution has either discharged the common liability by
 108 payment or agreed, while the action is pending against her or
 109 him, to discharge the common liability; ~~or~~

110 2. Such action is for wrongful death, the claimant must
 111 present the claim in writing to the Department of Financial
 112 Services within 2 years after the claim accrues; or

113 3. Such action arises from a violation of s. 794.011
 114 involving a victim who was younger than the age of 16 at the
 115 time of the act, the claimant may present the claim in writing
 116 at any time pursuant to s. 95.11(9).

23-00780A-22

2022974

(14) Every claim against the state or one of its agencies or subdivisions for damages for a negligent or wrongful act or omission pursuant to this section shall be forever barred unless the civil action is commenced by filing a complaint in the court of appropriate jurisdiction within 4 years after such claim accrues; except that:

(a) An action for contribution must be commenced within the limitations provided in s. 768.31(4); ~~and~~

(b) An action for damages arising from medical malpractice or wrongful death must be commenced within the limitations for such actions in s. 95.11(4); and

(c) An action arising from acts constituting a violation of s. 794.011 involving a victim who was younger than the age of 16 at the time of the act may be commenced at any time pursuant to s. 95.11(9).

Section 2. Sections 45.061, 110.504, 111.071, 163.01, 190.043, 213.015, 252.51, 252.89, 252.944, 260.0125, 284.31, 284.38, 322.13, 337.19, 341.302, 373.1395, 375.251, 381.0056, 393.075, 395.1055, 403.706, 409.993, 455.221, 455.32, 456.009, 456.076, 471.038, 472.006, 497.167, 513.118, 548.046, 556.106, 589.19, 723.0611, 760.11, 766.1115, 766.112, 768.1355, 768.295, 944.713, 946.5026, 946.514, 961.06, 1002.33, 1002.333, 1002.34, 1002.55, 1002.83, 1002.88, 1006.24, and 1006.261, Florida Statutes, are reenacted for the purpose of incorporating the amendments made by this act to s. 768.28, Florida Statutes, in references thereto.

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



The Florida Senate

Committee Agenda Request

To: Senator Danny Burgess, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 12, 2022

I respectfully request that **Senate Bill #974**, relating to Sovereign Immunity, be placed on the:

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

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Joe Gruters".

Joe Gruters

Cc: Tom Cibula, Staff Director
Celia Georgiades, Committee Administrative Assistant

1/31/2022

Meeting Date

Judiciary

Committee

The Florida Senate

APPEARANCE RECORD

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

974 and Amd.

Bill Number or Topic

660804

Amendment Barcode (if applicable)

Name Lindy Kennedy

Phone (850) 201-2096

Address 125 S Gadsden St #300,
Street

Email lindy@snhaf.net

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:

Safety Net Hospital Alliance of FL

☐ 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.

5-001 (08/10/2021)

1/31/22

Meeting Date

Judiciary

Committee

Name

David Cruz

Phone

850-222-9684

Address

PO Box 1757

Email

Street

Tallahassee

FL

32302

City

State

Zip

The Florida Senate

APPEARANCE RECORD

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974/Sovereign Immunity

Bill Number or Topic

660804

Amendment Barcode (if applicable)

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 League of Cities

☐

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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S-001 (08/10/2021)

APPEARANCE RECORD

1-31-22

Meeting Date

974

Bill Number or Topic

Judiciary

Committee

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

Amendment Barcode (if applicable)

Name

Bob Harris

Phone

850-222-6720

Address

2618 Centennial Place

Email

bharris@lawfla.com

Street

TLH

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

Panhandle Area Educational Consortium

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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Meeting Date

1/31/22

Committee

Judiciary

Name

Sabrina Davis

Phone

813-300-5014

Address

5011 SW 47th Way

Email

Sabrinarawr@

Street

Gainesville, FL 32608

City

State

Zip

Amendment Barcode (if applicable)

9174

Bill Number or Topic

NIA

yahoo.
com

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

1/31/22

Meeting Date

SB974

Bill Number or Topic

Judiciary

Committee

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

Amendment Barcode (if applicable)

Name

Marcia Scheppeler

Phone

501-401-7350

Address

712 SE 5th Ave

Email

marciaf12@icloud.com

Street

Stuart

FL

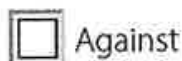
34994

City

State

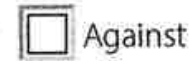
Zip

Speaking:



OR

Waive Speaking:



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

Deliver both copies of this form to
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January 31, 2022
Meeting Date
Judiciary
Committee

SB 974
Bill Number or Topic
NA
Amendment Barcode (if applicable)

Name Stacy Wanker Phone 772-201-2023

Address 201 SE Grove Ave Email stacy@hwrealcstategroup.com
Street
Port St Lucie FL 34983
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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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1/31/22

Meeting Date

974

Bill Number or Topic

Judiciary

Committee

Amendment Barcode (if applicable)

Name

Melody Page - McDonald

Phone

561-676-6892

Address

25 W Plumosa Ln

Email

0072melody@gmail.com

Street

LW FL 33467

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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S-001 (08/10/2021)

The Florida Senate

01.31.22

APPEARANCE RECORD

974

Meeting Date

Bill Number or Topic

Judiciary

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

Committee

Amendment Barcode (if applicable)

Name **William Large**

Phone **850-509-0756**

Address **210 South Monroe Street**
Street

Email **William@fljustice.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 Justice Reform Institute

☐ 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 Judiciary

BILL: CS/SB 654

INTRODUCER: Judiciary Committee; and Senator Cruz, and others

SUBJECT: Protective Injunctions

DATE: February 1, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u> </u>	<u> </u>	<u>CF</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 654 requires clerks of court to transmit and sheriffs to accept electronic copies of documents relating to proceedings for an injunction for protection against domestic violence and similar injunction proceedings. Under current law, a clerk of court may not provide electronic copies of the documents to a sheriff unless they are requested by the sheriff.

The bill does not change the requirements of existing law that the clerk forward the documents, including injunctions for protection against domestic violence and similar injunctions, to the sheriff within 24 hours after issuance. These documents are then to be served by the sheriff on the appropriate party to the injunction proceeding as under existing law.

By requiring a sheriff to accept electronic copies of domestic violence injunctions and similar injunctions, the bill will likely enable sheriffs to serve the injunctions on the respondents more quickly after the injunctions are issued by the court.

The bill takes effect July 1, 2022.

II. Present Situation:

Clerks of the Court

The Clerk of the Circuit Court is a constitutional officer elected within each of Florida's 67 counties. The clerk generally serves as both the clerk of the courts as well as the clerk of the board of county commissioners, auditor, recorder and custodian of all county funds.¹ Florida law provides that the clerk of the circuit court is required to be the recorder of all instruments that he or she may be required or authorized by law to record in the county where he or she is clerk. The Clerk is required to record all such instruments in one general series called 'Official Records,' which must be open to the public for the purpose of inspecting and making extracts of the instruments, under the Clerk's supervision."²

Injunctions for Protection

Section 741.30, F.S., authorizes a family or household member who is either the victim of domestic violence³ or has reasonable cause to believe he or she is in imminent danger of becoming the victim of any act of domestic violence to file in the circuit court a petition for an injunction against domestic violence.

Section 784.046, F.S., provides that:

- A petition for an injunction for protection against repeat violence may be filed in the circuit court by a person who is the victim of repeat violence⁴ or the parent or legal guardian of any minor child who is living at home.
- A petition for an injunction for protection against dating violence may be filed in the circuit court by:
 - A person who is the victim of dating violence⁵ and has reasonable cause to believe he or she is in imminent danger of becoming the victim of another act of dating violence;
 - A person who has reasonable cause to believe he or she is in imminent danger of becoming the victim of an act of dating violence; or
 - The parent or legal guardian of any minor child who is living at home and who seeks an injunction for protection against dating violence on behalf of that minor child.

¹ FLA. CONST. art. V, s. 16. The Florida Constitution specifically provides that two roles may be divided by special or general law between two officers, one serving as clerk of court and one serving as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds. Additionally, there may be a clerk of the county court if authorized by general or special law.

² Section 28.222(1) & (2), F.S.

³ "Domestic violence" is an assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. Section 741.28(2), F.S.

⁴ "Repeat violence" means two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member. Section 784.046(1)(b), F.S.

⁵ "Dating violence" is violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. This relationship is determined based on specified factors. Section 784.046(1)(d), F.S.

- A petition for an injunction for protection against sexual violence may be filed in the circuit court by a person who is the victim of sexual violence⁶ or the parent or legal guardian of a minor child who is living at home who is the victim of sexual violence on his or her own behalf or on behalf of the minor child if:
 - The person has reported the sexual violence to a law enforcement agency and is cooperating in any criminal proceeding against the respondent, regardless of whether criminal charges based on the sexual violence have been filed, reduced, or dismissed by the state attorney; or
 - The respondent who committed the sexual violence against the victim or minor child was sentenced to a term of imprisonment in state prison for the sexual violence and the respondent's term of imprisonment has expired or is due to expire within 90 days following the date the petition is filed.

Section 784.0485, F.S., authorizes a person who is the victim of stalking⁷ or the parent or legal guardian of a minor child who is living at home who seeks an injunction for protection against stalking on behalf of the minor child to file in the circuit court a petition for an injunction for protection against stalking. For the purposes of injunctions for protection against stalking, the offense of stalking includes the offense of cyberstalking.⁸

Once an injunction is ordered by a court, clerk of the court is required to furnish a copy of the petition, notice of hearing, and temporary injunction, if any, to the law enforcement agency of the county where the respondent resides or can be found. For an injunction for protection against dating violence, the clerk must also furnish a copy of any financial affidavit, as well as any Uniform Child Custody Jurisdiction and Enforcement Act affidavit.⁹ Within 24 hours after the court issues a protective injunction, the clerk of the court must forward a certified copy of the injunction for service to the law enforcement agency with jurisdiction over the residence of the petitioner. The enforcement agency must serve the respondent with these documents as soon as possible. At the law enforcement agency's request, the clerk may transmit a facsimile copy of the protection injunction that the clerk has certified.¹⁰

Legal Standard for a Protective Injunction

The procedures for the issuance of a protective injunction issued under s. 741.30, s. 784.046, or s. 784.0485, F.S., are similar. A person who is the victim of domestic violence or has reasonable cause to believe her or she is in imminent danger of becoming a victim of domestic violence, for

⁶ "Sexual violence" means any one incident of sexual battery; a lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child; sexual performance by a child; or any other forcible felony wherein a sexual act is committed or attempted, regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney. Section 784.046(1)(c), F.S.

⁷ The offense of stalking is committed by a person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person. Section 784.048(2), F.S.

⁸ "Cyberstalk" means: 1) to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person; or 2) to access, or attempt to access, the online accounts or Internet-connected home electronic systems of another person without that person's permission, causing substantial emotional distress to that person and serving no legitimate purpose. Section 784.048(1)(d), F.S.

⁹ Section 741.30, F.S., s. 784.046, F.S., and s. 784.0458, F.S.

¹⁰ Section 741.30(8)(c)(1), F.S., s. 784.046(8)(c)(1), F.S., and s. 784.0458(8)(c)(1), F.S.

example, has standing to file a sworn petition for an injunction.¹¹ Based on this initial petition, a court may issue a *temporary* injunction ex-parte.¹² During an ex-parte proceeding, a court is generally not required to review a response from the accused and may base a temporary injunction on hearsay evidence.^{13,14} Additional evidence may be considered, however, if an accused appears at the ex-parte proceeding or has received reasonable notice of the hearing.¹⁵ This ex-parte proceeding is often necessary because “the existence of a true emergency . . . may sometimes require immediate action that will not permit the movant to verify each allegation made.”¹⁶

Parties to an injunction are entitled to a full hearing, and a temporary injunction is effective for a maximum of 15 days.¹⁷ A full hearing is required prior to the expiration of the temporary injunction. At the full hearing, the accused must have a reasonable opportunity to prove or disprove the allegations made in the complaint and is entitled to introduce evidence and cross exam witnesses.¹⁸ Based upon the full hearing, a court “must consider the current allegations, the parties’ behavior within the relationship, and the history of the relationship as a whole” to determine if a permanent injunction is warranted based on the petitioner’s belief that he or she is in imminent danger of becoming a victim of domestic violence.¹⁹

III. Effect of Proposed Changes:

The bill requires a clerk of the court to electronically transmit a domestic violence injunction, injunction for repeat violence, sexual violence, or dating violence, injunction for stalking, and related documents to the sheriff or law enforcement agency of the county where the respondent lives within 24 hours after the injunction is issued by the court. The bill provides that in the event of an Internet or network outage that would delay transmission by more than 24 hours, the clerk may provide copies by facsimile, hand delivery, or certified or registered mail.

The bill clarifies that the following documents are to be submitted with the electronic transmission of the protective injunction within 24 hours after a court issues the injunction: the petition, any temporary injunction issued, any notice of hearing, any financial affidavit, and any Uniform Child Custody Jurisdiction and Enforcement Act affidavit. The bill deletes the provisions of current law that would allow the clerk of the court to transmit a facsimile copy of the information only upon the request of the sheriff.

¹¹ Section 741.30(1)(a), F.S.

¹² Section 741.30(5)(c), F.S.

¹³ *Parrish v. Price*, 71 So. 3d 132, 134 (Fla. 2d DCA 2011) (Holding that a temporary injunction may be based solely on the petition filed, even if it is almost entirely based on hearsay statements).

¹⁴ Additionally, when a “parent files a sworn petition and has reasonable cause to believe the minor child is a victim of sexual violence by a nonparent, the sworn petition is a *presumptively sufficient* basis for an injunction.” (emphasis added) *Berthiaume v. B.S. ex rel. A.K.*, 85 So. 3d 1117, 1119 (Fla. 1st DCA 2012).

¹⁵ Section 741.30(5)(b), F.S.

¹⁶ *Smith v. Crider*, 932 So. 2d 393, 399 n. 4 (Fla. 2d DCA 2006).

¹⁷ A court may, however, grant a continuance for good cause as requested by either party. The temporary injunction may be extended to include the continuance. Section 741.30(5)(c), F.S.

¹⁸ *Furry v. Rickles*, 68 So. 3d 389, 390 (Fla. 1st DCA 2011) (citing *Ohrn v. Wright*, 963 So. 2d 298 (Fla. 5th DCA 2007)).

¹⁹ *Giallanza v. Giallanza*, 787 So.2d 162, 164 (Fla. 2d DCA 2001) (citing *Gustafson v. Mauck*, 743 So. 2d 614, 616 (Fla. 1st DCA 1999)).

Additionally, the bill authorizes a law enforcement agency to electronically transmit a copy of a protective injunction to a law enforcement officer for the purpose of service of process.

The bill takes effect 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:

CS/SB 654 may result in indeterminate negative impact for any law enforcement agencies and clerks of court that do not currently have the resources in place to transmit and receive injunction documents in an electronic format.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 741.30, 784.046, 784.0485.

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 Judiciary on January 31, 2022:

The CS adds a provision to state that in the event of an Internet or network outage that would delay the electronic transmission of injunction documents by more than 24 hours after the injunction is issued by a court, the clerk of the court may, instead, provide a copy of the injunction documents using facsimile, hand delivery, or certified or registered mail.

B. Amendments:

None.



851076

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/31/2022	.	
	.	
	.	
	.	

The Committee on Judiciary (Cruz) recommended the following:

Senate Amendment (with title amendment)

Delete lines 57 - 287
and insert:
time of the day or night. If there is an Internet outage or any
other significant disruption in network connectivity which would
delay service by more than 24 hours, the clerk of the court may
provide copies to the sheriff's office or law enforcement agency
by facsimile, hand delivery, or certified or registered mail. An
electronic ~~When requested by the sheriff, the clerk of the court
may transmit a facsimile copy of an injunction must be that has~~



851076

12 ~~been~~ certified by the clerk of the court, and the electronic
13 ~~this facsimile~~ copy must ~~may~~ be served in the same manner as a
14 certified copy. Upon receiving an electronic ~~a facsimile~~ copy of
15 the injunction, the sheriff must verify receipt with the sender
16 before attempting to serve it upon the respondent. In addition,
17 if the sheriff is in possession of an injunction for protection
18 that has been certified by the clerk of the court, the sheriff
19 may electronically transmit a ~~facsimile~~ copy of that injunction
20 to a law enforcement officer who shall serve it in the same
21 manner as a certified copy. The clerk of the court is ~~shall be~~
22 responsible for furnishing to the sheriff such information on
23 the respondent's physical description and location as is
24 required by the department to comply with the verification
25 procedures set forth in this section. Notwithstanding any other
26 ~~provision of~~ law to the contrary, the chief judge of each
27 circuit, in consultation with the appropriate sheriff, may
28 authorize a law enforcement agency within the jurisdiction to
29 effect service. A law enforcement agency serving injunctions
30 pursuant to this section must ~~shall~~ use service and verification
31 procedures consistent with those of the sheriff.

32 2. When an injunction is issued, if the petitioner requests
33 the assistance of a law enforcement agency, the court may order
34 that an officer from the appropriate law enforcement agency
35 accompany the petitioner and assist in placing the petitioner in
36 possession of the dwelling or residence, or otherwise assist in
37 the execution or service of the injunction. A law enforcement
38 officer must ~~shall~~ accept a copy of an injunction for protection
39 against domestic violence, certified by the clerk of the court,
40 from the petitioner and immediately serve it upon a respondent



851076

41 who has been located but not yet served.

42 3. All orders issued, changed, continued, extended, or
43 vacated subsequent to the original service of documents
44 enumerated under subparagraph 1. must, ~~shall~~ be certified by the
45 clerk of the court and delivered to the parties at the time of
46 the entry of the order. The parties may acknowledge receipt of
47 such order in writing on the face of the original order. In the
48 event a party fails or refuses to acknowledge the receipt of a
49 certified copy of an order, the clerk shall note on the original
50 order that service was effected. If delivery at the hearing is
51 not possible, the clerk shall mail certified copies of the order
52 to the parties at the last known address of each party. Service
53 by mail is complete upon mailing. When an order is served
54 pursuant to this subsection, the clerk shall prepare a written
55 certification to be placed in the court file specifying the
56 time, date, and method of service and shall notify the sheriff.

57
58 If the respondent has been served previously with the temporary
59 injunction and has failed to appear at the initial hearing on
60 the temporary injunction, any subsequent petition for injunction
61 seeking an extension of time may be served on the respondent by
62 the clerk of the court by certified mail in lieu of personal
63 service by a law enforcement officer.

64 (b) ~~There shall be created~~ A Domestic and Repeat Violence
65 Injunction Statewide Verification System is created within the
66 Department of Law Enforcement. The department shall establish,
67 implement, and maintain a statewide communication system capable
68 of electronically transmitting information to and between
69 criminal justice agencies relating to domestic violence



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injunctions and repeat violence injunctions issued by the courts throughout the state. Such information must include, but is not limited to, information as to the existence and status of any injunction for verification purposes.

(c)1. Within 24 hours after the court issues an injunction for protection against domestic violence or changes, continues, extends, or vacates an injunction for protection against domestic violence, the clerk of the court must electronically transmit forward a certified copy of the injunction for service to the sheriff with jurisdiction over the residence of the petitioner. If there is an Internet outage or any other significant disruption in network connectivity which would delay service by more than 24 hours, the clerk of the court may provide copies to the sheriff's office by facsimile, hand delivery, or certified or registered mail. The injunction must be served in accordance with this subsection.

2. Within 24 hours after service of process of an injunction for protection against domestic violence upon a respondent, the law enforcement officer must electronically transmit forward the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against domestic violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information



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relating to the service available to other law enforcement agencies by electronically transmitting such information to the department.

5. Subject to available funding, the Florida Association of Court Clerks and Comptrollers shall develop an automated process by which a petitioner may request notification of service of the injunction for protection against domestic violence and other court actions related to the injunction for protection. The automated notice must ~~shall~~ be made within 12 hours after the sheriff or other law enforcement officer serves the injunction upon the respondent. The notification must include, at a minimum, the date, time, and location where the injunction for protection against domestic violence was served. The Florida Association of Court Clerks and Comptrollers may apply for any available grants to fund the development of the automated process.

6. Within 24 hours after an injunction for protection against domestic violence is vacated, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff receiving original notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the department of such action of the court.

Section 2. Subsection (8) of section 784.046, Florida Statutes, is amended to read:

784.046 Action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting;



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pretrial release violations; public records exemption.—

(8)(a)1. Within 24 hours after the court issues an injunction for protection against repeat violence, sexual violence, or dating violence, the clerk of the court shall electronically transmit ~~furnish~~ a copy of the petition, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. If there is an Internet outage or any other significant disruption in network connectivity which would delay service by more than 24 hours, the clerk of the court may furnish copies to the sheriff's office or law enforcement agency by facsimile, hand delivery, or certified or registered mail. An electronic ~~When requested by the sheriff, the clerk of the court may transmit a facsimile copy of an injunction must be that has been certified by the clerk of the court, and the electronic this facsimile copy must may~~ be served in the same manner as a certified copy. Upon receiving an electronic a facsimile copy of the injunction, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent. In addition, if the sheriff is in possession of an injunction for protection that has been certified by the clerk of the court, the sheriff may electronically transmit a ~~facsimile~~ copy of that injunction to a law enforcement officer who shall serve it in the same manner as a certified copy. The clerk of the court ~~is shall be~~ responsible for furnishing to the sheriff such information on the respondent's physical description and location as is required by the department to comply with the verification



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procedures set forth in this section. Notwithstanding any other ~~provision of~~ law to the contrary, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the chief judge's jurisdiction to effect this type of service and to receive a portion of the service fee. A No person may not ~~shall be authorized or permitted to~~ serve or execute an injunction issued under this section unless the person is a law enforcement officer as defined in chapter 943.

2. When an injunction is issued, if the petitioner requests the assistance of a law enforcement agency, the court may order that an officer from the appropriate law enforcement agency accompany the petitioner and assist in the execution or service of the injunction. A law enforcement officer must ~~shall~~ accept a copy of an injunction for protection against repeat violence, sexual violence, or dating violence, certified by the clerk of the court, from the petitioner and immediately serve it upon a respondent who has been located but not yet served.

(b) ~~There shall be created~~ A Domestic, Dating, Sexual, and Repeat Violence Injunction Statewide Verification System is created within the Department of Law Enforcement. The department shall establish, implement, and maintain a statewide communication system capable of electronically transmitting information to and between criminal justice agencies relating to domestic violence injunctions, dating violence injunctions, sexual violence injunctions, and repeat violence injunctions issued by the courts throughout the state. Such information must include, but is not limited to, information as to the existence and status of any injunction for verification purposes.



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(c)1. Within 24 hours after the court issues an injunction for protection against repeat violence, sexual violence, or dating violence or changes or vacates an injunction for protection against repeat violence, sexual violence, or dating violence, the clerk of the court must electronically transmit ~~forward~~ a copy of the injunction to the sheriff with jurisdiction over the residence of the petitioner.

2. Within 24 hours after service of process of an injunction for protection against repeat violence, sexual violence, or dating violence upon a respondent, the law enforcement officer must electronically transmit ~~forward~~ the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against repeat violence, sexual violence, or dating violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department.

5. Subject to available funding, the Florida Association of Court Clerks and Comptrollers shall develop an automated process by which a petitioner may request notification of service of the injunction for protection against repeat violence, sexual



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215 violence, or dating violence and other court actions related to
216 the injunction for protection. The automated notice must ~~shall~~
217 be made within 12 hours after the sheriff or other law
218 enforcement officer serves the injunction upon the respondent.
219 The notification must include, at a minimum, the date, time, and
220 location where the injunction for protection against repeat
221 violence, sexual violence, or dating violence was served. The
222 Florida Association of Court Clerks and Comptrollers may apply
223 for any available grants to fund the development of the
224 automated process.

225 6. Within 24 hours after an injunction for protection
226 against repeat violence, sexual violence, or dating violence is
227 lifted, terminated, or otherwise rendered no longer effective by
228 ruling of the court, the clerk of the court must notify the
229 sheriff or local law enforcement agency receiving original
230 notification of the injunction as provided in subparagraph 2.
231 That agency shall, within 24 hours after receiving such
232 notification from the clerk of the court, notify the department
233 of such action of the court.

234 Section 3. Subsection (8) of section 784.0485, Florida
235 Statutes, is amended to read:

236 784.0485 Stalking; injunction; powers and duties of court
237 and clerk; petition; notice and hearing; temporary injunction;
238 issuance of injunction; statewide verification system;
239 enforcement.—

240 (8) (a) 1. Within 24 hours after the court issues an
241 injunction for protection against stalking, the clerk of the
242 court shall electronically transmit ~~furnish~~ a copy of the
243 petition, notice of hearing, and temporary injunction, if any,



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to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. If there is an Internet outage or any other significant disruption in network connectivity which would delay service by more than 24 hours, the clerk of the court may furnish copies to the sheriff's office or law enforcement agency by facsimile, hand delivery, or certified or registered mail. An electronic ~~when~~

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

And the title is amended as follows:

Delete lines 9 - 20

and insert:

documents rather than by facsimile; authorizing clerks of the court to provide such documents by facsimile, hand delivery, or certified or registered mail under certain circumstances; providing that electronically submitted copies of injunctions must be served in the same manner as certified copies; making conforming and technical changes; amending ss. 784.046 and 784.0485, F.S.; specifying a timeframe in which the clerk of the court must transmit specified documents relating to injunctions for protection against repeat violence, sexual violence, or dating violence and against stalking, respectively, to the appropriate local sheriff or law enforcement agency; providing for the electronic transmission of certain documents rather than by facsimile; authorizing clerks of the court to



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273 provide such documents by facsimile, hand delivery, or
274 certified or registered mail under certain
275 circumstances; providing that

By Senator Cruz

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A bill to be entitled

An act relating to protective injunctions; amending s. 741.30, F.S.; deleting an obsolete date; specifying a timeframe in which the clerk of the court must transmit specified documents relating to an injunction for protection against domestic violence to the appropriate local sheriff or law enforcement agency; providing for the electronic transmission of certain documents rather than by facsimile; providing that electronically submitted copies of injunctions must be served in the same manner as certified copies; making conforming and technical changes; amending ss. 784.046 and 784.0485, F.S.; specifying a timeframe in which the clerk of the court must transmit specified documents relating to injunctions for protection against repeat violence, sexual violence, or dating violence and against stalking, respectively, to the appropriate local sheriff or law enforcement agency; providing for the electronic transmission of certain documents rather than by facsimile; providing that electronically submitted copies of injunctions must be served in the same manner as certified copies; making conforming and technical changes; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) and subsection (8) of section 741.30, Florida Statutes, are amended to read:

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741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.—

(2) (a) Notwithstanding any other ~~provision of~~ law, the assessment of a filing fee for a petition for protection against domestic violence is prohibited ~~effective October 1, 2002~~. However, subject to legislative appropriation, the clerk of the circuit court may, on a quarterly basis, submit to the Office of the State Courts Administrator a certified request for reimbursement for petitions for protection against domestic violence issued by the court, at the rate of \$40 per petition. The request for reimbursement must ~~shall~~ be submitted in the form and manner prescribed by the Office of the State Courts Administrator. From this reimbursement, the clerk shall pay any law enforcement agency serving the injunction the fee requested by the law enforcement agency; however, this fee may ~~shall~~ not exceed \$20.

(8) (a) 1. Within 24 hours after the court issues an injunction for protection against domestic violence, the clerk of the court shall electronically transmit ~~furnish~~ a copy of the petition, financial affidavit, Uniform Child Custody Jurisdiction and Enforcement Act affidavit, if any, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. An electronic ~~When requested by the sheriff, the clerk of the court may transmit a facsimile~~ copy of

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an injunction ~~must be that has been~~ certified by the clerk of the court, and ~~the electronic this facsimile~~ copy ~~must~~ may be served in the same manner as a certified copy. Upon receiving ~~an electronic a facsimile copy of the injunction~~, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent. In addition, if the sheriff is in possession of an injunction for protection that has been certified by the clerk of the court, the sheriff may electronically transmit a ~~facsimile~~ copy of that injunction to a law enforcement officer who shall serve it in the same manner as a certified copy. The clerk of the court ~~is~~ shall be responsible for furnishing to the sheriff such information on the respondent's physical description and location as is required by the department to comply with the verification procedures set forth in this section. Notwithstanding any other ~~provision of~~ law to the contrary, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service. A law enforcement agency serving injunctions pursuant to this section ~~must~~ shall use service and verification procedures consistent with those of the sheriff.

2. When an injunction is issued, if the petitioner requests the assistance of a law enforcement agency, the court may order that an officer from the appropriate law enforcement agency accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in the execution or service of the injunction. A law enforcement officer ~~must~~ shall accept a copy of an injunction for protection against domestic violence, certified by the clerk of the court,

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from the petitioner and immediately serve it upon a respondent who has been located but not yet served.

3. All orders issued, changed, continued, extended, or vacated subsequent to the original service of documents enumerated under subparagraph 1. ~~must, shall~~ be certified by the clerk of the court and delivered to the parties at the time of the entry of the order. The parties may acknowledge receipt of such order in writing on the face of the original order. In the event a party fails or refuses to acknowledge the receipt of a certified copy of an order, the clerk shall note on the original order that service was effected. If delivery at the hearing is not possible, the clerk shall mail certified copies of the order to the parties at the last known address of each party. Service by mail is complete upon mailing. When an order is served pursuant to this subsection, the clerk shall prepare a written certification to be placed in the court file specifying the time, date, and method of service and shall notify the sheriff.

If the respondent has been served previously with the temporary injunction and has failed to appear at the initial hearing on the temporary injunction, any subsequent petition for injunction seeking an extension of time may be served on the respondent by the clerk of the court by certified mail in lieu of personal service by a law enforcement officer.

(b) ~~There shall be created~~ A Domestic and Repeat Violence Injunction Statewide Verification System is created within the Department of Law Enforcement. The department shall establish, implement, and maintain a statewide communication system capable of electronically transmitting information to and between

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criminal justice agencies relating to domestic violence injunctions and repeat violence injunctions issued by the courts throughout the state. Such information must include, but is not limited to, information as to the existence and status of any injunction for verification purposes.

(c)1. Within 24 hours after the court issues an injunction for protection against domestic violence or changes, continues, extends, or vacates an injunction for protection against domestic violence, the clerk of the court must electronically transmit forward a certified copy of the injunction for service to the sheriff with jurisdiction over the residence of the petitioner. The injunction must be served in accordance with this subsection.

2. Within 24 hours after service of process of an injunction for protection against domestic violence upon a respondent, the law enforcement officer must electronically transmit forward the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against domestic violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department.

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5. Subject to available funding, the Florida Association of Court Clerks and Comptrollers shall develop an automated process by which a petitioner may request notification of service of the injunction for protection against domestic violence and other court actions related to the injunction for protection. The automated notice must ~~shall~~ be made within 12 hours after the sheriff or other law enforcement officer serves the injunction upon the respondent. The notification must include, at a minimum, the date, time, and location where the injunction for protection against domestic violence was served. The Florida Association of Court Clerks and Comptrollers may apply for any available grants to fund the development of the automated process.

6. Within 24 hours after an injunction for protection against domestic violence is vacated, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff receiving original notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the department of such action of the court.

Section 2. Subsection (8) of section 784.046, Florida Statutes, is amended to read:

784.046 Action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.—

(8)(a)1. Within 24 hours after the court issues an injunction for protection against repeat violence, sexual

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175 violence, or dating violence, the clerk of the court shall
 176 electronically transmit ~~furnish~~ a copy of the petition, notice
 177 of hearing, and temporary injunction, if any, to the sheriff or
 178 a law enforcement agency of the county where the respondent
 179 resides or can be found, who shall serve it upon the respondent
 180 as soon thereafter as possible on any day of the week and at any
 181 time of the day or night. An electronic ~~When requested by the~~
 182 ~~sheriff, the clerk of the court may transmit a facsimile~~ copy of
 183 an injunction must be ~~that has been~~ certified by the clerk of
 184 the court, and the electronic ~~this facsimile~~ copy must ~~may~~ be
 185 served in the same manner as a certified copy. Upon receiving an
 186 ~~electronic a facsimile~~ copy of the injunction, the sheriff must
 187 verify receipt with the sender before attempting to serve it
 188 upon the respondent. In addition, if the sheriff is in
 189 possession of an injunction for protection that has been
 190 certified by the clerk of the court, the sheriff may
 191 electronically transmit a facsimile copy of that injunction to a
 192 law enforcement officer who shall serve it in the same manner as
 193 a certified copy. The clerk of the court is ~~shall be~~ responsible
 194 for furnishing to the sheriff such information on the
 195 respondent's physical description and location as is required by
 196 the department to comply with the verification procedures set
 197 forth in this section. Notwithstanding any other ~~provision of~~
 198 law to the contrary, the chief judge of each circuit, in
 199 consultation with the appropriate sheriff, may authorize a law
 200 enforcement agency within the chief judge's jurisdiction to
 201 effect this type of service and to receive a portion of the
 202 service fee. A No person may not ~~shall be authorized or~~
 203 ~~permitted to serve or execute an injunction issued under this~~

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204 section unless the person is a law enforcement officer as
 205 defined in chapter 943.
 206 2. When an injunction is issued, if the petitioner requests
 207 the assistance of a law enforcement agency, the court may order
 208 that an officer from the appropriate law enforcement agency
 209 accompany the petitioner and assist in the execution or service
 210 of the injunction. A law enforcement officer must ~~shall~~ accept a
 211 copy of an injunction for protection against repeat violence,
 212 sexual violence, or dating violence, certified by the clerk of
 213 the court, from the petitioner and immediately serve it upon a
 214 respondent who has been located but not yet served.
 215 (b) ~~There shall be created~~ A Domestic, Dating, Sexual, and
 216 Repeat Violence Injunction Statewide Verification System is
 217 created within the Department of Law Enforcement. The department
 218 shall establish, implement, and maintain a statewide
 219 communication system capable of electronically transmitting
 220 information to and between criminal justice agencies relating to
 221 domestic violence injunctions, dating violence injunctions,
 222 sexual violence injunctions, and repeat violence injunctions
 223 issued by the courts throughout the state. Such information must
 224 include, but is not limited to, information as to the existence
 225 and status of any injunction for verification purposes.
 226 (c)1. Within 24 hours after the court issues an injunction
 227 for protection against repeat violence, sexual violence, or
 228 dating violence or changes or vacates an injunction for
 229 protection against repeat violence, sexual violence, or dating
 230 violence, the clerk of the court must electronically transmit
 231 ~~forward~~ a copy of the injunction to the sheriff with
 232 jurisdiction over the residence of the petitioner.

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2. Within 24 hours after service of process of an injunction for protection against repeat violence, sexual violence, or dating violence upon a respondent, the law enforcement officer must electronically transmit forward the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against repeat violence, sexual violence, or dating violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department.

5. Subject to available funding, the Florida Association of Court Clerks and Comptrollers shall develop an automated process by which a petitioner may request notification of service of the injunction for protection against repeat violence, sexual violence, or dating violence and other court actions related to the injunction for protection. The automated notice must ~~shall~~ be made within 12 hours after the sheriff or other law enforcement officer serves the injunction upon the respondent. The notification must include, at a minimum, the date, time, and location where the injunction for protection against repeat violence, sexual violence, or dating violence was served. The

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Florida Association of Court Clerks and Comptrollers may apply for any available grants to fund the development of the automated process.

6. Within 24 hours after an injunction for protection against repeat violence, sexual violence, or dating violence is lifted, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff or local law enforcement agency receiving original notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the department of such action of the court.

Section 3. Subsection (8) of section 784.0485, Florida Statutes, is amended to read:

784.0485 Stalking; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.—

(8)(a)1. Within 24 hours after the court issues an injunction for protection against stalking, the clerk of the court shall electronically transmit ~~furnish~~ a copy of the petition, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. An electronic ~~When requested by the sheriff, the clerk of the court may transmit a facsimile~~ copy of an injunction must be ~~that has been~~ certified by the clerk of the court, and the electronic ~~this facsimile~~

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copy ~~must~~ ~~may~~ be served in the same manner as a certified copy. Upon receiving an electronic ~~a facsimile~~ copy of the injunction, the sheriff must verify receipt with the sender before attempting to serve it on the respondent. In addition, if the sheriff is in possession of an injunction for protection that has been certified by the clerk of the court, the sheriff may electronically transmit a ~~facsimile~~ copy of that injunction to a law enforcement officer who shall serve it in the same manner as a certified copy. The clerk of the court shall furnish to the sheriff such information concerning the respondent's physical description and location as is required by the Department of Law Enforcement to comply with the verification procedures set forth in this section. Notwithstanding any other law, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service. A law enforcement agency serving injunctions pursuant to this section ~~must~~ ~~shall~~ use service and verification procedures consistent with those of the sheriff.

2. If an injunction is issued and the petitioner requests the assistance of a law enforcement agency, the court may order that an officer from the appropriate law enforcement agency accompany the petitioner to assist in the execution or service of the injunction. A law enforcement officer ~~must~~ ~~shall~~ accept a copy of an injunction for protection against stalking, certified by the clerk of the court, from the petitioner and immediately serve it upon a respondent who has been located but not yet served.

3. An order issued, changed, continued, extended, or vacated subsequent to the original service of documents

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enumerated under subparagraph 1. ~~must~~ ~~shall~~ be certified by the clerk of the court and delivered to the parties at the time of the entry of the order. The parties may acknowledge receipt of such order in writing on the face of the original order. If a party fails or refuses to acknowledge the receipt of a certified copy of an order, the clerk shall note on the original order that service was effected. If delivery at the hearing is not possible, the clerk shall mail certified copies of the order to the parties at the last known address of each party. Service by mail is complete upon mailing. When an order is served pursuant to this subsection, the clerk shall prepare a written certification to be placed in the court file specifying the time, date, and method of service and shall notify the sheriff.

4. If the respondent has been served previously with a temporary injunction and has failed to appear at the initial hearing on the temporary injunction, any subsequent petition for injunction seeking an extension of time may be served on the respondent by the clerk of the court by certified mail in lieu of personal service by a law enforcement officer.

(b)1. Within 24 hours after the court issues an injunction for protection against stalking or changes, continues, extends, or vacates an injunction for protection against stalking, the clerk of the court must electronically transmit forward a certified copy of the injunction for service to the sheriff having jurisdiction over the residence of the petitioner. The injunction must be served in accordance with this subsection.

2. Within 24 hours after service of process of an injunction for protection against stalking upon a respondent, the law enforcement officer must electronically transmit forward

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the written proof of service of process to the sheriff having jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against stalking, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the Department of Law Enforcement.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the Department of Law Enforcement.

5. Within 24 hours after an injunction for protection against stalking is vacated, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff receiving original notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the Department of Law Enforcement of such action of the court.

Section 4. This act shall take effect July 1, 2022.



The Florida Senate

Committee Agenda Request

To: Senator Danny Burgess, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: November 17, 2021

I respectfully request that **Senate Bill # 654**, relating to Protective Injunctions, 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", is written over a horizontal line.

Senator Janet Cruz
Florida Senate, District 18

The Florida Senate

APPEARANCE RECORD

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

Bill Number or Topic

Amendment Barcode (if applicable)

Meeting Date

Judiciary

Committee

Name

Cindy Stuart, Clerk of Court

Phone

813-307-7021

Address

601 E. Kennedy Blvd. Hills Co.

Email

Cindy.Stuart@Hillsclerk.com

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 \(flsenate.gov\)](#)

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
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1-31-22

Meeting Date

Judiciary

Committee

654

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Jenna Hodgens, Gov. Relations,

Phone

813-307-7194

Address

601 E. Kennedy Blvd.

Email

jenna.hodgens@hillsclerk.com

Street

TPH

FLA

City

State

33601

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:

Hills Co. Clerk of
Court

☐ 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

Meeting Date

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

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:

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 Judiciary

BILL: CS/SB 1664

INTRODUCER: Judiciary Committee; and Senator Perry, and others

SUBJECT: Unlawful Assemblies

DATE: February 1, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	_____	_____	<u>CJ</u>	_____
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1664 addresses unlawful assemblies that specifically target residences to harass or disturb people inside their homes.

Specifically, the bill amends the unlawful assembly statute to expressly prohibit a person from picketing or protesting before or about another person's home in order to harass or disturb the person in his or her home. A person who engages in the prohibited conduct commits a second degree misdemeanor, punishable by up to 60 days in county jail and a \$500 fine.¹

The bill takes effect October 1, 2022.

II. Present Situation:

The rights to acquire, possess, and *protect* private property are basic principles afforded under the both the Constitution of the United States and the Florida Constitution. While the government has interest in protecting private property rights, those interests must also coincide with other basic legal protections, such as the freedom to assemble. Balancing these rights, especially when they seemingly compete with one another, is a delicate issue. For example, while first amendment interests are broadly protected, courts have recognized that state and local

¹ Sections 775.082 and 775.083, F.S.

authorities may broadly use their “police powers”² to protect the rights of individuals during confrontational protests.

The United States Supreme has frequently addressed this issue. The Court found, for example, that certain regulations, including a 36-foot buffer zone restricting protestors at the entrance to an abortion clinic were justified by the government’s interest in allowing the clinic to remain operational and allowing patients to walk in without close physical confrontations.³ The Court has recognized that some protests effect the rights of others, specifically commenting that “if overamplified loudspeakers assault the citizenry, government may turn them down.”⁴ In summary, courts have recognized the government’s ability to “to shut off discourse solely to protect others from hearing it is dependent upon a showing that substantial privacy interests are being invaded in an essentially intolerable manner.”⁵

Unlawful Assembly

Although protests, at face value, are legal, certain offenses may occur at or near a protest that are not protected under the First Amendment right to assemble. For example, Florida’s unlawful assembly statute, s. 877.02, F.S., prohibits three or more persons from meeting together to commit a “breach of the peace” or “any other unlawful act.”⁶ A violation of the unlawful assembly statute is a second degree misdemeanor, punishable by up to 60 days in county jail and a \$500 fine.⁷

As defined in s. 877.03, F.S., “breach of the peace or disorderly conduct” includes:

- Brawling or fighting,
- Corrupting the public morals,
- Outraging the sense of public decency, or
- Affecting the peace and quiet of persons who may witness them.⁸

Moreover, these activities are a second degree misdemeanor offense separate and apart from the unlawful assembly statute. Accordingly, the unlawful assembly statute defines an offense that is a subset of the offenses constituting a breach of the peace or disorderly conduct. The unlawful assembly statute differs from the breach of peace or disorderly conduct statute by requiring that a person arrested for unlawful assembly be held in custody until he or she is brought before a court to establish bail or bond.⁹

The Florida Supreme Court has held that the common law definition of “unlawful assembly” must be satisfied in order for the offense to satisfy constitutional muster. Specifically, the Court held that the offense only covers situations where 1) three or more people assemble, 2) have a

² Local and State officials have broad powers to create laws for the health, safety, morals, and general welfare of the public. See Legal Information Institute, Cornell Law School, *police powers*, https://www.law.cornell.edu/wex/police_powers (last visited Jan. 28, 2022).

³ *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 768-71 (1994).

⁴ *Grayned v. City of Rockford*, 408 U.S. 104, 116 (1972).

⁵ *Cohen v. California*, 403 U.S. 15, 21 (1971).

⁶ Section 870.02(1), F.S.

⁷ Section 775.082, F.S., and s. 775.083, F.S.

⁸ Section 877.03, F.S.

⁹ Section 870.02(2), F.S.

common unlawful purpose, and 3) assemble in such a manner as to give rational, firm, and courageous persons in the neighborhood of the assembly a well-grounded fear of a breach of the peace.¹⁰

Recent Targeted Protests at Private Residences

Protests, especially for highly-publicized issues, have sometimes targeted specific individual's homes. Both Senators Marco Rubio and Rick Scott have had protests outside their private residences.¹¹ The local Mayors of Chicago and Portland have likewise drawn protests to their private residences.^{12, 13} In Orlando, groups stood outside of a home owned by an officer involved in the death of George Floyd, with one local resident summarizing "about 50 people showed up to the neighborhood, honking horns and yelling until around 3:30 a.m."¹⁴

III. Effect of Proposed Changes:

The bill creates a new criminal offense to picket or protest before or about the residence or dwelling of any person with the intent to harass or disturb that person in his or her home. The bill provides a definition of "dwelling" to include "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families." A person who violates this section commits a second degree misdemeanor and may be sentenced to up to 60 days in county jail and assessed a \$500 fine.

The bill specifically states that the purpose of the new offense is to "serve the states significant interest in protecting the well-being, tranquility, and privacy of the home and protecting residents from the detrimental effect of targeted picketing."

The bill takes effect October 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁰ *State v. Simpson*, 347 So. 2d 414, 415 (Fla. 1977).

¹¹ Jacob Ogles, *Protesters to convene on Marco Rubio's, Rick Scott's homes to demand challenge to Joe Biden win*, FLORIDA POLITICS, Jan. 1, 2021, available at <https://floridapolitics.com/archives/405357-protesters-to-convene-on-marco-rubios-rick-scotts-homes-to-demand-challenge-to-joe-biden-win/>. See also, Lautaro Grinspan, *Trump supporters gather in front of Marco Rubio's West Miami home. 'You work for us.'*, THE MIAMI HERALD, Jan. 3 2021, available at <https://www.spokesman.com/stories/2021/jan/03/trump-supporters-gather-in-front-of-marco-rubios-w/>.

¹² Madeline Holcombe, *Chicago protesters rally at mayor's house a day after clashes with police*, CNN, July 19, 2020, available at <https://www.cnn.com/2020/07/19/us/chicago-protest-ori-lightfoot/index.html>.

¹³ The Portland Mayor actually planned to move out of his apartment due to the targeted protests at his home. Andrew Hay, *Portland mayor to leave home targeted by protestors*, REUTERS, Sept. 2, 2020, available at <https://www.reuters.com/article/us-global-race-usa-protests-portland/portland-mayor-to-leave-home-targeted-by-protesters-idUSKBN25T32R>.

¹⁴ FOX 35 ORLANDO, *Protesters remain at Orlando-area home owned by officer connected to George Floyd's death*, May 30, 2020, available at <https://www.fox35orlando.com/news/protesters-remain-at-orlando-area-home-owned-by-officer-connected-to-george-floyds-death>.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues

Courts analyze regulations effecting speech under two different standards depending on if the regulation is content-neutral or content-based.¹⁵ Content-neutral restrictions, such as limitations on protests which interrupt a meeting of the Legislature, are subject to *intermediate scrutiny*. Content-based restrictions, such as regulations regarding indecent language, are presumably unconstitutional and must survive the highest level of judicial scrutiny *strict scrutiny*. In order to pass constitutional muster, a content-based regulation must be shown to be narrowly tailored to serve a compelling government interest. Content-neutral regulations, on the other hand, must satisfy *intermediate scrutiny* and be tailored to a significant government interest, while leaving open alternative channels of communication.

The bill is specifically tailored to protest activity that leads to the intentional harassment of a particular residence, as opposed to protests activity generally. This regulatory activity is clearly content-neutral, as it not regulating a particular ideology or type of speech. The bill only outlaws picketing and protest activity to the extent that such activity is specifically towards an individual person or residence, as opposed to merely the public at large, or an overall ideology.¹⁶ Courts are likely to find that the state has a well vested interest in protecting both property rights and the rights of citizens to be free from confrontational protests within their own dwellings.¹⁷

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

None.

¹⁵ *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 164 (2015)

¹⁶ A similar statute was upheld by the United States Supreme Court precisely for this reason. Specifically, the court found that the use of the words “dwelling” and “residence” in an ordinance outlawing “picketing before or about the residence or dwelling” suggested that the ordinance was appropriately limited to regulate certain conduct at particular residences and was not overbroad so as to unconstitutionally limit picketing through the whole residential area. *Frisby v. Schultz*, 487 U.S. 474, 482 (1988).

¹⁷ See footnotes 3-5 and accompanying text.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 870.02, 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 Judiciary on January 31, 2022

The CS provides a definition for “dwelling” as used in the bill to include “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families.”

B. Amendments:

None.



121202

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/31/2022	.	
	.	
	.	
	.	

The Committee on Judiciary (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete line 27
and insert:
his or her home. As used in this paragraph, the term "dwelling"
means any building, structure, or portion thereof which is
occupied as, or designed or intended for occupancy as, a
residence by one or more families.

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

And the title is amended as follows:



121202

12 Between lines 5 and 6
13 insert:
14 defining the term "dwelling";

By Senator Perry

8-00744-22

20221664__

A bill to be entitled

An act relating to unlawful assemblies; amending s. 870.02, F.S.; prohibiting a person or persons from picketing or protesting before or about the residence or dwelling of any person with specified intent; providing criminal penalties; providing an effective date.

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

Section 1. Section 870.02, Florida Statutes, is amended to read:

870.02 Unlawful assemblies.—

(1) (a) If three or more persons meet together to commit a breach of the peace, or to do any other unlawful act, each of them commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

~~(b) (2)~~ A person arrested for a violation of paragraph (a) ~~this section~~ shall be held in custody until brought before the court for admittance to bail in accordance with chapter 903.

(2) (a) In an effort to serve the state's significant interest in protecting the well-being, tranquility, and privacy of the home and protecting residents from the detrimental effect of targeted picketing, it is unlawful for a person or persons to picket or protest before or about the residence or dwelling of any person with the intent to harass or disturb that person in his or her home.

(b) A person who violates paragraph (a) commits a misdemeanor of the second degree, punishable as provided in s.

Page 1 of 2

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

8-00744-22

20221664__

775.082 or s. 775.083.

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

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Danny Burgess, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 24, 2022

I respectfully request that **Senate Bill #1664**, relating to Unlawful Assemblies, 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". The signature is written in a cursive style with a long, sweeping underline.

Senator Keith Perry
Florida Senate, District 8

The Florida Senate

APPEARANCE RECORD

1-31-22

Meeting Date

SB 1664

Bill Number or Topic

JUDICIARY

Committee

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

Amendment Barcode (if applicable)

Name

LIEUTENANT MIKE CRABBS

Phone

321-436-4447

Address

2500 W. COLONIAL DR

Email

MICHAEL.CRABBS@OCFL.NET

Street

ORLANDO

City

FL

State

32802

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:

ORANGE COUNTY
SHERIFF'S OFFICE



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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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1664
Bill Number or Topic

1/31/22
Meeting Date
Judiciary
Committee

Amendment Barcode (if applicable)

Name Rev Dr Russell Meyer Phone 813 763 3610

Address 1308 Winsor Pl Email Russellmeyer@afl-net
Street

JAX FL 32205
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:

FL FAITH ADVOCACY CENTER

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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S-001 (08/10/2021)

1/31/2022

Meeting Date

The Florida Senate
APPEARANCE RECORD

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SB 1664

Bill Number or Topic

Lediciary
Committee

Amendment Barcode (if applicable)

Name

Ana V. Guebara

Phone

561 215 1062

Address

Street

Lakewood FL

City

State

33461

Zip

Email

ana@floridarisng.org

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:

Florida Student Power

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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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SB 1664

Bill Number or Topic

1/31/2022

Meeting Date

Judiciary

Committee

Amendment Barcode (if applicable)

Name

Mary-Elizabeth Estrada

Phone

Address

2713 Island Dr.

Email

Street

Sebring

City

FL

State

33872

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:

Florida student Bwer

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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S-001 (08/10/2021)

January 31, 2022

Meeting Date

Judiciary

Committee

The Florida Senate

APPEARANCE RECORD

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1664

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Pamela Burch Fort**

Phone **850-425-1344**

Address **104 S. Monroe Street**

Email **TcgLobby@aol.com**

Street

Tallahassee

FL

32301

City

State

Zip

Reset Form

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:

NAACP Florida State Conference

☐ 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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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1/31/2022

Meeting Date

JUDICIARY

Committee

1664

Bill Number or Topic

Amendment Barcode (if applicable)

Name

FRANCESCA MENES

Phone

Address

Street

MIAMI

City

State

Zip

Email

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:

The Black Collective

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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

1/31/22

Meeting Date

Judiciary

Committee

1664

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Ida V. Eskamani

Phone

Address

134 E Colonial Dr

Email

Street

Orlando

City

FL

State

32801

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 Rising

☐

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

SR 1664
Bill Number or Topic

Amendment Barcode (if applicable)

1/31/22
Meeting Date
Judiciary
Committee

Name Neisha-Rose Hines Phone 786 363-1164

Address 4343 W. Flagler Email _____
Miami FL
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:

ACLU FL

☐ 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 Judiciary

BILL: CS/SB 630

INTRODUCER: Judiciary Committee; and Senators Jones and Powell

SUBJECT: Pregnant Women in Custody

DATE: February 1, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Jones	CJ	Favorable
2.	Davis	Cibula	JU	Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 630 requires pregnancy testing for women who are arrested and held in custody and grants a court the discretion to stay the beginning of incarceration for pregnant women who are convicted of a crime.

The bill requires that every female, who is arrested, be notified that she has a right to request a pregnancy test if she is still in custody 72 hours after her arrest. The notification must occur at the time of booking. If the female has not been released on bond within 72 hours after her arrest, the facility where she is being held must administer a pregnancy test, if requested. The pregnancy test must be performed within 24 hours of the request and may be conducted through urine or blood tests, by ultrasound scan, or by any other standard pregnancy testing protocols adopted by the facility. The bill provides that “female” includes a juvenile or adult woman.

The bill authorizes a judge, upon sentencing a pregnant woman to incarceration, to stay the beginning of incarceration for up to 12 weeks after the woman gives birth or is no longer pregnant, if the woman requests a stay. The bill lists six factors the court must consider when making a determination to stay the sentence. If the judge chooses to issue the stay, he or she must explain the reasons for doing so in writing.

The judge may order the pregnant woman to comply with any terms and conditions that may be ordered for probation until she is incarcerated. If a pregnant woman fails to comply with the

terms and conditions or is convicted of another crime, the judge may order sanctions, including incarcerating the pregnant woman to serve the sentence for which she was granted the stay.

The bill requires that, within 10 days after the end of the stay and the woman is incarcerated to serve the sentence, she must be offered an appropriate assessment by a licensed health care practitioner or telehealth provider. If requested, the licensed health care practitioner or telehealth provider must provide a postpartum assessment, which includes assessing the need for any medical tests, procedures, lactation support, mental health support, or treatments associated with her postpartum condition. The assessments and treatments must be developed in consultation with community support organizations, licensed health care professionals, social services programs, and local and state government agencies, including nonprofit organizations.

The bill requires the Department of Corrections and county and municipal detention facilities to collect and gather certain data that will be published by the department each quarter on its public website. The data will include information about the number of stays granted and the outcomes of the pregnancies, miscarriages, births, stillbirths, and complications. The information may not include personally identifiable information and must comply with all state and federal confidentiality laws.

The bill may have an indeterminate fiscal impact on the DOC and municipal and county detention facilities. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

II. Present Situation:

Recent Birth in Alachua County Jail

Erica Thompson was arrested and booked into the Alachua County Jail on the morning of August 9, 2021. She was 6 months' pregnant but went into premature labor and gave birth in her jail cell that night to a baby girl whom she named Ava. According to one news report, the birth occurred in a cell in the women's infirmary.¹ EMS arrived after the baby was born and transported the mother and baby to UF Health Shands Hospital. The baby died several hours later.²

Arrest and Trial

After a person is arrested or charged with a crime, he or she will often be taken into custody and held in a municipal or county jail until first appearance. Within 24 hours of being arrested, the

¹ Cindy Swirko, *Sheriff's Office Responds with Photos and Videos in Case of Baby Born in Jail*, THE GAINESVILLE SUN, Aug. 20, 2021 available at <https://www.news4jax.com/news/local/2021/10/01/mother-suing-alachua-county-detention-center-after-newborn-died-while-she-was-in-jail/#:~:text=ALACHUA%20COUNTY%2C%20Fla.,until%20after%20the%20baby%20arrived> (last visited Jan. 26, 2022).

² Anne Maxwell, *Family Suing Alachua County Jail after Death of Baby Born in Jail*, NEWS4JAX, (Oct. 1. 2021) available at <https://www.news4jax.com/news/local/2021/10/01/mother-suing-alachua-county-detention-center-after-newborn-died-while-she-was-in-jail/#:~:text=ALACHUA%20COUNTY%2C%20Fla.,until%20after%20the%20baby%20arrived> (last visited Jan. 26, 2022).

defendant will have his or her first appearance before the court.³ The presiding judge will advise the defendant whether he or she will receive pretrial release. If granted, the judge will set the requirements for pretrial release, including the amount of bail or bond the defendant must pay to be released. If a person has no right to pretrial release or bond, he or she is immediately delivered into the custody of the sheriff of the county identified in the indictment, information, or where the affidavit is filed.⁴

Once the state has filed formal charges, a defendant may enter a not guilty plea and the case will move forward to trial. Alternatively, a defendant may enter a plea of guilty and be sentenced by the judge; or pursuant to a plea agreement, the defendant may plead guilty or nolo contendere and be sentenced accordingly, if approved by the court. Once a trial is held and evidence is presented, the jury or the judge will find the defendant guilty or not guilty. If, at the conclusion of all the evidence, the defendant is found guilty beyond a reasonable doubt, the judge will decide the sentence or other punishment, as required under Florida law.⁵

The U.S. Constitution provides that “in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.”⁶ If a defendant asserts his or her right to a speedy trial under the Florida Rules of Criminal Procedure and, barring any procedural issues or delays by the defendant, the trial must commence within 60 days.

Pregnancy while Incarcerated

Women are the fastest growing segment of the incarcerated population.⁷ Reports predict that an estimated four to ten percent of women are pregnant upon being committed to prison or jail.⁸ In a survey of 53 jails across the United States, 38 percent reported performing pregnancy tests on all women entering their facilities, and 45 percent relied on inmates to self-report pregnancies and then perform confirmation testing as needed.⁹

Documentation of pregnancies and pregnancy care while incarcerated is sparse. The most recent data from the Bureau of Justice Statistics (BJS) was collected more than 15 years ago. In 2002, the BJS found that five percent of women in local jails were pregnant when admitted. In 2004, the BJS reported that four percent of women in state prisons and three percent of women in

³ Fla R. Crim. P. 3.130.

⁴ Section 907.04, F.S.

⁵ The Criminal Punishment Code is the state’s primary sentencing policy and provides a method by which a judge can calculate the minimum and maximum sentencing range for felonies. *See* ch. 921, F.S. Sections 775.082 and 775.083, F.S., also provides guidelines for sentencing and the assessment of fines, respectively.

⁶ U.S. Const. Amend. V. *See also* Rule 3.191, Fla. R. Crim. Pro.

⁷ Sawyer, Wendy, Prison Policy Initiative, *The Gender Divide: Tracking Women’s State Prison Growth*, p. 17, (Jan. 9, 2018), available at https://www.prisonpolicy.org/reports/women_overtime.html (last visited Jan. 26, 2022).

⁸ Ferszt, G., Palmer, M., and McGrane, C., Nursing for Women’s Health, *Where Does Your State Stand on Shackling of Pregnant Incarcerated Women?*, (Feb. 2018), available at [https://nwhjournal.org/article/S1751-4851\(17\)30335-5/pdf](https://nwhjournal.org/article/S1751-4851(17)30335-5/pdf) (last visited Jan. 26, 2022); Daniel, R., Prison Policy Initiative, *Prisons Neglect Pregnant Women in Their Healthcare Policies*, (Dec. 5, 2019), available at <https://www.prisonpolicy.org/blog/2019/12/05/pregnancy/> (last visited Jan. 26, 2022).

⁹ Friedman, S., Kaempf, Aimee, and Kaufman, Sarah, *The Realities of Pregnancy and Mothering while Incarcerated*, J. OF THE AM. ACAD. OF PSYCHIATRY AND THE LAW, 48(3), (Nov. 3, 2020), available at <http://jaapl.org/content/early/2020/05/13/JAAPL.003924-20> (last visited Jan. 26, 2022).

federal prisons were pregnant upon admission. The government has not released any further national data since.¹⁰

The American College of Obstetricians and Gynecologists report that pregnancies among incarcerated women are often higher risk due to a number of factors, including that such pregnancies are often unplanned and are compromised by a lack of prenatal care, poor nutrition, domestic violence, mental illness, and drug and alcohol abuse.¹¹ Pregnant women also lack control over their environments while incarcerated, which may negatively affect sleep, dietary requirements, and medication administration.¹² Compared with the general public, incarcerated women are at higher risk for having premature delivery and low birth-weight infants.¹³

For some women, incarceration may improve pregnancy outcomes. Women in prison experience forced sobriety, regular nutrition, regular prenatal care, a lack of partner violence, and no homelessness.¹⁴ However, these outcomes vary by the woman's personal situation and the facility-specific circumstances.

Pregnant Women in Florida Correctional Facilities

The DOC has five female correctional institutions statewide.¹⁵ The DOC assigns prisoners to institutions based on current classification procedures while facilitating the individual risk and needs of prisoners to the extent possible considering security and health care needs.¹⁶ The DOC also considers other factors, such as the programmatic and education needs of the prisoner. All newly committed females receive a complete physical examination, which includes a complete gynecological and obstetrical history, pelvic examination, and serum pregnancy test.¹⁷ All inmates who are visibly pregnant or confirmed to be pregnant are housed at the Lowell Correctional Institution which houses all pregnant prisoners for the duration of the pregnancy, unless a medical condition prohibits transfer to or housing at the facility.

The DOC has guidelines for the health care of pregnant prisoners. A senior health care professional examines the pregnant prisoner as soon as possible to confirm the pregnancy, determine the stage of pregnancy, and determine the anticipated due date. Pregnant prisoners are

¹⁰ Daniel, R., Prison Policy Initiative, *Prisons Neglect Pregnant Women in Their Healthcare Policies*, (Dec. 5, 2019), available at <https://www.prisonpolicy.org/blog/2019/12/05/pregnancy/> (last visited Jan. 26, 2022). See also Sufrin, C., Beal, L., Clarke, J., Jones, R., and Mosher, W., *Pregnancy Outcomes in US Prison, 2016-2017*, AM. J. OF PUB. HEALTH, (Jan. 15, 2019), available at <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2019.305006> (last visited Nov. 4, 2021).

¹¹ The American College of Obstetricians and Gynecologists, Committee Opinion, *Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females*, (Nov. 2011), available at <https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Health-Care-for-Pregnant-and-Postpartum-Incarcerated-Women-and-Adolescent-Females?IsMobileSet=false> (last visited Nov. 4, 2021).

¹² *Supra* note 9, at 2.

¹³ *Id.* at 3.

¹⁴ *Id.*

¹⁵ These facilities are Gadsden Correctional Facility in Quincy, Lowell Correctional Institution in Ocala, Florida Women's Reception Center in Ocala, Hernando Correctional Institution in Brooksville, and Homestead Correctional Institution in Florida City. Office of Program Policy Analysis and Government Accountability, *Florida Correctional Facilities, Report No. 19-08*, (Oct. 2019), p. 2, available at <https://oppaga.fl.gov/Documents/Reports/19-08.pdf> (last visited Jan. 26, 2022).

¹⁶ *Id.* at pp. 7-8.

¹⁷ Department of Corrections, *Senate Bill 630 Agency Analysis*, p. 2, (Nov. 16, 2021). <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=32859>.

transferred to a contract hospital for the actual delivery and then returned to the institution when discharged by the attending obstetrician. The DOC reports that postpartum care is provided at the institution according to the discharge orders of the attending obstetrician, but that the 6-week checkup is provided by the obstetrician.¹⁸

The DOC reports the pregnant prisoner population over the last three fiscal years is as follows:

- 37 prisoners in Fiscal Year 2020-2021;
- 69 in Fiscal Year 2019-2020; and
- 101 in Fiscal Year 2018-2019.¹⁹

Protections for Pregnant Prisoners under State Law

Background

In 2012, the Legislature passed the “Healthy Pregnancies for Incarcerated Women Act.”²⁰ Those provisions, which are discussed below, generally prevent the use of restraints on pregnant prisoners during labor, delivery, and postpartum recovery. In 2020, the Legislature revisited and expanded that statute renaming the new provisions the “Tammy Jackson Healthy Pregnancies for Incarcerated Women Act.”²¹ The legislation generally prohibits involuntarily placing a pregnant prisoner in restrictive housing, but if placed there, then she is entitled to special healthcare guarantees. In 2019, Tammy Jackson was incarcerated in the infirmary at the North Broward Bureau, a special needs facility that houses prisoners who are mentally ill or have special needs. When Ms. Jackson, who was 9 months pregnant, realized that she was going into labor, she called for help. Although the on-call doctor was called, no medical assistance was provided and she gave birth 7 hours later in her cell, alone.²²

Current Provisions

Section 944.241(3)(a), F.S., prohibits restraints²³ from being used on a prisoner²⁴ who is known to be pregnant during labor,²⁵ delivery, and postpartum recovery,²⁶ unless the corrections

¹⁸ *Id.*

¹⁹ *Id.* This number reflects the number of prisoners who were pregnant at some point during the fiscal year; however, some prisoners may be counted in more than one fiscal year.

²⁰ Chapter 2012-41, Laws of Fla.

²¹ Chapter 2020-89, Laws of Fla.

²² Deanna Paul, *A Pregnant Inmate Came to Term in Jail. Lawyers Say She Was Forced To Give Birth There – Alone*, THE WASHINGTON POST May 6, 2019 available at <https://www.washingtonpost.com/nation/2019/05/04/mentally-ill-woman-gives-birth-alone-broward-county-jail-attorney-says/> (last visited Jan. 27, 2022).

²³ Section 944.241(2)(j), F.S., defines “restraints” to mean any physical restraint or mechanical device used to control the movement of a prisoner’s body or limbs, including, but not limited to, flex cuffs, soft restraints, hard metal handcuffs, a black box, chubb cuffs, leg irons, belly chains, a security or tether chain, or a convex shield.

²⁴ Section 944.241(2)(i), F.S., defines “prisoner” to mean any person incarcerated or detained in any correctional institution who is accused of, convicted of, sentenced for, or adjudicated delinquent for a violation of criminal law or the terms and conditions of parole, probation, community control, pretrial release, or a diversionary program. Additionally, the term includes any woman detained under the immigration laws of the United States at any correctional institution.

²⁵ Section 944.241(2)(f), F.S., defines “labor” to mean the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix.

²⁶ Section 944.241(2)(g), F.S., defines “postpartum recovery” to mean, as determined by her physician, the period immediately following delivery, including the recovery period when a woman is in the hospital or infirmary following birth, up to 24 hours after delivery unless the physician after consultation with the DOC or correctional institution recommends a longer period of time.

official²⁷ makes an individualized determination that the prisoner presents an extraordinary circumstance.²⁸ This section applies to any facility under the authority of the DOC, the Department of Juvenile Justice, a county or municipal detention facility, or a detention facility operated by a private entity.²⁹

State law also limits the involuntary placement of a pregnant prisoner in restrictive housing.³⁰ A pregnant prisoner may be involuntarily placed in restrictive housing if the corrections official of the correctional institution makes an individualized determination that such housing is necessary to protect the health and safety of the pregnant prisoner or others.³¹ Pregnant prisoners placed in restrictive housing must be seen by a qualified healthcare professional at least once every 24 hours and a corrections officer every hour. Pregnant prisoners must be given a medical treatment plan that has been developed and approved by a qualified healthcare professional at the correctional institution if she does not already have a treatment plan in place.³²

If a pregnant woman needs medical care or has passed her due date, she must be placed in a designated medical housing unit or admitted to the infirmary until labor begins. She must have access to outdoor recreation, visitation, mail, telephone calls, and other privileges and classes available to the general population unless:

- A corrections official, in consultation with a qualified health care professional, determines such access poses a threat to the safety and security of the correctional institution; or
- A qualified health care professional determines that such access poses a danger of adverse clinical consequences for the pregnant prisoner or others.³³

Pregnant Women in Municipal and County Detention Facilities

Municipal and county detention facilities must provide pregnant prisoners with prenatal care and medical treatment for the duration of her pregnancy. The county must ensure that pregnant prisoners receive supplemental food and clothing and are excused from inappropriate work assignments.³⁴

A pregnant prisoner must be transferred to a hospital outside the facility if conditions develop that are beyond the scope and capabilities of the county detention facility.³⁵ The charges for the hospital and medical care must be charged against the detention facility's allocated funds.³⁶ The

²⁷ Section 944.241(2)(b), F.S., defines "corrections official" to mean the official who is responsible for oversight of a correctional institution, or his or her designee.

²⁸ Section 944.241(2)(d), F.S., defines "extraordinary circumstance" to mean a substantial flight risk or some other extraordinary medical or security circumstance that dictates restraints be used to ensure the safety and security of the prisoner, the staff of the correctional institution or medical facility, other prisoners, or the public.

²⁹ See s. 944.241(2)(a), F.S.

³⁰ Section 944.241(2)(k), F.S., defines "restrictive housing" to mean housing a prisoner separately from the general population of a correctional institution and imposing restrictions on her movement, behavior, and privileges. The term includes placing a prisoner in medical isolation, in a medical housing unit, or in the infirmary.

³¹ Section 944.241(4)(b), F.S.

³² Section 944.241(4)(c)4., F.S.

³³ Section 944.241(4)(d), F.S.

³⁴ Section 951.175(4), F.S.

³⁵ *Id.*

³⁶ Section 951.175(5), F.S.

county must also provide care for the newborn and pay for the child's care until the child is suitably placed outside the prison system.³⁷

Privacy of Medical Records

Health Insurance Portability and Accountability Act

The federal Health Insurance Portability and Accountability Act (HIPAA), enacted in 1996, protects personal health information (PHI).³⁸ In 2000, the U.S. Department of Health and Human Services promulgated privacy rules which established national standards to protect medical records and other PHI.³⁹ These rules address, among other things, the use and disclosure of an individual's PHI.

Only certain entities are subject to the HIPAA's provisions. These "covered entities" include:

- Health plans;
- Health care providers;
- Health care clearinghouses; and
- Business associates of any of the above.⁴⁰

The HIPAA requires the disclosure of an individual's PHI to the individual who is the subject of the PHI information or his or her personal representative,⁴¹ upon his or her request.⁴² An individual also has the right to request the disclosure of PHI to another person or entity. Such request must be in writing, signed by the individual, and clearly identify the designated person and where to send the PHI.⁴³

In general, HIPAA privacy rules preempt any state law that is contrary to its provisions.⁴⁴ However, if the state law is more stringent, the state law will apply.

Florida Law on Medical Records

Patient records are generally protected from disclosure. Section 456.057, F.S., prohibits health care practitioners from disclosing medical records and a patient's medical condition to anyone other than the patient, the patient's legal representative, or other health care practitioners and providers involved in the patient's care or treatment without written authorization of the patient.

³⁷ *Id.*

³⁸ Pub. L. No. 104-191 (1996). Protected health information includes all individually identifiable health information held or transmitted by a covered entity or its business associate.

³⁹ U.S. Department of Health and Human Services, *Health Information Privacy* (last rev. Dec. 10, 2020), available at <https://www.hhs.gov/hipaa/for-professionals/privacy/index.html> (last visited Jan. 26, 2022). The rules were modified in 2002.

⁴⁰ U.S. Department of Health and Human Services, Office for Civil Rights, *Summary of the HIPAA Privacy Rule*, (last rev. May 2003), available at <https://www.hhs.gov/sites/default/files/privacysummary.pdf> (last visited Jan. 26, 2022).

⁴¹ *Supra* note 39. A personal representative is generally a person with authority under state law to make health care decisions on behalf of an individual.

⁴² *Supra* note 35. The HIPAA limits access to psychotherapy notes, certain lab results, and information compiled for legal proceedings. A covered entity may also deny access to personal health information in certain situations, such as when a health care practitioner believes access could cause harm to the individual or others.

⁴³ *Supra* note 34.

⁴⁴ 45 C.F.R. s. 160.203.

A health care practitioner may disclose records, without the patient's written authorization under the following circumstances:

- To any person, firm, or corporation that has procured or furnished such care or treatment with the patient's consent;
- When a compulsory examination is made under Rule 1.360, Florida Rules of Civil Procedure;
- Upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient by the party seeking the records;
- For statistical and scientific research, provided the information is abstracted in a way to protect the identity of the patient, or the patient provided written permission;
- To a regional poison control center for the purpose of treating or managing a poison episode; and
- To the Department of Children and Families or its contracted entity for the purposes of investigations or services for cases of abuse, neglect, or exploitation of children or vulnerable adults.⁴⁵

A health care practitioner may also release medical records without the patient's consent to facilitate emergency treatment, when the health care provider is unable to obtain the patient's consent due to the patient's condition and the need for immediate medical care.⁴⁶ Medical records related to workers compensation may also be released to certain parties without a patient's written authorization.⁴⁷

A third party to whom medical records are disclosed may not further disclose any information in the medical record without the expressed, written consent of the patient or the patient's legal representative.⁴⁸

Hospitals and ambulatory surgical centers may not disclose patient medical records without the consent of the patient or the patient's legal representative.⁴⁹ However, certain disclosures are permissible without the patient's consent.⁵⁰

III. Effect of Proposed Changes:

Short Title

The bill provides that the act may be cited as "Ava's Law" in memory of the baby, Ava, who died after being born prematurely in the Alachua County jail last year.

⁴⁵ Section 456.057(7), F.S.

⁴⁶ Section 408.051(3), F.S.

⁴⁷ Section 440.13(4)(c), F.S.

⁴⁸ Section 456.057(11), F.S.

⁴⁹ Section 395.3025(4), F.S.

⁵⁰ For the list of exceptions to obtaining the patient's written consent for release of records, *see* s. 395.3025(4), F.S.

Pregnancy Testing for Arrestees

The bill requires that every female⁵¹ who is arrested to be notified, upon booking, that she has a right to request a pregnancy test if she remains in custody 72 hours after her arrest. If the female has not been released on bond within 72 hours after arrest, the municipal or county detention facility⁵² where she is being held must administer a pregnancy test, if requested. The pregnancy test must be performed within 24 hours of the request and may be conducted through urine or blood tests, by ultrasound scan, or by any other standard pregnancy testing protocols adopted by the facility.

Sentence Stays for Pregnant Women

The bill authorizes a judge, upon sentencing a pregnant woman to incarceration, to stay the beginning of incarceration for up to 12 weeks after the woman gives birth or is no longer pregnant, if the woman requests a stay. The factors the court must consider when making a determination to stay the sentence are:

- The severity of the offense.
- Whether she was previously convicted of a felony.
- Whether other felony charges are pending against her.
- The state's interest in deterring and punishing criminal activity and protecting the public.
- The rights of the victim of her crime, consistent with s. 16, Art. I of the State Constitution and s. 960.0021, F.S.
- Whether staying the incarceration is consistent with protecting the life, health, and safety of the unborn child and its life during the first 12 weeks after birth. When considering this factor, the court must consider the existence of any previous substance abuse by the woman, whether any of her other children have been adjudicated dependent, and any other information relevant to the health and safety of the unborn child.

If the judge issues the stay, the judge must explain his or her reasoning in writing.

The judge may order a pregnant woman whose incarceration is stayed to comply with any terms and conditions of probation. Under s. 948.03, F.S., a judge would be authorized to order the pregnant woman to:

- Report to the probation officer as directed;
- Permit the probation officer to visit her at her home or elsewhere;
- Work faithfully at suitable employment insofar as may be possible;
- Remain within a specified place;
- Live without violating any law;

⁵¹ The bill provides that the term “pregnant woman” includes a juvenile or adult woman.

⁵² Section 951.23, F.S., defines “municipal detention facility” as a city jail stockade, a city prison camp, and any other place except a county detention facility used by a municipality or municipal officer for the detention of persons charged with or convicted of violation of municipal laws or ordinance; and “county detention facility” as a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either a felony or misdemeanor.

- Make reparation or restitution to an aggrieved party for the damage or loss caused by her offense in an amount determined by the court;
- Make payment of the debt due and owing to a county or municipal detention facility for medical care, treatment, hospitalization, or transportation received by a felony probationer while in that detention facility;
- Support her legal dependents to the best of her ability;
- Make payment of the debt due and owing to the state;
- Pay any application fee and attorney fees and costs that have been appropriately assessed
- Not associate with persons engaged in criminal activities;
- Submit to random testing as directed by the probation officer to determine the presence or use of alcohol or controlled substances;
- Not possess, carry, or own any weapon without first procuring consent of the probation officer or any firearm;
- Not use intoxicants to excess or possess any drugs, unless prescribed by a health care practitioner; and
- Comply with any other terms and conditions the court considers proper.

If a woman is convicted of another crime or violates any of the terms and conditions ordered by the court, the judge may impose sanctions, including requiring the pregnant woman to be incarcerated to serve the sentence for which the stay was granted

The bill requires that within 10 days after the stay ends and the woman is incarcerated to serve the sentence, she must be offered an appropriate assessment by a licensed health care practitioner or a telehealth provider.⁵³ If requested, the licensed health care practitioner or telehealth provider must provide a postpartum assessment, which includes assessing the woman's need for any necessary medical tests, procedures, lactation support, mental health support, or treatments associated with her postpartum condition. The DOC and municipal and county detention facilities must develop and offer the assessments and treatments, in consultation with community support organizations, licensed health care practitioners, social services programs, and local and state government agencies, including nonprofit organizations.

The bill requires each municipal and county detention facility and the DOC to collect the following information:

- The total number of pregnant women who receive a sentence stay;
- The total number of births, including the number of live births and stillbirths, to women whose sentences are stayed, and the gestational age and birth weight of each infant at the time of birth or stillbirth;
- The total number of such women who experience complications during pregnancy and type of complications experienced;
- The total number of women who experience miscarriages; and

⁵³ Section 456.47, F.S., defines a "telehealth provider" as a person who provides health care and related services using telehealth and who is licensed by the Florida Department of Health or under a multistate health care licensure compact of which Florida is a member state, or a person who is registered with the Department of Health to provide such services. "Telehealth" is the use of synchronous or asynchronous telecommunications technology to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient.

- The total number of women who refuse to provide information about the birth, gestational age, weight of the infant at birth, pregnancy complications, and miscarriages.

Municipal and county detention facilities must report the above-listed information to the DOC and the DOC must compile the data with information from its own institutions and quarterly publish the data on its website. The bill requires patient identifying information to be excluded and compliance with state and federal confidentiality laws.

The bill is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill may cause some municipal and county governments to expend funds for the pregnancy testing and postpartum assessments and treatments. However, these provisions relate to the defense, prosecution, or punishment of criminal offenses, and criminal laws are exempt from the requirements of article VII, section 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:

This bill may implicate the Equal Protection Clause of the U.S. Constitution and a similar clause in the Florida Constitution.⁵⁴ The Fourteenth Amendment of the U.S. Constitution provides that no state shall deny to any person within its jurisdiction the equal protection of the laws.⁵⁵ The Fourteenth Amendment prevents unreasonable discrimination based on the use of classification, thereby preventing laws which draw distinctions between individual classes based solely on differences that do not relate to a legitimate governmental objective. The Florida Equal Protection Clause provides that all natural persons, female and male, are equal before the law.⁵⁶

⁵⁴ U.S. CONST. amend. XIV, and FLA. CONST. art. I, s. 2.

⁵⁵ *Id.*

⁵⁶ FLA. CONST. art. I, s. 2.

A law with gender classifications must serve important governmental objectives and must be substantially related to the achievement of those objectives.⁵⁷ The bill authorizes a sentence deferral for a pregnant woman to receive “necessary health care for herself and the unborn child.” The DOC has a constitutional and statutory duty to provide adequate health care to all inmates.⁵⁸ Since the DOC is required to provide adequate health care to all inmates, regardless of gender, a court may find that a man in need of necessary health care services to be similarly situated to a pregnant woman in need of necessary health care services. However, a court could also find that the difference in treatment of similarly situated men and pregnant women serves an important governmental objective.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 630 will have an indeterminate fiscal impact on the DOC. However, the DOC may incur costs associated with postpartum assessments, data collection, and reporting requirements. There may also be an indeterminate fiscal impact to the inmate and community supervision population.⁵⁹

The DOC and municipal and county detention facilities may reduce expenditures related to prenatal care, delivery services, and postpartum care for pregnant prisoners. Municipal and county detention facilities may expend funds to provide pregnancy testing to women who are arrested. However, they may also realize cost savings related to care of the newborn infant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁵⁷ *Alachua County Court Executive v. Anthony*, 418 So.2d 264, 265-266 (Fla. 1982) (citing *Craig v. Boren*, 429 U.S. 190, 197 (1976)).

⁵⁸ *Estelle v. Gamble*, 429 U.S. 97, 103 (1976), and s. 945.025(2), F.S., which requires that medical, mental, and psychological problems be diagnosed and treated whenever possible.

⁵⁹ *Supra* note 17 at 4.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 907.033 and 925.13.

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 Judiciary on January 31, 2022:

The committee substitute differs from the underlying bill by *permitting*, rather than *requiring*, a judge to stay the incarceration of a pregnant woman for up to 12 weeks. When determining whether to stay an incarceration, a judge must consider 6 enumerated factors, and explain his or her reasons in writing if a stay is granted. Among the new factors to be considered are whether the defendant has a previous felony conviction, whether another felony is pending, and whether the stay is consistent with protecting the life, health, and safety of the unborn child and its life during the first 12 weeks after birth.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/31/2022	.	
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	.	
	.	

The Committee on Judiciary (Jones) recommended the following:

Senate Amendment (with title amendment)

Delete lines 58 - 116
and insert:

(2) Notwithstanding any other law, after a pregnant woman is convicted of any offense and when the sentencing court pronounces a sentence of incarceration, the court has the discretion to stay the beginning of the period of incarceration for up to 12 weeks after the pregnant woman gives birth or is no longer pregnant. In determining whether to grant a pregnant woman's request to stay the beginning of the period of



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incarceration, the court must consider all of the following:

(a) The severity of the offense for which the defendant is convicted.

(b) Whether the defendant was previously convicted of a felony.

(c) Whether other felony charges are pending against the defendant.

(d) The state's interest in deterring and punishing criminal activity and protecting the public.

(e) The rights of the victim of the defendant's crime, consistent with s. 16, Art. I of the State Constitution and s. 960.0021.

(f) Whether staying the incarceration is consistent with protecting the life, health, and safety of the unborn child and its life during the first 12 weeks after birth. In considering this factor, the court shall consider the existence of any prior substance abuse by the defendant, whether any other children of the defendant have been adjudicated dependent, and any other information relevant to the health and safety of the unborn child.

If the court grants the request to stay the incarceration, it must explain its reasons in writing.

(3) The sentencing court may order a pregnant woman whose incarceration is stayed to comply with any of the terms and conditions specified in s. 948.03 until such time as she is incarcerated.

(4) Within 10 days after the end of the stay of incarceration and the commencement of the woman's incarceration



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41 to serve the sentence, she must be offered an appropriate
42 assessment by a licensed health care practitioner or a
43 telehealth provider as defined in s. 456.47, and upon her
44 request, the licensed health care practitioner or telehealth
45 provider shall provide a postpartum assessment, including the
46 need for any necessary medical tests, procedures, lactation
47 support, mental health support, or treatments associated with
48 her postpartum condition. The Department of Corrections and
49 municipal and county detention facilities shall develop and
50 offer such assessments and treatments in consultation with
51 community support organizations, licensed health care
52 practitioners, social services programs, and local and state
53 government agencies, including nonprofit organizations.

54 (5) If, during the stay of incarceration, the pregnant
55 woman is convicted of another crime or violates any of the
56 conditions imposed by the sentencing judge, the judge may impose
57 any sanction under s. 948.06, including an order requiring the
58 incarceration of the pregnant woman to serve the sentence for
59 which the stay was granted.

60 (6) (a) The Department of Corrections shall collect from its
61 own institutions, and each municipal detention facility and
62 county detention facility as those terms are defined in s.
63 951.23 shall collect and report to the department, all of the
64 following information, which the department shall compile and
65 publish quarterly on its public website:

66 1. The total number of pregnant women whose sentences are
67 stayed under subsection (2);

68 2. The total number of births, including the number of live
69 births and stillbirths, to women whose sentences are deferred,



715928

and the gestational age and birth weight of each infant at the
time of birth or stillbirth;

3. The total number of women who experience complications
during pregnancy and the type of complications experienced;

4. The total number of women who experience miscarriages;
and

5. The total number of women who refuse to provide
information regarding the outcome of their pregnancies as
indicated in subparagraphs 2., 3., and 4.

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

And the title is amended as follows:

Delete lines 13 - 24

and insert:

the term "pregnant woman"; authorizing a sentencing
court to stay the beginning of the period of
incarceration for up to a certain timeframe for a
pregnant woman convicted of any offense; requiring the
court to consider specified factors in determining
whether to grant a pregnant woman's request to stay
the beginning of the period of incarceration;
requiring the court to explain its reasons for
granting a stay of incarceration in writing;
authorizing a sentencing court to order a pregnant
woman to comply with specified terms and conditions
during the stay of the incarceration; requiring that,
within 10 days after the end of the stay and the
commencement of the woman's incarceration, she be
offered and receive, upon her request, a specified



715928

99 assessment and services; authorizing a judge to impose
100 specified sanctions for another criminal conviction or
101 a violation of the terms

By Senator Jones

35-00023A-22

2022630__

1 A bill to be entitled
 2 An act relating to pregnant women in custody;
 3 providing a short title; creating s. 907.033, F.S.;
 4 requiring that every female who is arrested and not
 5 released on bond within 72 hours after arrest be
 6 administered a pregnancy test within a specified
 7 timeframe, upon her request; requiring that each
 8 municipal or county detention facility notify each
 9 arrested female upon booking at the facility of her
 10 right to request a pregnancy test; providing for the
 11 types of pregnancy tests that may be given; defining
 12 the term "female"; creating s. 925.13, F.S.; defining
 13 the term "pregnant woman"; requiring that, if a
 14 pregnant woman is convicted of a crime and sentenced
 15 to incarceration of any length, the sentencing judge
 16 provide the pregnant woman the opportunity to defer
 17 the imposed sentence until a specified time after
 18 delivery; authorizing a sentencing judge to order a
 19 pregnant woman to comply with certain terms and
 20 conditions during the deferral; requiring that, within
 21 10 days after the deferral period ends and the woman
 22 is incarcerated, she be offered and receive, upon her
 23 request, specified services; authorizing sanctions for
 24 a new criminal conviction or violation of the terms
 25 and conditions ordered by the judge; requiring
 26 municipal and county detention facilities to collect
 27 and report to the Department of Corrections, and the
 28 department to collect from its own institutions,
 29 specified information; requiring the department to

Page 1 of 5

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

35-00023A-22

2022630__

30 quarterly compile and publish the information on its
 31 public website; providing requirements for publishing
 32 such information; providing an effective date.
 33
 34 Be It Enacted by the Legislature of the State of Florida:
 35
 36 Section 1. This act may be cited as "Ava's Law."
 37 Section 2. Section 907.033, Florida Statutes, is created to
 38 read:
 39 907.033 Pregnancy testing of female arrestees.—Every female
 40 who is arrested and not released on bond within 72 hours after
 41 arrest must, upon her request, be administered a pregnancy test
 42 by the municipal or county detention facility as defined in s.
 43 951.23 where she is being held within 24 hours after the
 44 request. Upon her booking into the facility, the facility must
 45 notify each such arrestee of her right to request a pregnancy
 46 test 72 hours after arrest if she is still in custody. The
 47 pregnancy test may be conducted through urine or blood tests, by
 48 ultrasound scan, or by any other standard pregnancy testing
 49 protocols adopted by the facility. As used in this section, the
 50 term "female" includes a juvenile or adult woman.
 51 Section 3. Section 925.13, Florida Statutes, is created to
 52 read:
 53 925.13 Sentence deferral for pregnant women.—
 54 (1) As used in this section, the term "pregnant woman"
 55 means a juvenile or adult woman whose pregnancy has been
 56 verified by a pregnancy test or through a medical examination
 57 conducted by a health care practitioner.
 58 (2) Notwithstanding any other law, the sentence of a

Page 2 of 5

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

35-00023A-22

2022630

pregnant woman who is convicted of a crime and sentenced to incarceration of any length must comply with all of the following requirements:

(a) The sentencing judge must provide a pregnant woman the opportunity to defer the imposed sentence until 12 weeks after delivery of the baby so that during the deferral period the pregnant woman may receive necessary health care for herself and the unborn child. If the pregnancy ends at any time before the delivery of the baby, the deferral period will end 12 weeks from the date the pregnancy ends. If the pregnant woman chooses not to defer her sentence, she must be incarcerated as directed by the judge.

(b) The sentencing judge may order a pregnant woman whose sentence is deferred to comply with any of the terms and conditions specified in s. 948.03 until such time as she is incarcerated.

(c) Within 10 days after the deferral period ends and the woman is incarcerated to serve the sentence, she must be offered an appropriate assessment by a licensed health care practitioner or a telehealth provider as defined in s. 456.47, and, upon the request of the incarcerated woman, the licensed health care practitioner or telehealth provider shall provide a postpartum assessment, including the need for any necessary medical tests, procedures, lactation support, mental health support, or treatments associated with her postpartum condition. The Department of Corrections and municipal and county detention facilities shall develop and offer such assessments and treatments in consultation with community support organizations, licensed health care practitioners, social services programs,

35-00023A-22

2022630

and local and state government agencies, including nonprofit organizations.

(3) If, during the deferral period, the pregnant woman is convicted of a new crime or violates any of the conditions imposed by the sentencing judge, the judge may impose any sanction that may be imposed under s. 948.06, including an order requiring the incarceration of the pregnant woman to serve the sentence for which the deferral was granted.

(4) (a) The Department of Corrections shall collect from its own institutions, and each municipal and county detention facility, as those terms are defined in s. 951.23, shall collect and report to the department, all of the following information, which the department shall compile and publish quarterly on its public website:

1. The total number of pregnant women who receive a sentence deferral under paragraph (2) (a);

2. The total number of women who receive or who decline an assessment under paragraph (2) (c);

3. The total number of births, including the number of live births and stillbirths, to women whose sentences are deferred, and the gestational age and birth weight of each infant at the time of birth or stillbirth;

4. The total number of women who experience complications during pregnancy and the type of complications experienced;

5. The total number of women who experience miscarriages; and

6. The total number of women who refuse to provide information regarding the outcome of their pregnancies as indicated in subparagraphs 3., 4., and 5.

35-00023A-22

2022630__

117 (b) The information published pursuant to paragraph (a)
118 ~~must exclude personally identifying information and must comply~~
119 ~~with state and federal confidentiality laws.~~
120 Section 4. This act shall take effect July 1, 2022.



The Florida Senate

Committee Agenda Request

Senator Shevrin D. "Shev" Jones
214 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

To: Chair Danny Burgess
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 25, 2022

I respectfully request that **SB 630: Pregnant Women in Custody**, be placed on the:

- ☒ Committee agenda at your earliest possible convenience.
- ☐ Next committee agenda.

A handwritten signature in blue ink, appearing to be "Shev", is written above a horizontal line.

Senator Shevrin Jones
Florida Senate, District 35

The Florida Senate

APPEARANCE RECORD

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

SB 630

Bill Number or Topic

1/31/22

Meeting Date

Judiciary

Committee

Amendment Barcode (if applicable)

Name

Neisha-Rose Hines

Phone

786 363-1104

Address

4343 W. Flagler

Email

Street

Miami FL

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:

ACLU FL

☐

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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

1-31-22
Meeting Date

630
Bill Number or Topic

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

Judiciary
Committee

Name Barbara DeVane Phone 257-4280

Address 625 E. Brevard St Email barbadervane1@
Tallahassee FL 32308 Yahoo.com

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 National Organization for Women

☐ 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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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

1-31-22

Meeting Date

SB630

Bill Number or Topic

Deliver both copies of this form to
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Committee

Amendment Barcode (if applicable)

Name

Nina Manning

Dignity Power

Phone

808-476-7388

Address

136 Dorsher Rd

Email

Street

Orlando

City

FL

State

32835

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

630

Meeting Date

Bill Number or Topic

Judiciary
Committee

Deliver both copies of this form to
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Amendment Barcode (if applicable)

Name

Tray Johns / Dignity Power Phone 808 366 4347

Address

136 Dorscher rd
Street

Email

Orlando FL 32835
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

1-31-22

Meeting Date

SB630

Bill Number or Topic

Judiciary

Committee

Deliver both copies of this form to
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Amendment Barcode (if applicable)

Name

Jamikia Jones

Phone

850-688-7153

Address

P.O. Box 6957

Email

Power Up People Plus@gmail.com

Street

Indian Shores

State

FL

Zip

334301

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

1.31.22

Meeting Date

SB 630

Bill Number or Topic

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

Committee

Amendment Barcode (if applicable)

Name

Trish Brown

Phone

(850) 688-7153

Address

1316 Loy Ave.

Email

Power4People4Us@
gmn.fl.com

Street

Altamonte

32310

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

SB 630

1-31-22

Meeting Date

Bill Number or Topic

JUDICIARY

Committee

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

Amendment Barcode (if applicable)

Name

Brenda Spitzbarth

Phone

772-834-8124

Address

P.O. Box 275

Email

BKAYSPITZ@GMAIL.COM

Street

OLDSMAR

City

FL

State

34677

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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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1/31/2022

Meeting Date

SB 630

Bill Number or Topic

Judiciary

Committee

Amendment Barcode (if applicable)

Name

Ana V. Guevara

Phone

561 215 1062

Address

Street

Lakewood

City

FL

State

33461

Zip

Email

ana@floridarisng.org

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:

Florida Student Power

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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S-001 (08/10/2021)

The Florida Senate

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1/31/21

Meeting Date

SB 630

Bill Number or Topic

Judiciary

Committee

Amendment Barcode (if applicable)

Name Mary-Elizabeth Estrada

Phone _____

Address 2713 Island Dr

Email _____

Street

Sebring

City

FL

State

33872

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:

Florida Student Power

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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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1/31/22

Meeting Date

Senate Judiciary

Committee

SB 630

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Annie Filkowski

Phone

(239) 849-2644

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:

Florida Alliance of
Planned Parenthood Affiliates

☐

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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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

1/31/22
Meeting Date

Judiciary
Committee

630
Bill Number or Topic

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

Amendment Barcode (if applicable)

Name Ida V. Eskamani Phone _____

Address 134 E. Colonial Dr Email _____
Street

Orlando FL 32801
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 Rising +
Florida Immigrant Coalition

☐ 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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S-001 (08/10/2021)

January 31, 2022

Meeting Date

The Florida Senate
APPEARANCE RECORD

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630

Bill Number or Topic

Judiciary

Committee

Name **Pamela Burch Fort**

Phone **850-425-1344**

Address **104 S. Monroe Street**

Email **TcgLobby@aol.com**

Street

Tallahassee

FL

32301

City

State

Zip

Reset Form

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:

NAACP Florida State Conference

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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S-001 (08/10/2021)

January 31, 2022

Meeting Date

Judiciary

Committee

The Florida Senate

APPEARANCE RECORD

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

Senate Bill 630

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Brian Jogerst**

Phone **850.222.0191**

Address **PO Box 838**

Email **brian@waypointstrat.com**

Street

Tallahassee

FL

32302

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 Association of Healthy
Start Coalitions**

☐ 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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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1/31/2022
Meeting Date

630
Bill Number or Topic

Judiciary
Committee

Amendment Barcode (if applicable)

Name Karen Woodall

Phone 850-321-9386

Address 579 E. Call St.

Email fcfe@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 \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

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1/31/2022
Meeting Date
Judiciary
Committee

630
Bill Number or Topic

Amendment Barcode (if applicable)

Name Donn Scott, Jr SPLC Action Fund Phone _____

Address P.O. Box 10788 Email donn.scottjr@splcenter.org
Street
Tallahassee FL 32302
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:

SPLC Action Fund

☐ 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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB630

Bill Number or Topic

1/31/2022

Meeting Date

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

Judiciary

Committee

Amendment Barcode (if applicable)

Name

Jen DePercio

Phone

954.993.0469

Address

555 Gunston Ct

Email

JCDauto@hotmail.com

Street

Davenport FL 33837

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

Deliver both copies of this form to
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1/31/21

Meeting Date

SB 630

Bill Number or Topic

Judiciary

Committee

Amendment Barcode (if applicable)

Name

Laurette Philipson

Phone

727-484-0237

Address

7240 Westwind drive

Street

Email

advocate.philipson@gmail.com

Port Lichey FL 34108

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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Jan. 31, 2022

Meeting Date

Judiciary

Committee

5BL30

Bill Number or Topic

Amendment Barcode (if applicable)

Name Denise Rock

Phone 561-502-0393

Address 11447 Blue Violet Lane

Street

WPB FL 33411

City

State

Zip

Email _____

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.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 702

INTRODUCER: Judiciary Committee; and Senator Burgess, and others

SUBJECT: Photographic Enforcement of School Bus Safety

DATE: February 1, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Vickers	TR	Favorable
2.	Davis	Cibula	JU	Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 702 authorizes a school district to contract with a private vendor or manufacturer to provide a side stop signal arm enforcement system on each school bus in its fleet. The system uses electronic traffic enforcement technology to record traffic violations when drivers fail to stop for a school bus displaying a stop signal.

A private vendor or manufacturer contracting with a school district must submit specific information regarding an alleged violation to a law enforcement agency authorized to enforce school bus stop arm violations. The information must be submitted within 30 days after the alleged violation is captured, including the following: a copy of the recorded image showing the motor vehicle; the license plate number and state of issuance; and the date, time, and place of the alleged violation.

The bill requires a law enforcement agency to review the information and determine if there is sufficient evidence that a violation occurred. If the evidence shows that a violation occurred, the agency or an authorized agent must electronically certify a notice of violation and, within 30 days, send a notice of violation by registered mail to the vehicle's registered owner. The notice must also include specific information detailing how to pay the civil penalty, contest the violation, and the consequence of failing to pay or contest. If the owner does not contest or pay the civil penalty, the Department of Highway Safety and Motor Vehicles (DHSMV) must prohibit the owner from renewing his or her registration or transferring the title of his or her vehicle.

Under the bill, any funds received from violations must be provided to the school district in which the violation occurred. The funds must be used to install or maintain side stop signal arm enforcement systems, for the administration and costs associated with enforcement of the violations, or for any other technology that increases the safety of the transportation of students.

The bill requires each school district using the system to provide an annual report to the Governor, President of the Senate, Speaker of the House of Representatives, and the DHSMV by December 31, 2022, and every year thereafter providing specified information.

The bill may have an indeterminate fiscal impact on school districts electing to install a school bus side stop signal arm enforcement system on its school buses. See Section V. Fiscal Impact Statement.

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

II. Present Situation:

School Buses and Traffic Laws

Law enforcement agencies are responsible for enforcing traffic laws, including school transportation related traffic violations. However, law enforcement officers are not always present along every school transportation route. Because law enforcement officers cannot feasibly monitor each bus on every route each day, many school transportation traffic violations may go unenforced.

In Florida, a school bus must stop as far to the right of the street as possible and display warning lights and stop signals before discharging or loading passengers.¹ When possible, school buses should not stop where visibility is obscured for a distance of 200 feet from the bus.²

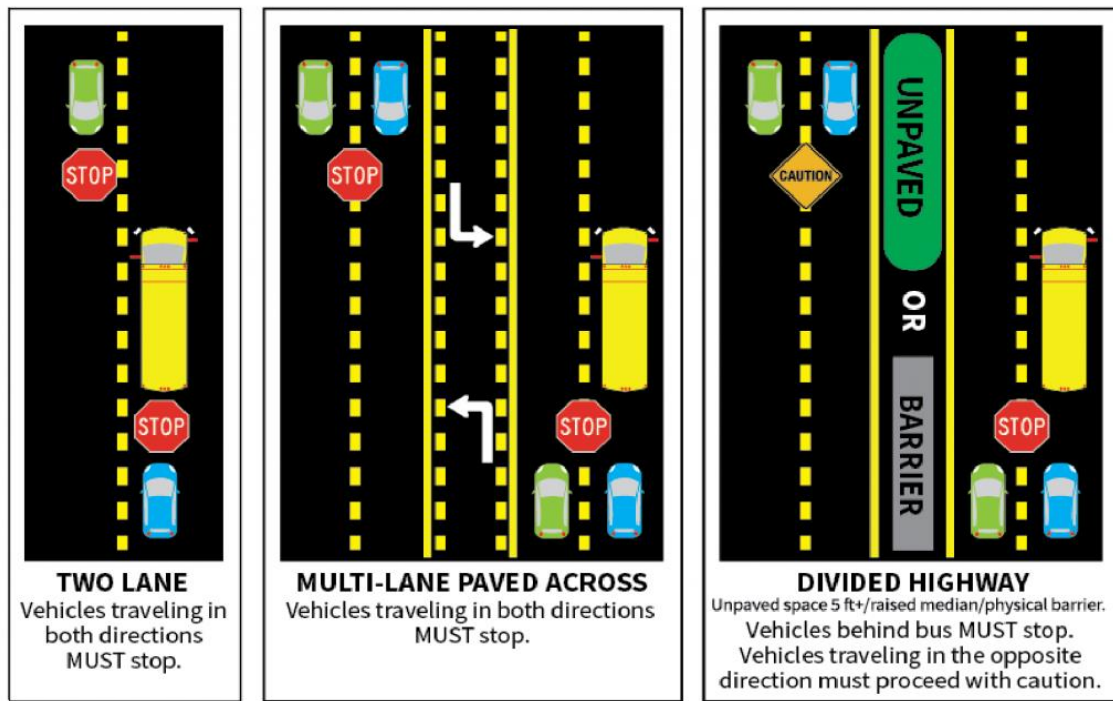
When approaching a stopped school bus displaying a stop signal, a driver must bring his or her vehicle to a full stop until the bus's signal is withdrawn.³ However, a driver is not required to stop if his or her vehicle is traveling in the opposite direction of a stopped school bus on a divided highway with an unpaved space of at least 5 feet, a raised median, or a physical barrier.⁴

¹ Section 316.172(3), F.S.

² *Id.*

³ Section 316.172(1)(a), F.S.

⁴ Section 316.172(2), F.S.



5

A person cited for failing to stop for a school bus displaying a stop signal commits a moving traffic violation⁶ and is subject to a \$200 civil penalty.⁷ A person cited for a moving violation may either pay the civil penalty or request a hearing to contest the citation.⁸ A driver who passes a school bus on the side that children enter and exit while the school bus displays a stop signal also commits a moving violation; however, he or she is subject to a \$400 civil penalty⁹ and must attend a mandatory hearing at a specified time and location.¹⁰ A driver who illegally passes a stopped school bus and:

- Does not cause serious bodily injury or death to another, will receive four points on his or her driver license record.¹¹
- Causes serious bodily injury or death to another, will receive six points on his or her driver license record and must:¹²
 - Serve 120 community service hours in a trauma center or hospital that regularly receives victims of vehicle accidents;

⁵ Florida Department of Highway Safety and Motor Vehicles, *Child Safety: School Bus Safety*, <https://www.flhsmv.gov/safety-center/child-safety/school-bus-safety/> (last visited Jan. 27, 2022).

⁶ A moving violation is a classification of a type of traffic citation. The most common moving violations include speeding, running a red light, and driving while intoxicated. However, some moving violations may not actually require the vehicle to be in motion, as the name infers.

⁷ In addition to this penalty, for a second or subsequent offense within a period of 5 years, the DHSMV shall suspend the driver license of the person for not less than 180 days and not more than 1 year. Section 318.18(5)(a), F.S.

⁸ Section 318.14, F.S.

⁹ In addition to this penalty, for a second or subsequent offense within a period of 5 years, the DHSMV shall suspend the driver license of the person for not less than 360 days and not more than 2 years. Section 318.18(5)(b), F.S.

¹⁰ Sections 316.172(1)(b) and 318.19(3), F.S.

¹¹ Section 322.27(3)(d)4.a., F.S.

¹² Section 322.27(3)(d)4.b., F.S.

- Participate in a victim's impact panel session; if such panel does not exist, the driver must attend a DHSMV approved driver improvement course relating to the rights of vulnerable road users relative to vehicles on the roadway;¹³ and
- Pay a \$1,500 fine and have his or her driver license suspended by DHSMV for at least 1 year.¹⁴

When a driver accumulates a certain number of points on his or her driving record within a certain time period, his or her license is suspended, as follows:

- 12 points in 12 months = 30 day suspension.
- 18 points in 18 months = 3 month suspension.
- 24 points in 36 months = 12 month suspension.¹⁵

Traffic Infraction Detectors

A traffic infraction detector is a vehicle sensor installed to work in conjunction with a traffic control signal and a camera or cameras synchronized to automatically record two or more sequenced photographs or electronic images or streaming video of only the rear of a motor vehicle at the time the vehicle fails to stop behind the stop bar or clearly marked stop line when facing a traffic control signal steady red light.¹⁶

In 2010, the Legislature authorized the DHSMV, counties, and municipalities to issue a traffic citation for a driver's failure to stop at a traffic control signal when such violation was identified by a traffic infraction detector.¹⁷ The state is responsible for regulating the use of such cameras.¹⁸

A municipality may install or authorize installation of traffic infraction detectors on streets and highways in accordance with the Florida Department of Transportation (FDOT) standards, and on state roads within the incorporated area when permitted by FDOT.¹⁹ A county may install or authorize installation of traffic infraction detectors on streets and highways in unincorporated areas of the county in accordance with FDOT standards, and on state roads in unincorporated areas of the county when permitted by the FDOT.²⁰ The DHSMV may install or authorize installation of traffic infraction detectors on any state road under the original jurisdiction of the FDOT, when permitted by the FDOT.²¹

If the DHSMV, a county, or a municipality installs a traffic infraction detector at an intersection, the respective governmental entity must install signage notifying the public that a traffic infraction device may be in use at that intersection, including specific notification of enforcement

¹³ Section 316.027(4)(b), F.S.

¹⁴ Section 318.18(5)(d), F.S.

¹⁵ Section 322.27(3), F.S.

¹⁶ Section 316.003(95), F.S.

¹⁷ See generally ss. 316.0083, and 316.0776, F.S.; Ch. 2010-80, Laws of Fla.; Any notification or traffic citation issued by using a traffic infraction detector must include a photograph or other recorded image showing both the license tag of the offending vehicle and the traffic control device being violated. Section 316.003(95), F.S.

¹⁸ Section 316.0076, F.S.

¹⁹ Sections 316.008(8) and 316.0776(1), F.S.

²⁰ *Id.*

²¹ Section 321.50, F.S.

of violations concerning right turns.²² Such signage must meet the specifications for uniform signals and devices adopted by the FDOT under to s. 316.0745, F.S.²³

Traffic Infraction Detector Litigation

In 2018, the Florida Supreme Court held that the review of red light camera images authorized by Florida law allows city's private third-party vendor, as its agent, to review and sort red light camera images to forward to a law enforcement officer when:

- The vendor's decisions are essentially ministerial and non-discretionary in that such decisions are strictly circumscribed by the contract language, guidelines promulgated by the city, and actual practices;
- Such ministerial decisions are additionally restricted by a broad policy that requires the vendor to automatically forward "close calls" to law enforcement for review;
- The law enforcement officer, not the vendor, makes the actual decision whether probable cause exists and whether a notice and citation should be issued; and
- The law enforcement officer's decision that probable cause exists and that the citation should be issued are supported by the responsible law enforcement officer's full, professional review which does not merely acquiesce to any decision by the vendor.²⁴

As such, s. 316.0083(1), F.S., authorizes a local government to contract with a third-party vendor to review and sort information and images from red light cameras before sending that information to a trained law enforcement officer. A law enforcement officer must then review the information and determine whether probable cause exists to issue a citation.

School Bus Stop Arm Traffic Citations

According to DHSMV, in Fiscal Year 2020-21, 2,051 traffic citations were issued for failing to stop for a school bus or passing a stopped school bus and 25 citations were issued for passing a school bus on the side children enter and exit.²⁵

The Department of Education (DOE) created a statewide survey for bus drivers to complete regarding the illegal passing of their school buses. The survey results from 2019 show that on a single day, 12,749 illegal passes were made based on the observations of 10,136 school bus drivers who completed the survey. Of these illegal passes, 526 were made on the right side of the bus where children generally enter and exit the vehicle, 11,316 were made on the left side, and for 907 instances, the side was unknown.²⁶

The National Highway Traffic Safety Administration indicates that from 2010 to 2019, 240 school-age children died in school-transportation-related crashes.²⁷ Half (50 percent) were

²² Section 316.0776(2), F.S.

²³ *Id.*

²⁴ *Jimenez v. State*, 246 So.3d 219 (Fla. 2018).

²⁵ E-mail from Kevin Jacobs, Legislative Affairs Director, Department of Highway Safety and Motor Vehicles, (Jan. 13, 2022) (on file with the Senate Committee on Transportation, and the Senate Committee on Judiciary).

²⁶ Florida Department of Education, *School Transportation, Illegal Passing of School Buses – Survey Results for 2019*, <http://www.fldoe.org/core/fileparse.php/18815/urlt/2019IllegalPassing.pdf> (last visited Jan. 27, 2022).

²⁷ National Highway Traffic Safety Administration, *2010-2019 Data: School Transportation-Related Crashes*, <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813209> (last visited Jan. 27, 2022).

struck by school buses or vehicles functioning as school buses, while the other half (50 percent) were struck by other vehicles involved in the crashes.²⁸

To increase student transportation safety, 23 states have school bus stop-arm camera laws.²⁹ These systems are typically equipped with multiple sensors and cameras affixed to a school bus. The sensor triggers a tag on the recording each time it senses a vehicle passing the stopped bus illegally.³⁰ When a vehicle illegally passes a stopped school bus, the sensor triggers two cameras to capture a high-definition digital video recording (DVR) from both directions. The cameras capture both oncoming traffic and vehicles passing the stopped bus on the driver side. The DVR recording is flagged as a violation and tags information for enforcement, including, but not limited to, the time, date, and location of the violation and images or film of the subject vehicle and license plate. The violation recordings captured are reviewed and processed by a third-party private manufacturer or vendor.³¹

Florida does not currently authorize the use of traffic infraction technology or school bus side stop signal arm enforcement systems to detect violations of school bus stop signals.

III. Effect of Proposed Changes:

The bill creates s. 316.616, F.S., which authorizes, but does not require, a school district to install and operate a side stop signal arm enforcement system. The system records violations when drivers fail to stop for a school bus displaying a stop signal.

Under the bill “school bus” means a school bus that is owned, leased, operated, or contracted by a school district.

A “side stop signal arm enforcement system” means a camera system affixed to a school bus with:

- Two or more camera sensors or computers that produce recorded video; and
- Two or more film or digital photographic still images that document a motor vehicle failing to stop for a school bus that displays a stop signal.

The bill provides that a school district may install and operate a side stop signal arm enforcement system on a school bus for the purpose of enforcing traffic to stop for a school bus under s. 316.172, F.S. The school district must post a warning sign or sticker on all school buses in which a system is installed and operational indicating the use of such system.

The school district may contract with a private vendor or manufacturer to provide a side stop signal arm enforcement system on each bus within its fleet, whether owned, contracted, or leased, and for services including, but not limited to, the installation, operation, and maintenance

²⁸ *Id.* at 2.

²⁹ National Conference of State Legislatures, *State School Bus Stop-Arm Camera Laws*, (July 13, 2021) available at <https://www.ncsl.org/research/transportation/state-school-bus-stop-arm-camera-laws.aspx> (last visited Jan. 27, 2022).

³⁰ Seon Automated Stop-Arm Camera Solution, <https://www.seon.com/school-bus-safety/school-bus-camera-systems/stop-arm-system> (last visited Jan. 27, 2022).

³¹ *Id.*

of the system. The school district's decision to establish a side stop signal arm enforcement system must be based solely on the need to increase public safety.

A school district must ensure that the side stop signal arm enforcement system meets specifications established by the State Board of Education and must be tested at regular intervals according to specifications prescribed by state board rule. The state board must establish such specifications by rule on or before December 31, 2022. However, any equipment acquired by purchase, lease, or other arrangement under an agreement entered into by a school district on or before July 1, 2023, or equipment used to enforce violations of s. 316.172, F.S., on or before July 1, 2023, is not required to meet the specifications established by the state board until July 1, 2023.

Enforcement Process

Each private manufacturer or vendor must, within 30 days after an alleged violation is captured, submit the following information to a law enforcement agency authorized to enforce violations of s. 316.172, F.S. under the terms of the interlocal agreement:

- A copy of the recorded image showing the motor vehicle;
- The license plate number and state of issuance of the motor vehicle; and
- The date, time, and place of the alleged violation.

The bill requires a law enforcement agency that receives the required information from a private vendor to review the information and determine if there is sufficient evidence that a violation occurred. If the evidence shows that a violation occurred, the agency must electronically certify a notice of violation. Under the bill, a certificate of violation which is based on images produced by a bus stop enforcement system and sworn to by a law enforcement officer is considered prima facie evidence of the facts contained in it, and any image recorded by the system is admissible in any judicial or administrative proceeding to determine liability for the violation.

A rebuttable presumption will exist that the registered owner of the motor vehicle was the driver at the time of the alleged violation. The owner of the motor vehicle involved in a violation may admit responsibility for the violation and pay the fine as indicated on the notice of violation. Payment of the fine operates as a final disposition of the civil penalty.

Within 30 days after receiving information provided from a private manufacturer or vendor for an alleged violation, a law enforcement agency, or an agent authorized by such law enforcement agency must send by first-class mail a notice of violation to the registered owner of the motor vehicle involved in the violation. Mailing the notice of violation constitutes notification. In the case of joint ownership of a motor vehicle, the notice of violation will be mailed to the first name appearing on the registration. However, if the first name appearing on the registration is a business entity, the second name appearing on the registration may be used. The notice of violation must include all of the following:

- A copy of the recorded image showing the motor vehicle involved in the violation.
- A citation for the violation indicating the date, time, and location of the alleged violation.
- The amount of the civil penalty and the date by which such penalty must be paid.
- A copy of the law enforcement certificate and a statement of the inference therein.
- Instructions on how to request a hearing to contest liability or notice.

- A warning that failure to pay the civil penalty or to contest liability within 30 days after the notice is mailed shall waive the right to contest liability.

The registered owner of a motor vehicle who is found in violation of s. 316.172, F.S., by a side stop signal arm enforcement system is subject to a civil penalty of either \$200 for passing a school bus while the school bus displays a stop signal, or \$400 for passing a school bus on the side that children enter and exit while the school bus displays a stop signal. The fine must be paid to the school district in which the violation occurred and must be used for the installation or maintenance of side stop signal arm enforcement systems on school buses, for the administration and costs associated with enforcement of those violations, or for any other technology that increases the safety of the transportation of students.

The bill provides that a violation issued is not a moving violation, does not add points to a person's license, and is not part of a person's driving record. The violation may not be used for any purpose relating to motor vehicle insurance.

If a violation has not been contested and the civil penalty has not been paid within 30 days after a notice is mailed, the law enforcement agency or an agent authorized by the law enforcement agency must send by first-class mail a final notice of the unpaid civil penalty. The final notice must inform the owner that the law enforcement agency or the agent authorized by the law enforcement agency will send an electronic referral, in a form prescribed by DHSMV to DHSMV if the civil penalty is not paid within 30 days after the final notice was mailed. The referral will result in the nonrenewal of the registration of the vehicle and prohibit the title transfer of the vehicle within this state.

Within 5 days after receipt of a referral the DHSMV must enter the referral into the DHSMV's motor vehicle database and must refuse to renew the registration of the vehicle and prohibit the title transfer of the vehicle within this state until the civil penalty is paid

The DHSMV must remove the penalties imposed when it receives notification by a law enforcement agency or an agent authorized by the law enforcement agency that the civil penalty has been paid. The department is responsible for developing the electronic format and the method of transmittal.

Side Stop Signal Arm Enforcement System Operation

The bill provides that notwithstanding any other law, equipment deployed as part of a side stop signal arm enforcement system must be incapable of automated or user-controlled remote surveillance by means of recorded video or still images. The bill requires the use of technology ensuring that the recordings or images captured by the system do not identify the driver, any passenger, or the contents of the vehicle. However, a violation may not be dismissed because the video or still images allow for the identification of the driver, any passenger, or the contents of a motor vehicle as long as a reasonable effort has been made to comply with the prohibition.

The bill provides that:

- All recordings and images captured must be destroyed within 90 days after the final disposition of the recorded event.

- The vendor of a side stop signal arm enforcement system must provide the school district with written notice by December 31 of each year that such records have been destroyed.
- Notwithstanding any other law, registered motor vehicle owner information obtained as a result of the operation of a side stop signal arm enforcement system is not the property of the manufacturer or vendor of the system and may be used only for the purposes of this section.
- The owner of a motor vehicle is not responsible for a violation if the vehicle involved was reported to a state or local law enforcement agency as stolen at the time the violation occurred.

State Board of Education and School District Responsibilities

The bill amends s. 1006.21, F.S., to provide that district school boards, after considering recommendations of the district school superintendent may install and operate, or enter into an agreement with a private vendor or manufacturer to provide, a side stop signal arm enforcement system for each school bus.

The State Board of Education may adopt rules to address student privacy concerns that may arise from the use of a side stop signal arm enforcement system.

By December 31, 2022, and annually thereafter, a school district operating a side stop signal arm enforcement system must provide a summary report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the DHSMV regarding the use and operation of the system under this section, including the number of citations issued and the amount of funds collected for the preceding state fiscal year.

The bill provides 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:

CS/SB 702 authorizes school districts to contract with a private vendor or manufacturer to provide a side stop signal arm enforcement system on each bus within its fleet, whether owned, contracted, or leased, and for services including, but not limited to, the installation, operation, and maintenance of the system. As such, the bill will have a positive fiscal impact on private vendors providing enforcement system installation, operation, and maintenance.

Registered motor vehicle owners may be negatively impacted by any financial penalties imposed by the bill if their vehicle is identified by a side stop signal arm enforcement system to have not stopped for a school bus when required, even if the registered owner was not the driver of the motor vehicle at the time the event occurred, due to the fact the bill requires that to the extent practicable, a side stop signal arm enforcement system must use necessary technology to ensure that recorded video or still images produced by the system do not identify the driver, any passenger, or the contents of a motor vehicle.

C. Government Sector Impact:

Participating school districts may incur costs associated with installing a side stop signal arm enforcement system on its school buses.

The fiscal impact on school districts may be reduced as they receive funds from penalties imposed for school bus stop arm violations captured by an enforcement system. The penalties must be paid to the school district in which the violation occurred and must be used for the installation or maintenance of side stop signal arm enforcement systems on school buses, for the administration and costs associated with enforcement of those violations, or for any other technology that increases the safety of the transportation of students.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DHSMV³² provided the following comments:

- The inability of a vehicle owner to transfer his or her title will affect insurance companies paying total loss claims if a vehicle is declared a total loss and impact licensed automobile

³² Department of Highway Safety and Motor Vehicles, *Senate Bill 702 Agency Analysis* (Dec. 1, 2021), available at <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=32972>.

dealers that accept the motor vehicle in trade and cannot negotiate the title. It will also affect tow companies that tow a vehicle from a crash scene at the request of law enforcement. If the owner does not pay the tow company, they will be unable to recoup their costs by selling the vehicle. For these reasons, the DHSMV suggests that consideration be given to eliminating the requirement to place a stop on the title, or alternatively, limiting the title stop to a period of 180 days.

- The DHSMV recommends that the effective date of the bill be changed to October 1, 2022, to allow time for the DHSMV and stakeholders to implement the necessary technology changes.

VIII. Statutes Affected:

This bill substantially amends section 1006.21 of the Florida Statutes.

This bill creates section 316.616 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 Judiciary on January 31, 2022:

The committee substitute differs from the underlying bill by:

- Requiring school districts to enter into interlocal agreements with one or more law enforcement agencies to enforce the side stop signal arm enforcement systems.
- Authorizing DHSMV to prescribe an electronic referral form that will be used by a law enforcement agency to notify DHSMV when a civil penalty has been paid.
- No longer requiring DHSMV to mail a notice to a vehicle owner that a registration will not be renewed or that a title may not be transferred.
- Authorizing DHSMV to remove restrictions on a vehicle when notice is received by a law enforcement agency or an authorized agent that the civil penalty has been paid.
- Authorizing school districts to use a portion of the fines collected to help offset the costs of enforcing the violations.

- B. **Amendments:**

None.



743940

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/31/2022	.	
	.	
	.	
	.	

The Committee on Judiciary (Burgess) recommended the following:

Senate Amendment (with title amendment)

Delete lines 88 - 239
and insert:

(d) A school district shall enter into an interlocal agreement with one or more law enforcement agencies authorized to enforce violations of s. 316.172 within the geographic area of the school district which jointly establishes the responsibilities of enforcement and the reimbursement of costs associated with side stop signal arm enforcement system violations consistent with this section.



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(3) Each private manufacturer or vendor shall, within 30 days after an alleged violation is captured, submit the following information to a law enforcement agency authorized pursuant to paragraph (2) (d):

(a) A copy of the recorded image showing the motor vehicle.

(b) The license plate number and state of issuance of the motor vehicle.

(c) The date, time, and place of the alleged violation.

(4) (a) Each law enforcement agency authorized to enforce violations pursuant to paragraph (2) (d) shall review the information submitted by the private manufacturer or vendor as provided under subsection (3) to determine whether there is sufficient evidence that a violation of s. 316.172 occurred and, if the evidence shows a violation occurred, shall electronically certify a notice of violation.

(b) A certificate or a facsimile of a certificate based on inspection of recorded images produced by a side stop signal arm enforcement system and sworn to or affirmed by a law enforcement officer authorized pursuant to paragraph (2) (d) to enforce violations shall be prima facie evidence of the facts contained in it. Upon request by the law enforcement agency, the school district shall provide written documentation that the side stop signal arm enforcement system was operating correctly at the time of the alleged violation.

(c) A recorded image evidencing a violation of s. 316.172 shall be admissible in any judicial or administrative proceeding to adjudicate the liability for the violation.

(d) A rebuttable presumption shall exist that the registered owner of the motor vehicle was the driver at the time



743940

41 of the alleged violation.

42 (5) (a) Within 30 days after receiving the information
43 provided under subsection (3), a law enforcement agency
44 authorized pursuant to paragraph (2) (d) to enforce violations or
45 an agent authorized by such law enforcement agency shall send by
46 first-class mail a notice of violation to the registered owner
47 of the motor vehicle involved in the violation. Mailing the
48 notice of violation constitutes notification.

49 (b) In the case of joint ownership of a motor vehicle, the
50 notice of violation shall be mailed to the first name appearing
51 on the registration. However, if the first name appearing on the
52 registration is a business entity, the second name appearing on
53 the registration may be used.

54 (c) The notice of violation must include all of the
55 following:

56 1. A copy of the recorded image showing the motor vehicle
57 involved in the violation.

58 2. A citation for the violation indicating the date, time,
59 and location of the alleged violation.

60 3. The amount of the civil penalty and the date by which
61 such penalty must be paid.

62 4. A copy of the certificate described in subsection (4)
63 and a statement of the inference therein.

64 5. Instructions on how to request a hearing to contest
65 liability or notice.

66 6. A warning that failure to pay the civil penalty or to
67 contest liability within 30 days after the notice is mailed
68 shall waive the right to contest liability.

69 (d) The owner of the motor vehicle involved in a violation



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70 may admit responsibility for the violation and pay the fine as
71 indicated on the notice of violation. Payment of the fine
72 operates as a final disposition of the civil penalty.

73 (6)(a) If a violation has not been contested and the civil
74 penalty has not been paid within 30 days after a notice required
75 under subsection (5) is mailed, the law enforcement agency or an
76 agent authorized by the law enforcement agency shall send by
77 first-class mail a final notice of the unpaid civil penalty. The
78 final notice must inform the owner that the law enforcement
79 agency or the agent authorized by the law enforcement agency
80 shall send an electronic referral, in a form prescribed by the
81 department, to the department if the civil penalty is not paid
82 within 30 days after the final notice was mailed and that such
83 referral shall result in the nonrenewal of the registration of
84 such motor vehicle and prohibit the title transfer of such motor
85 vehicle within this state.

86 (b) Within 5 days after receipt of a referral under
87 paragraph (a), the department shall enter the referral into the
88 department's motor vehicle database and shall refuse to renew
89 the registration of the motor vehicle and prohibit the title
90 transfer of the motor vehicle within this state until the civil
91 penalty is paid.

92 (c) The department shall remove the penalties imposed under
93 paragraph (b) upon receipt of notification, in an electronic
94 format and method prescribed by the department, by a law
95 enforcement agency or an agent authorized by the law enforcement
96 agency that the civil penalty has been paid.

97 (7)(a)1. Notwithstanding any other law, equipment deployed
98 as part of a side stop signal arm enforcement system as provided



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under this section must be incapable of automated or user-controlled remote surveillance by means of recorded video or still images.

2. Recorded images collected as part of the side stop signal arm enforcement system may only be used to document violations of s. 316.172 and may not be used for any other surveillance purposes.

3. To the extent practicable, a side stop signal arm enforcement system must use necessary technology to ensure that recorded video or still images produced by the system do not identify the driver, any passenger, or the contents of a motor vehicle.

4. A notice of a violation issued under this section may not be dismissed solely because a recorded video or still images allow for the identification of the driver, any passenger, or the contents of a motor vehicle as long as a reasonable effort has been made to comply with this subsection.

(b) Any recorded video or still image obtained through the use of a side stop signal arm enforcement system must be destroyed within 90 days after the final disposition of the recorded event. The vendor of a side stop signal arm enforcement system shall provide the school district with written notice by December 31 of each year that such records have been destroyed in accordance with this section.

(c) Notwithstanding any other law, registered motor vehicle owner information obtained as a result of the operation of a side stop signal arm enforcement system is not the property of the manufacturer or vendor of the system and may be used only for the purposes of this section.



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(8) The owner of a motor vehicle is not responsible for a violation of this section if the vehicle involved was reported to a state or local law enforcement agency as stolen at the time the violation occurred.

(9) This section supplements the enforcement of s. 316.172 by law enforcement officers when a driver fails to stop while a school bus is stopped and does not prohibit a law enforcement officer from issuing a traffic citation for a violation of s. 316.172.

(10) (a) The registered owner of a motor vehicle who is found in violation of s. 316.172 by a side stop signal arm enforcement system is subject to a civil penalty of \$200 for a violation of s. 316.172(1) (a) and \$400 for a violation of s. 316.172(1) (b). Notwithstanding s. 318.18(5), the fine shall be paid to the school district in which the violation occurred and must be used for the installation or maintenance of side stop signal arm enforcement systems on school buses, for the administration and costs associated with enforcement of such violations, or for any other

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

And the title is amended as follows:

Delete lines 12 - 36

and insert:

requiring school districts to enter into interlocal agreements with certain law enforcement agencies for certain purposes; requiring manufacturers and vendors to submit specified information to law enforcement agencies within a specified timeframe; requiring law



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enforcement agencies to review such information to
determine whether a violation occurred and
electronically certify the notice of violation under
certain circumstances; providing that certain
certificates sworn to or affirmed by a law enforcement
officer are prima facie evidence; providing that
recorded images evidencing a violation of this act are
admissible in any judicial or administrative
proceeding for a certain purpose; providing a
rebuttable presumption; providing notice requirements
and procedures; authorizing motor vehicle owners
served a notice of violation to take certain actions
as a final disposition of such notice; providing that
payment of the fine operates as a final disposition of
the civil penalty; providing notice requirements and
procedures for unpaid civil penalties; requiring the
Department of Highway Safety and Motor Vehicles to
refuse to renew the registration of motor vehicles and
prohibit the transfer of title under specified
circumstances; requiring the department to remove
penalties imposed on a motor vehicle owner upon
receipt of a certain notification; requiring that side

By Senator Burgess

20-00718-22

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1 A bill to be entitled
 2 An act relating to photographic enforcement of school
 3 bus safety; creating s. 316.616, F.S.; defining the
 4 terms "school bus" and "side stop signal arm
 5 enforcement system"; authorizing school districts to
 6 install and operate side stop signal arm enforcement
 7 systems on school buses; requiring school districts to
 8 post certain warning signs or stickers on such buses;
 9 authorizing school districts to contract with a
 10 private vendor or manufacturer to provide side stop
 11 signal arm enforcement systems and certain services;
 12 requiring manufacturers and vendors to submit
 13 specified information to law enforcement agencies
 14 within a specified timeframe; requiring law
 15 enforcement agencies to review such information to
 16 determine whether a violation occurred and
 17 electronically certify the notice of violation under
 18 certain circumstances; providing that certain
 19 certificates sworn to or affirmed by a law enforcement
 20 officer are prima facie evidence; providing that
 21 recorded images evidencing a violation of this act are
 22 admissible in any judicial or administrative
 23 proceeding for a certain purpose; providing a
 24 rebuttable presumption; providing notice requirements
 25 and procedures; authorizing motor vehicle owners
 26 served a notice of violation to take certain actions
 27 as a final disposition of such notice; providing that
 28 payment of the fine operates as a final disposition of
 29 the civil penalty; providing notice requirements and

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

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30 procedures for unpaid civil penalties; requiring the
 31 Department of Highway Safety and Motor Vehicles to
 32 refuse to renew the registration of motor vehicles and
 33 prohibit the transfer of title under specified
 34 circumstances; requiring the department to remove
 35 penalties imposed on a motor vehicle owner upon
 36 presentation of adequate proof; requiring that side
 37 stop signal arm enforcement system equipment be
 38 incapable of automated or user-controlled remote
 39 surveillance; specifying requirements of and
 40 prohibitions on the use of recorded video and still
 41 images captured by the side stop signal arm
 42 enforcement system; providing that a motor vehicle
 43 owner is not responsible for a violation of this act
 44 if the vehicle was reported stolen at the time the
 45 violation occurred; providing civil penalties;
 46 providing for distribution of such penalties;
 47 providing construction; requiring school districts
 48 operating a side stop signal arm enforcement system to
 49 provide a summary report to the Governor, the
 50 Legislature, and the department annually by a
 51 specified date; requiring the State Board of Education
 52 to adopt rules for a specified purpose and authorizing
 53 it to adopt other rules; amending s. 1006.21, F.S.;
 54 conforming a provision to changes made by the act;
 55 providing an effective date.

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

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

20-00718-22

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Section 1. Section 316.616, Florida Statutes, is created to read:

316.616 School buses; side stop signal arm enforcement system.—

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

(a) "School bus" has the same meaning as provided in s. 316.6145.

(b) "Side stop signal arm enforcement system" means a camera system affixed to a school bus with two or more camera sensors or computers that produce recorded video and two or more film or digital photographic still images for the purpose of documenting a motor vehicle being used or operated in a manner that allegedly violates s. 316.172.

(2) (a) A school district may install and operate a side stop signal arm enforcement system on a school bus for the purpose of enforcing s. 316.172. The school district shall post a warning sign or sticker on all school buses in which a system is installed and operational indicating the use of such system.

(b) The school district may contract with a private vendor or manufacturer to provide a side stop signal arm enforcement system on each bus within its fleet, whether owned, contracted, or leased, and for services including, but not limited to, the installation, operation, and maintenance of the system. The school district's decision to establish a side stop signal arm enforcement system must be based solely on the need to increase public safety.

(c) A school district shall ensure that the side stop signal arm enforcement system meets the requirements of subsection (12).

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(3) Each private manufacturer or vendor shall, within 30 days after an alleged violation is captured, submit the following information to a law enforcement agency authorized to enforce violations of s. 316.172:

(a) A copy of the recorded image showing the motor vehicle.

(b) The license plate number and state of issuance of the motor vehicle.

(c) The date, time, and place of the alleged violation.

(4) (a) Each law enforcement agency authorized to enforce violations of s. 316.172 shall review the information submitted by the private manufacturer or vendor as provided under subsection (3) to determine whether there is sufficient evidence that a violation of s. 316.172 occurred and, if the evidence shows a violation occurred, shall electronically certify a notice of violation.

(b) A certificate or a facsimile of a certificate based on inspection of recorded images produced by a side stop signal arm enforcement system and sworn to or affirmed by a law enforcement officer authorized to enforce violations of s. 316.172 shall be prima facie evidence of the facts contained in it. Upon request by the law enforcement agency, the school district shall provide written documentation that the side stop signal arm enforcement system was operating correctly at the time of the alleged violation.

(c) A recorded image evidencing a violation of s. 316.172 shall be admissible in any judicial or administrative proceeding to adjudicate the liability for the violation.

(d) A rebuttable presumption shall exist that the registered owner of the motor vehicle was the driver at the time

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of the alleged violation.

(5) (a) Within 30 days after receiving the information provided under subsection (3), a law enforcement agency authorized to enforce violations of s. 316.172 or an agent authorized by such law enforcement agency shall send by first-class mail a notice of violation to the registered owner of the motor vehicle involved in the violation. Mailing the notice of violation constitutes notification.

(b) In the case of joint ownership of a motor vehicle, the notice of violation shall be mailed to the first name appearing on the registration. However, if the first name appearing on the registration is a business entity, the second name appearing on the registration may be used.

(c) The notice of violation must include all of the following:

1. A copy of the recorded image showing the motor vehicle involved in the violation.

2. A citation for the violation indicating the date, time, and location of the alleged violation.

3. The amount of the civil penalty and the date by which such penalty must be paid.

4. A copy of the certificate described in subsection (4) and a statement of the inference therein.

5. Instructions on how to request a hearing to contest liability or notice.

6. A warning that failure to pay the civil penalty or to contest liability within 30 days after the notice is mailed shall waive the right to contest liability.

(d) The owner of the motor vehicle involved in a violation

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may admit responsibility for the violation and pay the fine as indicated on the notice of violation. Payment of the fine operates as a final disposition of the civil penalty.

(6) (a) If a violation has not been contested and the civil penalty has not been paid within 30 days after a notice required under subsection (5) is mailed, the law enforcement agency or an agent authorized by the law enforcement agency shall send by first-class mail a final notice of the unpaid civil penalty. The final notice must inform the owner that the law enforcement agency or the agent authorized by the law enforcement agency shall send a referral to the department if the civil penalty is not paid within 30 days after the final notice was mailed and that such referral shall result in the nonrenewal of the registration of such motor vehicle and prohibit the title transfer of such motor vehicle within this state.

(b) A referral sent to the department under paragraph (a) must include all of the following:

1. Any information known or available to the law enforcement agency or an authorized agent concerning the motor vehicle's license plate number and year of registration and the name of the registered owner of the motor vehicle.

2. The date on which the violation occurred.

3. The dates on which the required notice and final notice were mailed.

4. The seal, logo, emblem, or electronic seal of the law enforcement agency.

(c) Within 5 days after receipt of a referral under paragraph (a), the department shall enter the referral into the department's motor vehicle database and shall refuse to renew

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the registration of the motor vehicle and prohibit the title transfer of the motor vehicle within this state until the civil penalty is paid. The department shall send the registered owner of the motor vehicle by first-class mail a notice stating:

1. That the registration of the motor vehicle involved in the violation cannot be renewed within this state.

2. That the title of the motor vehicle involved in the violation cannot be transferred within this state.

3. That the penalties provided in this paragraph are being imposed due to failure to pay the civil penalty for a violation of s. 316.172 as provided in this section.

4. The procedure provided in paragraph (d) for removing the penalties provided in this paragraph.

(d) The department shall remove the penalties imposed under paragraph (c) when the registered owner of the motor vehicle or any other person presents the department with adequate proof that the civil penalty has been paid.

(7) (a) 1. Notwithstanding any other law, equipment deployed as part of a side stop signal arm enforcement system as provided under this section must be incapable of automated or user-controlled remote surveillance by means of recorded video or still images.

2. Recorded images collected as part of the side stop signal arm enforcement system may only be used to document violations of s. 316.172 and may not be used for any other surveillance purposes.

3. To the extent practicable, a side stop signal arm enforcement system must use necessary technology to ensure that recorded video or still images produced by the system do not

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identify the driver, any passenger, or the contents of a motor vehicle.

4. A notice of a violation issued under this section may not be dismissed solely because a recorded video or still images allow for the identification of the driver, any passenger, or the contents of a motor vehicle as long as a reasonable effort has been made to comply with this subsection.

(b) Any recorded video or still image obtained through the use of a side stop signal arm enforcement system must be destroyed within 90 days after the final disposition of the recorded event. The vendor of a side stop signal arm enforcement system shall provide the school district with written notice by December 31 of each year that such records have been destroyed in accordance with this section.

(c) Notwithstanding any other law, registered motor vehicle owner information obtained as a result of the operation of a side stop signal arm enforcement system is not the property of the manufacturer or vendor of the system and may be used only for the purposes of this section.

(8) The owner of a motor vehicle is not responsible for a violation of this section if the vehicle involved was reported to a state or local law enforcement agency as stolen at the time the violation occurred.

(9) This section supplements the enforcement of s. 316.172 by law enforcement officers when a driver fails to stop while a school bus is stopped and does not prohibit a law enforcement officer from issuing a traffic citation for a violation of s. 316.172.

(10) (a) The registered owner of a motor vehicle who is

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found in violation of s. 316.172 by a side stop signal arm enforcement system is subject to a civil penalty of \$200 for a violation of s. 316.172(1)(a) and \$400 for a violation of s. 316.172(1)(b). Notwithstanding s. 318.18(5), the fine shall be paid to the school district in which the violation occurred and must be used for the installation or maintenance of side stop signal arm enforcement systems on school buses or for any other technology that increases the safety of the transportation of students.

(b) For each violation under this section, the registered owner of the motor vehicle shall be liable for the imposed penalty unless the owner is convicted of the same violation under s. 316.172 or unless the motor vehicle was stolen at the time of the violation as provided under subsection (8).

(c) A violation for which a civil penalty is imposed pursuant to this section is not considered a moving violation for the purpose of assessing points under s. 322.27(3). Such violation is noncriminal, and imposition of a civil penalty pursuant to this section does not constitute a conviction, may not be made a part of the driving record of the person upon whom such liability is imposed, and may not be used for any purposes in the provision of motor vehicle insurance.

(11) By December 31, 2022, and annually thereafter, a school district operating a side stop signal arm enforcement system shall provide a summary report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the department regarding the use and operation of the system under this section, including the number of citations issued and the amount of funds collected for the

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preceding state fiscal year.

(12) A side stop signal arm enforcement system must meet specifications established by the State Board of Education and must be tested at regular intervals according to specifications prescribed by state board rule. The state board must establish such specifications by rule on or before December 31, 2022. However, any such equipment acquired by purchase, lease, or other arrangement under an agreement entered into by a school district on or before July 1, 2023, or equipment used to enforce violations of s. 316.172 on or before July 1, 2023, is not required to meet the specifications established by the state board until July 1, 2023.

(13) The State Board of Education may adopt rules to address student privacy concerns that may arise from the use of a side stop signal arm enforcement system.

Section 2. Paragraph (h) is added to subsection (3) of section 1006.21, Florida Statutes, to read:

1006.21 Duties of district school superintendent and district school board regarding transportation.—

(3) District school boards, after considering recommendations of the district school superintendent:

(h) May install and operate, or enter into an agreement with a private vendor or manufacturer to provide, a side stop signal arm enforcement system for each school bus pursuant to s. 316.616.

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

The Florida Senate

42

Jan 31 2022

APPEARANCE RECORD

702

Meeting Date

Bill Number or Topic

Judiciary

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

743940

Committee

Amendment Barcode (if applicable)

Name Jennifer Cook Pritt

Phone 850-219-3631

Address 2636 Mitcham Drive
Street

Email jpritt@fpca.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 Police Chiefs 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)

1/31/2022

Meeting Date

The Florida Senate

APPEARANCE RECORD

SB 702

Bill Number or Topic

Judiciary

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Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name **Monte Stevens**

Phone **850.671.4401**

Address **123 S Adams St.**

Email **stevens@thesoutherngroup.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:

AAA

☐ 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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1-31-22

Meeting Date

JUDICIARY

Committee

702

Bill Number or Topic

Amendment Barcode (if applicable)

Name LIEUTENANT MIKE CRABBS

Phone 321-436-4447

Address 2500 W. COLONIAL DR
Street

Email MICHAEL - CRABBS@OCFL.NET

ORLANDO
City

FL
State

32802
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:
ORANGE COUNTY
SHERIFF'S OFFICE

☐ 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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1/31/22

Meeting Date

SB 0702

Bill Number or Topic

Judiciary

Committee

Amendment Barcode (if applicable)

Name Edeline Joseph-Therophile

Phone 407-240-9577

Address 1747 Orlando Central Parkway

Email legislation@FloridaPTA.org

Street

Orlando,

City

FL

State

32809

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:
Florida PTA

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 Judiciary

BILL: CS/SB 1012

INTRODUCER: Judiciary Committee; and Senators Burgess and others

SUBJECT: Victims of Crimes

DATE: February 1, 2022

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1012 amends three statutes that address the rights of victims of crimes.

Section 960.001, F.S., specifies what information must be supplied to victims of crimes. The statute is amended to provide that, in addition to other enumerated information, victims must be informed of their right to employ private counsel. A new provision is added that encourages The Florida Bar to develop a registry of attorneys who are willing to serve on a pro bono basis as advocates for crime victims.

This statute is further amended to clarify that victims who are not incarcerated, or their representatives, may, *upon request*, be informed, be present, and be heard at all stages of criminal and juvenile proceedings, but this occurs when the victim or victim's representative requests to be notified.

Sections 960.0021 and 985.036, F.S., which pertain to a court's responsibility to inform victims of their rights and the rights of a victim in a juvenile proceeding, respectively, are similarly amended. Each statute is revised to add that the victim must be informed "upon request." The bill does not appear to require law enforcement agencies to incur any additional costs. See Section V. Fiscal Impact Statement.

This bill is effective July 1, 2022.

II. Present Situation:

Victim Rights

Victims of crime in Florida are guaranteed certain rights that are provided in the Florida Constitution as well as in the Florida Statutes. In 2018, Florida voters passed Marsy's Law, an amendment to the Florida Constitution, to expand victim's rights.¹

Florida Constitution

Marsy's Law provides that every victim, beginning at the time of his or her victimization, has the right to:

- Due process and to be treated with fairness and respect for the victim's dignity.
- Be free from intimidation, harassment, and abuse.
- Within the judicial process, to be reasonably protected from the accused and any person acting on behalf of the accused.²
- Have the safety and welfare of the victim and the victim's family considered when setting bail, including setting pretrial release conditions that protect the safety and welfare of the victim and the victim's family.
- Prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information of the victim.
- The prompt return of the victim's property when no longer needed as evidence.
- Full and timely restitution in every case and from each convicted offender for all losses suffered, both directly and indirectly, by the victim as a result of the criminal conduct.
- Proceedings free from unreasonable delay, and to a prompt and final conclusion of the case and any related postjudgment proceedings.^{3, 4}

Additionally, Marsy's law provides that, upon request, victims have the right to:

- Reasonable, accurate, and timely notice of, and to be present at, all public proceedings involving the criminal conduct, including, but not limited to, trial, plea, sentencing, or adjudication, even if the victim will be a witness at the proceeding. A victim must also be provided reasonable, accurate, and timely notice of any release or escape of the offender and any proceeding during which a right of the victim is implicated.

¹ FLA CONST. art. 1, s. 16 (b).

² This does not create a special relationship between the crime victim and any law enforcement agency or office absent a special relationship or duty as defined by Florida Law. FLA. CONST. art. 1, s. 16 (b)(3).

³ FLA CONST. art. 1, s. 16 (b)(10), provides that the state attorney may file in a good faith demand for a speedy trial and the trial court must hold a calendar call, with notice, within 15 days of the filing demand, to schedule a trial to commence on a date at least 5 days but no more than 60 days after the date of the calendar call unless the trial judge enters an order with specific findings of fact justifying a trial date more than 60 days after the calendar call. Additionally, all state-level appeals and collateral attacks on any judgment must be complete within 2 years from the date of appeal in non-capital cases and within 5 years from the date of appeal in capital cases, unless a court enters an order with specific finding as to why the court was unable to comply with this requirement and the circumstances causing the delay. Each year, the chief judge of any district court of appeal or the chief justice of the Supreme Court must report on a case by case basis to the Speaker of the House of Representatives and the President of the Senate all cases where the court entered an order regarding inability to comply with this requirement. The Legislature may enact legislation to implement this requirement.

⁴ FLA CONST. art. 1, s. 16 (b).

- Be heard in any public proceeding involving pretrial or other release from any form of legal constraint, plea, sentencing, adjudication, or parole, and any proceeding during which a right of the victim is implicated.
- Confer with the prosecuting attorney concerning any plea agreements, participation in pretrial diversion programs, release, restitution, sentencing, or any other disposition of the case.
- Provide information regarding the impact of the offender's conduct on the victim and the victim's family to the individual responsible for conducting any presentence investigation or compiling any presentence investigation report, and to have any such information considered in any sentencing recommendations submitted to the court.
- Receive a copy of any presentence report, and any other report or record relevant to the exercise of a victim's right, except for such portions made confidential or exempt by law.
- Be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the convicted offender, any scheduled release date of the offender, and the release of or the escape of the offender from custody.
- Be informed of all postconviction processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender. The parole or early release authority must extend the right to be heard to any person harmed by the offender.
- Be informed of clemency and expunction procedures, to provide information to the governor, the court, any clemency board, and other authority in these procedures, and to have the information considered before a clemency or expunction decision is made; and to be notified of such decision in advance of any release of the offender.⁵

Additionally, victims have a constitutional right to be informed of these rights, and to be informed that they may seek the advice of an attorney with respect to their rights. This information must be made available to the general public and provided to all crime victims in the form of a card or by other means intended to effectively advise the victim of their rights.⁶

Florida Statutes

Section 960.001, F.S., provides that certain agencies⁷ within the criminal justice system must develop and implement guidelines for the use of their agencies, which are consistent with article 1, section 16(b) of the Florida Constitution and achieve the following objectives by providing:

- A victim's rights information card or brochure.⁸
- Information concerning services available to victims of adult and juvenile crimes, including:

⁵ FLA. CONST. art. 1, s. 16 (b)(6).

⁶ FLA. CONST. art. 1, s. 16 (b)(11).

⁷ Section 960.001(1), F.S., provides that the Department of Legal Affairs, the state attorneys, the Department of Corrections, the Department of Juvenile Justice, the Florida Commission on Offender Review, the State Courts Administrator and circuit court administrators, the FDLE, and every sheriff's department, police department, or other law enforcement agency as defined in s. 943.10(4), F.S., must develop such guidelines.

⁸ Section 960.001(1)(o), F.S., provides that a victim of a crime must be provided with a victim's rights information card or brochure containing essential information concerning the rights of a victim and services available to a victim as required by state law.

- The availability of crime victim compensation, if applicable;
- Crisis intervention services, supportive or bereavement counseling, social service support referrals, and community-based victim treatment programs;
- The role of the victim in the criminal or juvenile justice process, including what the victim may expect from the system as well as what the system expects from the victim;
- The stages in the criminal or juvenile justice process which are of significance to the victim and the manner in which information about such stages can be obtained;
- The right of a victim who is not incarcerated, or the victim's representative, to be informed, to be present, and to be heard when relevant, at all crucial stages;
- The right of an incarcerated victim to be informed and submit written statements at all crucial states; and
- The right of a victim to a prompt and timely disposition of the case.⁹
- Information regarding the "victim notification card,"¹⁰ for purposes of notifying a victim or other appropriate contact.
- Consultation with the victim or guardian, or family of the victim.
- Information concerning victim or witness protection.
- Presence of a victim advocate during discovery deposition, or a forensic medical exam. The victim of a sexual offense must be advised of his or her right to have the courtroom cleared of certain persons when testifying.
- Local witness coordination services.
- Notification regarding judicial proceedings, the rights to be present, submit an impact statement, and of any scheduling changes.
- General victim assistance.
- Notification that the victim may request the offender attend a different school, if the victim attends the same school as the offender.
- Information concerning the release or escape of an offender.
- Notification of the rights to request restitution, and return of the victim's property.
- Notification to a victim's employer or creditor that the victim is needed in the prosecution of the case, or has been subjected to financial strain because of the case.
- Victim assistance education and training.
- Crime prevention programs.
- Prohibition of a government official asking or requiring a victim of a sexual offense submit to a polygraph examination or other truth-telling device.¹¹

The Florida Bar

The Florida Bar (Bar) is the organization of all lawyers who are licensed by the Supreme Court of Florida to practice law in the state. The Supreme Court of Florida has exclusive and ultimate authority to regulate the admission of persons to the practice of law and the discipline of those

⁹ Section 960.001(1)(a)1.-7., F.S.

¹⁰ Section 960.001(1)(b), F.S., provides the notification card must contain at minimum, the name, address, and phone number of the victim, or when appropriate, the next of kin or other designated contact, and any relevant identification or case numbers assigned to the case. The victim, next of kin, or other designated contact must be given an opportunity to complete such card, however he or she may choose not to complete it.

¹¹ Section 960.001(1)(a)-(u), F.S.

persons. The Court does this through both the Bar, and the Florida Board of Bar Examiners. Neither the Bar nor the Florida Board of Bar Examiners is supported by state tax dollars.¹²

The Bar's core functions are to prosecute unethical lawyers, administer a client protection fund to cover certain financial losses a client may suffer due to misappropriation by a lawyer, administer a substance abuse program, and provide continuing education services for lawyers.¹³ The Bar operates a general lawyer referral service, as well as a referral service providing legal advice for low fees in the areas of disability and elder law.¹⁴ The Bar does not appear to maintain a statewide registry of attorneys that provide pro bono legal services.

A Court's Responsibility to Advise Victims of Their Rights

Courts have a responsibility under the law to advise victims of crime about their rights.

Section 960.0021(2), F.S., states that courts may fulfill that responsibility by:

(a) Making an announcement at an arraignment, sentencing, or case-management proceeding: "If you are the victim of a crime with a case pending before this court, you are advised that you have the right:

1. To be informed.
 2. To be present.
 3. To be heard, when relevant, at all crucial stages of criminal proceedings to the extent that these rights do not interfere with the constitutional rights of the accused.
 4. To receive advance notification, when possible, of judicial proceedings and notification of scheduling changes, pursuant to section 960.001, Florida Statutes.
 5. To seek crimes compensation and restitution.
 6. To consult with the state attorney's office in certain felony cases regarding the disposition of the case.
 7. To make an oral or written victim impact statement at the time of sentencing of a defendant.
- For further information regarding additional rights afforded to victims of crime, you may contact the state attorney's office or obtain a listing of your rights from the Clerk of Court."
- (b) Displaying prominently on the courtroom doors posters giving notice of the existence of the rights of victims under Florida law.

Rights of Victims in Juvenile Proceedings

Section 985.036(1), F.S., states that nothing in the Juvenile Justice chapter, ch. 985, F.S., prohibits:

- (a) The victim of the offense;
- (b) The victim's parent or guardian if the victim is a minor;
- (c) The lawful representative of the victim or of the victim's parent or guardian if the victim is a minor; or
- (d) The next of kin if the victim is a homicide victim, from the right to be informed of, to be present during, and to be heard when relevant at, all crucial stages of the proceedings involving the juvenile offender, to the extent that such rights do not interfere with the constitutional rights

¹² The Florida Bar, *Frequently Asked Questions*, <https://www.floridabar.org/about/faq/> (last visited Jan. 27, 2022).

¹³ *Id.*

¹⁴ The Florida Bar, *What We Do*, <https://www.floridabar.org/about/faq/what-we-do/#Findingyoulawyer> (last visited Jan. 27, 2022).

of the juvenile offender. A person enumerated in this section may not reveal to any outside party any confidential information obtained under this subsection regarding a case involving a juvenile offense, except as is reasonably necessary to pursue legal remedies.

III. Effect of Proposed Changes:

Guidelines for the Fair Treatment of Victims and Witnesses (Section 1)

This bill amends three subparagraphs contained in s. 960.001, F.S., that address information that victims of crime must be given.

The Right to Employ Private Counsel

A new subparagraph 8. is added to provide that, in addition to other specified information, victims must be informed of their right to employ private counsel consistent with the constitutional rights of the accused. Additionally, this bill encourages The Florida Bar to develop a registry of attorneys who are willing to serve on a pro bono basis as advocates for crime victims.

Victims Who Are Not Incarcerated

Section 960.001(1)(a)5., F.S., is amended to add and delete language pertaining to a victim's rights. That statute, as amended, states that a victim, who is not incarcerated, and the victim's parents, guardian if a minor, or lawful representative, and the next of kin of a homicide victim have a right "upon request" to be informed, to be present, and to be heard at all stages of a criminal or juvenile proceeding, as provided by article 1, section 16(b) of the Florida Constitution. Language is deleted from the existing statute that removes the conditions "when relevant," at a "crucial" stage, and "to the extent that this right does not interfere with constitutional right of the accused."

Victims Who Are Incarcerated

In a similar manner, s. 960.001(1)(a)6., F.S., is also amended to add the phrase "*upon request*" such that incarcerated victims, have the right "upon request" to be informed and to submit written statements at all stages of the criminal proceedings, parole proceedings, or juvenile proceedings. The amended language no longer requires that the stage be a "crucial" stage for the incarcerated victim to be informed and submit statements at proceedings.

The Responsibility of Courts to Advise Victims of Their Rights (Section 2) and Rights of Victims in Juvenile Proceedings (Section 3)

Two additional statutes that address victims' rights are amended to reflect the changes made above to s. 96.001(1)(a), F.S.

Sections 960.0021(2) and 985.036(1), F.S., are very similarly amended to provide that a victim, *upon request*, may be heard at all stages of criminal and juvenile proceedings.

This bill is effective 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:

The Florida Constitution has required a crime victim to be notified of his or her right to retain private counsel since the amendment to article I, section 16 went into effect on January 8, 2019. Since the bill codifies an existing constitutional requirement, law enforcement agencies already providing such information should not incur any additional costs in updating victim information materials.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 960.001, 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 Judiciary on January 31, 2022:

Several provisions are added to the committee substitute which were not in the underlying bill. In general terms, these provisions state that:

- Victims, or their representatives, may receive notice and provide input, but only when they request to be notified.
- Their input is not limited to being “relevant” for them to be informed, present, or heard.
- The proceedings do not need to be deemed “crucial” for the victim or victim’s representative to be involved.

Additionally, language is deleted which states that the victim’s rights may be exercised to the extent that they do not interfere with the accused’s constitutional rights.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/31/2022	.	
	.	
	.	
	.	

The Committee on Judiciary (Burgess) recommended the following:

Senate Amendment (with title amendment)

Delete lines 54 - 72
and insert:
next of kin of a homicide victim, upon request, to be informed,
to be present, and to be heard ~~when relevant~~, at all ~~crucial~~
stages of a criminal or juvenile proceeding, ~~to the extent that~~
~~this right does not interfere with constitutional rights of the~~
~~accused~~, as provided by s. 16(b), Art. I of the State
Constitution;

6. In the case of incarcerated victims, the right, upon



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request, to be informed and to submit written statements at all
~~crucial~~ stages of the criminal proceedings, parole proceedings,
or juvenile proceedings; ~~and~~

7. The right of a victim to a prompt and timely disposition
of the case in order to minimize the period during which the
victim must endure the responsibilities and stress involved; and

8. The right of a victim to employ private counsel. The
Florida Bar is encouraged to develop a registry of attorneys who
are willing to serve on a pro bono basis as advocates for crime
victims to the extent that this right does not interfere with
the constitutional rights of the accused.

Section 2. Subsection (2) of section 960.0021, Florida
Statutes, is amended to read:

960.0021 Legislative intent; advisement to victims.—

(2) The courts may fulfill their obligation to advise crime
victims by:

(a) Making the following announcement at any arraignment,
sentencing, or case-management proceeding:

"If you are the victim of a crime with a case pending
before this court, you are advised that you have the
right, upon request:

1. To be informed.

2. To be present.

3. To be heard, ~~when relevant,~~ at all ~~crucial~~
stages of criminal proceedings ~~to the extent that~~
~~these rights do not interfere with the constitutional~~
~~rights of the accused.~~

4. To receive advance notification, when



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possible, of judicial proceedings and notification of scheduling changes, pursuant to section 960.001, Florida Statutes.

5. To seek crimes compensation and restitution.

6. To consult with the state attorney's office in certain felony cases regarding the disposition of the case.

7. To make an oral or written victim impact statement at the time of sentencing of a defendant.

For further information regarding additional rights afforded to victims of crime, you may contact the state attorney's office or obtain a listing of your rights from the Clerk of Court."

; or

(b) Displaying prominently on the courtroom doors posters giving notification of the existence and general provisions of this chapter. The Department of Legal Affairs shall provide the courts with the posters specified by this paragraph.

Section 3. Subsection (1) of section 985.036, Florida Statutes, is amended to read:

985.036 Rights of victims; juvenile proceedings.—

(1) Nothing in this chapter prohibits:

(a) The victim of the offense;

(b) The victim's parent or guardian if the victim is a minor;

(c) The lawful representative of the victim or of the victim's parent or guardian if the victim is a minor; or

(d) The next of kin if the victim is a homicide victim,



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70
71 from the right, upon request, to be informed of, to be present
72 during, and to be heard ~~when relevant at, all crucial~~ stages of
73 the proceedings involving the juvenile offender, ~~to the extent~~
74 ~~that such rights do not interfere with the constitutional rights~~
75 ~~of the juvenile offender~~. A person enumerated in this section
76 may not reveal to any outside party any confidential information
77 obtained under this subsection regarding a case involving a
78 juvenile offense, except as is reasonably necessary to pursue
79 legal remedies.

80
81 ===== T I T L E A M E N D M E N T =====
82 And the title is amended as follows:

83 Delete lines 4 - 8
84 and insert:
85 ensure that crime victims are given information about
86 specified rights, upon request, at all stages of
87 criminal, parole, or juvenile proceedings; requiring
88 law enforcement personnel to ensure that crime victims
89 are given information about their right to employ
90 private counsel; encouraging The Florida Bar to
91 develop a registry of attorneys willing to serve on a
92 pro bono basis as advocates for crime victims;
93 amending ss. 960.0021 and 985.036, F.S.; conforming
94 provisions to changes made by the act; providing an
95 effective date.

By Senator Burgess

20-00474-22

20221012__

A bill to be entitled

An act relating to victims of crimes; amending s. 960.001, F.S.; requiring law enforcement personnel to ensure that victims are given information about their right to employ private counsel; encouraging The Florida Bar to develop a registry of attorneys willing to serve as crime victim advocates on a pro bono basis; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 960.001, Florida Statutes, is amended to read:

960.001 Guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems.—

(1) The Department of Legal Affairs, the state attorneys, the Department of Corrections, the Department of Juvenile Justice, the Florida Commission on Offender Review, the State Courts Administrator and circuit court administrators, the Department of Law Enforcement, and every sheriff's department, police department, or other law enforcement agency as defined in s. 943.10(4) shall develop and implement guidelines for the use of their respective agencies, which guidelines are consistent with the purposes of this act and s. 16(b), Art. I of the State Constitution and are designed to implement s. 16(b), Art. I of the State Constitution and to achieve the following objectives:

(a) *Information concerning services available to victims of adult and juvenile crime.*—As provided in s. 27.0065, state attorneys and public defenders shall gather information

Page 1 of 3

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

20-00474-22

20221012__

regarding the following services in the geographic boundaries of their respective circuits and shall provide such information to each law enforcement agency with jurisdiction within such geographic boundaries. Law enforcement personnel shall ensure, through distribution of a victim's rights information card or brochure at the crime scene, during the criminal investigation, and in any other appropriate manner, that victims are given, as a matter of course at the earliest possible time, information about:

1. The availability of crime victim compensation, if applicable;

2. Crisis intervention services, supportive or bereavement counseling, social service support referrals, and community-based victim treatment programs;

3. The role of the victim in the criminal or juvenile justice process, including what the victim may expect from the system as well as what the system expects from the victim;

4. The stages in the criminal or juvenile justice process which are of significance to the victim and the manner in which information about such stages can be obtained;

5. The right of a victim, who is not incarcerated, including the victim's parent or guardian if the victim is a minor, the lawful representative of the victim or of the victim's parent or guardian if the victim is a minor, and the next of kin of a homicide victim, to be informed, to be present, and to be heard when relevant, at all crucial stages of a criminal or juvenile proceeding, to the extent that this right does not interfere with constitutional rights of the accused, as provided by s. 16(b), Art. I of the State Constitution;

Page 2 of 3

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

20-00474-22

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59 6. In the case of incarcerated victims, the right to be
60 informed and to submit written statements at all crucial stages
61 of the criminal proceedings, parole proceedings, or juvenile
62 proceedings; ~~and~~

63 7. The right of a victim to a prompt and timely disposition
64 of the case in order to minimize the period during which the
65 victim must endure the responsibilities and stress involved to
66 the extent that this right does not interfere with the
67 constitutional rights of the accused; and

68 8. The right of a victim to employ private counsel
69 consistent with the constitutional rights of the accused. The
70 Florida Bar is encouraged to develop a registry of attorneys who
71 are willing to serve on a pro bono basis as advocates for crime
72 victims.

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

The Florida Senate

APPEARANCE RECORD

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

SB1012

Bill Number or Topic

AMENDMENTS

Amendment Barcode (if applicable)

Meeting Date

Committee

Name

PAUL LAWRES

Phone

Address

3785 WENTWORTH

Email

LAWRES.PAUL@GMAIL.COM

Street

TALLAHASSEE

FL

32311

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:

MARY'S LAW
FOR FLORIDA



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

1/31/22

Meeting Date

1012

Bill Number or Topic

Judiciary

Committee

Amendment Barcode (if applicable)

Name

Adam Ross

Phone

727-510-9821

Address

PO Box 17500

Email

adam.ross@flsen6.gov

Street

Clearwater

FL

33752

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: State Attorney's Office
Sixth Judicial circuit

☐ 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 Judiciary

BILL: SB 1380

INTRODUCER: Senator Rodriguez

SUBJECT: Real Property Rights

DATE: January 28, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Bond	Cibula	JU	Favorable
2. _____	_____	CA	_____
3. _____	_____	RC	_____

I. Summary:

SB 1380 amends laws regarding restrictions on the use of real property. The bill limits how certain older real estate covenants or restrictions apply in a manner that protects real property rights and honors zoning requirements and conditions of a building or development permit. The bill also allows a property owner the right to establish parking rules and rates applicable to the owner's property.

The Marketable Recordable Title Act (MRTA) simplifies property transactions and modernizes land use by eliminating property rights that are more than 30 years old and predate the root of the title of the property in question. There are, however, numerous exceptions to MRTA whereby a property right is not extinguished by MRTA. The bill amends MRTA to:

- Modify an exception to extinguishment to require that a general reference to a prior right must include an affirmative statement of intent to preserve such property right.
- Specify that MRTA may extinguish a covenant or restriction related to a zoning requirement, building permit, or development permit. However, this will not extinguish the underlying zoning or building codes or ordinances; nor will it extinguish a covenant or restriction that says on its first page that it was required by local codes.
- Allow revitalization of a covenant or restriction that had been required by a government agency as a condition of a development permit.

A person who wishes to protect a property interest potentially extinguished by the change to MRTA has until July 1, 2023 to file a Statement of Marketable Title Action in the public records in order to preserve the property interest.

The bill provides that the owner or operator of a private property used for motor vehicle parking may establish rules, rates, and fines that govern private persons parking motor vehicles on such private property. A county or municipality may not enact an ordinance or a regulation restricting

or prohibiting a right of a private property owner or operator to establish rules, rates, and fines governing parking on the private property.

The bill is effective upon becoming law.

II. Present Situation:

The Marketable Record Title Act

The Marketable Record Title Act (MRTA) was enacted in 1963 “to simplify conveyances of real property, stabilize titles, and give certainty to land ownership.”^{1,2} Specifically, MRTA extinguishes most rights in real property that are more than 30 years old based on the date of the root of the title. The root of title “means any title transaction purporting to create or transfer the estate claimed by any person which is the last title transaction to have been recorded at least 30 years before the time when marketability is being determined. The effective date of the root of title is the date on which it was recorded.”³ Any person who has been vested with any estate in land of record for 30 years or more has a marketable record title, free and clear of most claims or encumbrances against the land that occurred prior to that record title. This allows a prospective buyer, for example, to rely on the first title transaction that occurred more than 30 years ago, together with all title transactions to date, as opposed to searching through decades of possible title transactions. Specifically, MRTA extinguishes the following rights, subject to exceptions:

[A]ll estates, interests, claims, or charges, the existence of which depends upon any act, title transaction, event, or omission that occurred before the effective date of the root of title.⁴

MRTA includes a number of exceptions—real property rights that MRTA expressly does not extinguish even if the rights were created in a pre-root instrument. One exception provides that MRTA does not extinguish any property right or title defect disclosed in an instrument recorded in the chain of title from the root forward. However, a general reference to the right or defect is insufficient notice to the title examiner, the reference must be made to the book and page, or to the name of the recorded plat.⁵

Section 712.04, F.S., lists the real property interests that are extinguished where MRTA applies. Unless one of the exceptions of s. 712.03, F.S., applies, a marketable record title is free and clear of all estates, interests, claims, or charges, the existence of which depends upon any act, title transaction, event, or omission that occurred before the effective date of the root of title.

Property owners, particularly those with recorded covenants and restrictions designed to preserve the character of the neighborhood, were often dismayed in the past when they discovered that their neighborhood covenants and restrictions had been invalidated by the operation of MRTA. In response, MRTA was amended to allow for covenant revitalization. Different procedures

¹ *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910, 914 (Fla. 3d DCA 2016).

² The Marketable Record Title Act is ch. 712, F.S.

³ Section 712.01(6), F.S.

⁴ Section 712.04, F.S. The exceptions are set forth at s. 712.03, F.S.

⁵ Section 712.03(1), F.S.

apply, depending upon whether the covenants created a homeowners' association. Section 712.12, F.S., governs covenant or restriction revitalization by parcel owners not subject to a homeowners' association. It does not apply to a covenant or restriction required by a governmental agency as a condition of a development permit.

Save Calusa Trust

In *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910 (Fla. 3d DCA 2016), the court addressed the issue of “whether a restrictive covenant, recorded in compliance with a government-imposed condition of a land use approval, is a title interest subject to extinguishment by MRTA.”⁶ The court held that the 99-year restrictive covenant was not a title interest under MRTA, and thus was not subject to extinguishment by MRTA. The court reasoned that the restrictive covenant in question was an inseparable part of a governmental action to rezone the property at issue. The court concluded that, based on MRTA’s language and case law, MRTA did not extinguish zoning regulations, including the one at issue in the case.⁷

Power of Local Governments to Enact Ordinances

The State Constitution grants local governments broad authority to take actions furthering citizens’ health, welfare, safety, and quality of life. This “home rule” authority includes legislative powers to enact local laws. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.⁸ Those counties operating under a county charter have all powers of local self-government not inconsistent with general law or special law approved by the vote of the electors.⁹ Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide municipal services, and exercise any power for municipal purposes, except as otherwise provided by law.¹⁰

The home rule power may be limited by the state. State preemption precludes a local government from exercising authority in a particular area, and requires consistency with the state constitution or state statute. A local government enactment may be found inconsistent with state law if (1) the Legislature has preempted a particular subject area to the state or (2) the local regulation conflicts with a state statute.¹¹

⁶ *Id.* at 914. The restrictive covenant at issue required the owner of a golf course, as a prerequisite to redeveloping the property, to have the consent of 75 percent of the homeowners whose homes were in a ring around the course.

⁷ *Id.* at 915-16.

⁸ FLA. CONST. art. VIII, s. 1(f).

⁹ FLA. CONST. art. VIII, s. 1(g).

¹⁰ FLA. CONST. art. VIII, s. 2(b). *See also* s. 166.021(1), F.S.

¹¹ James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemption and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009), <https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/> (last visited Jan. 18, 2022).

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.¹² Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.¹³

Implied preemption is a legal doctrine that addresses situations in which the Legislature has not expressly preempted an area but, for all intents and purposes, the area is dominated by the state. Findings of implied preemption are for a very narrow class of areas in which the state has legislated pervasively.¹⁴

In cases determining the validity of ordinances enacted in the face of state preemption, such ordinances are found null and void.¹⁵

III. Effect of Proposed Changes:

Section 1 of the bill amends the exception to MRTA at s. 712.03(1), F.S., for real property rights or title defects referenced in an instrument recorded after the root of title, to provide that such instrument is not extinguished by MRTA if it either:

- Specifically references the official records book and page, instrument number, or plat name, of the pre-root instrument; or
- Generally references the estate, interest, easement or use restriction, together with an affirmative statement of intent that the property is subject to such estate, interest, easement or use restriction.

Section 2 of the bill amends the scope of real property rights that may be extinguished by MRTA, at s. 712.04, F.S., to specifically include covenants and restrictions, including any covenant or restriction that depends upon a zoning requirement, building permit, or development permit.

Section 2 also creates two exceptions to the otherwise broad scope of s. 712.04, F.S., to provide that MRTA does not alter or invalidate:

- A comprehensive plan or plan amendment; zoning ordinance; land development regulation; building code; development permit; development order; or other law, regulation, or regulatory approval, to the extent such law, regulation, or regulatory approval operates independently of matters recorded in the official records; or
- Any recorded covenant or restriction that on the face of the first page of the document states that it was accepted by a governmental entity as part of, or as a condition of, any such comprehensive plan or plan amendment; zoning ordinance; land development regulation; building code; development permit; development order; or other law, regulation, or regulatory approval.

¹² See *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).

¹³ *Mulligan*, 934 So. 2d at 1243.

¹⁴ Wolf and Bolinder, *supra*.

¹⁵ See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

Section 3 amends s. 712.12, F.S., to allow covenant or restriction revitalization by parcel owners not subject to a homeowners' association where such covenant or restriction was required by a governmental agency as a condition of a development permit.

Section 4 creates s. 715.075, F.S., to provide that the owner or operator of a private property used for motor vehicle parking may establish rules, rates, and fines that govern private persons parking motor vehicles on such private property. Such rules and rates may include parking charges and fines for violating the property owner's or operator's rules.

The new section also creates a local government preemption. A county or municipality may not enact an ordinance or a regulation restricting or prohibiting a right of a private property owner or operator to establish rules, rates, and fines governing parking on the private property.

Section 5 provides an affirmative statement to declare that the amendments made to ss. 712.03, 712.04, and 712.12, F.S., pursuant to this bill are to provide clarification to already existing law. This clarification applies to all estates, interests, claims, covenants, restrictions, and charges, whether imposed or accepted after the effective date of the bill.

Section 6 requires that an individual who seeks to avoid losing a property interest because of the changes to MRTA in this bill file a notice in the public records no later than the earlier of the expiration of the interest or July 1, 2023. The form of notice is governed by s. 712.06, F.S.¹⁶

Section 7 directs the Division of Law Revision to replace any language in the bill regarding "the effective date of this act" to the date that the bill becomes law.

Section 8 provides that the bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁶ The notice must contain name and address of the claimant, name and address of the owner, legal description of the affected land, a statement of the legal claim, and the recording information for the document supporting the claim. The notice must be executed and recorded the same as a deed.

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:

SB 1380 does not appear to have a fiscal impact on state or local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 712.03, 712.04, and 712.12.

This bill creates section 715.075 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 Rodriguez

39-01426-22

20221380__

1 A bill to be entitled
 2 An act relating to real property rights; amending s.
 3 712.03, F.S.; revising rights that are not affected or
 4 extinguished by marketable record titles; amending s.
 5 712.04, F.S.; revising the types of interests
 6 extinguished by marketable record titles; providing
 7 construction; amending s. 712.12, F.S.; revising the
 8 definition of the term "covenant or restriction";
 9 creating s. 715.075, F.S.; authorizing owners or
 10 operators of private property used for motor vehicle
 11 parking to establish rules, rates, and fines governing
 12 private persons parking on the property; prohibiting
 13 counties and municipalities from enacting any
 14 ordinance or regulation attempting to restrict or
 15 prohibit the owner or operator from adopting such
 16 rules, rates, or fines; providing that any ordinance
 17 or regulation making such attempt is a violation of
 18 this act and is null and void; providing
 19 applicability; requiring persons with certain
 20 interests in land which may be extinguished by the act
 21 to file a specified notice to preserve such interests;
 22 providing a directive to the Division of Law Revision;
 23 providing an effective date.
 24
 25 Be It Enacted by the Legislature of the State of Florida:
 26
 27 Section 1. Subsection (1) of section 712.03, Florida
 28 Statutes, is amended to read:
 29 712.03 Exceptions to marketability.—Such marketable record

Page 1 of 5

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

39-01426-22

20221380__

30 title shall not affect or extinguish the following rights:
 31 (1) Estates or interests, easements and use restrictions
 32 disclosed by and defects inherent in the muniments of title on
 33 which said estate is based beginning with the root of title, +
 34 ~~provided, however, that in the muniments of title those estates,~~
 35 interests, easements, or use restrictions created before the
 36 root of title are preserved by identification in the legal
 37 description of the property by specific reference to the
 38 official records book and page number, instrument number, or
 39 plat name or there is otherwise an affirmative statement in a
 40 muniment of title to preserve such estates, interests,
 41 easements, or use restrictions created before the root of title
 42 as identified by the official records book and page or
 43 instrument number ~~a general reference in any of such muniments~~
 44 ~~to easements, use restrictions or other interests created prior~~
 45 ~~to the root of title shall not be sufficient to preserve them~~
 46 ~~unless specific identification by reference to book and page of~~
 47 ~~record or by name of recorded plat be made therein to a recorded~~
 48 ~~title transaction which imposed, transferred or continued such~~
 49 ~~easement, use restrictions or other interests;~~ subject, however,
 50 to ~~the provisions of~~ subsection (5).
 51 Section 2. Section 712.04, Florida Statutes, is amended to
 52 read:
 53 712.04 Interests extinguished by marketable record title.—
 54 Subject to s. 712.03, a marketable record title is free and
 55 clear of all estates, interests, claims, covenants,
 56 restrictions, or charges, the existence of which depends upon
 57 any act, title transaction, event, zoning requirement, building
 58 or development permit, or omission that occurred before the

Page 2 of 5

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

39-01426-22 20221380__

effective date of the root of title. Except as provided in s. 712.03, all such estates, interests, claims, covenants, restrictions, or charges, however denominated, whether they are or appear to be held or asserted by a person sui juris or under a disability, whether such person is within or without the state, natural or corporate, or private or governmental, are declared to be null and void. However, this chapter does not affect any right, title, or interest of the United States, Florida, or any of its officers, boards, commissions, or other agencies reserved in the patent or deed by which the United States, Florida, or any of its agencies parted with title. This section may not be construed to alter or invalidate:

(1) A comprehensive plan or plan amendment; zoning ordinance; land development regulation; building code; development permit; development order; or other law, regulation, or regulatory approval, to the extent such law, regulation, or regulatory approval operates independently of matters recorded in the official records; or

(2) Any recorded covenant or restriction that on the face of the first page of the document states that it was accepted by a governmental entity as part of, or as a condition of, any such comprehensive plan or plan amendment; zoning ordinance; land development regulation; building code; development permit; development order; or other law, regulation, or regulatory approval.

Section 3. Paragraph (b) of subsection (1) of section 712.12, Florida Statutes, is amended to read:

712.12 Covenant or restriction revitalization by parcel owners not subject to a homeowners' association.-

39-01426-22 20221380__

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

(b) "Covenant or restriction" means any agreement or limitation ~~imposed by a private party and not required by a governmental agency as a condition of a development permit, as defined in s. 163.3164, which is~~ contained in a document recorded in the public records of the county in which a parcel is located and which subjects the parcel to any use restriction that may be enforced by a parcel owner.

Section 4. Section 715.075, Florida Statutes, is created to read:

715.075 Vehicles parked on private property; rules and rates authorized.-

(1) The owner or operator of a private property used for motor vehicle parking may establish rules, rates, and fines that govern private persons parking motor vehicles on such private property. Such rules and rates may include parking charges and fines for violating the property owner's or operator's rules.

(2) A county or municipality may not enact an ordinance or a regulation restricting or prohibiting a right of a private property owner or operator established under subsection (1). Any such ordinance or regulation is a violation of this section and is null and void.

Section 5. The amendments to ss. 712.03, 712.04, and 712.12, Florida Statutes, in this act are intended to clarify existing law, are remedial in nature, and apply to all estates, interests, claims, covenants, restrictions, and charges, whether imposed or accepted before, on, or after the effective date of this act.

Section 6. A person with an interest in land which may

39-01426-22 20221380__

117 potentially be extinguished by this act, and whose interest has
118 not been extinguished before July 1, 2022, must file a notice
119 pursuant to s. 712.06, Florida Statutes, by July 1, 2023, to
120 preserve such interest.

121 Section 7. The Division of Law Revision is directed to
122 replace the phrase "the effective date of this act" wherever it
123 occurs in this act with the date the act becomes a law.

124 Section 8. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Danny Burgess Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 13, 2022

I respectfully request that SB 1380, relating to Real Property Rights, be placed on the:

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

A handwritten signature in black ink, appearing to read "AmR", is written over a horizontal line.

Senator Ana Maria Rodriguez
Florida Senate, District 39

1-31-22

Meeting Date

JUDICIAL

Committee

The Florida Senate
APPEARANCE RECORD

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

1386

Bill Number or Topic

Amendment Barcode (if applicable)

Name Jess M. McCarty, Executive Assistant County Attorney Phone 305-979-7110

Address 111 NW 1st Street Email jmm2@miamidade.gov
Street

Miami FL 33128
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:

Miami-Dade County

☐ 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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1.31.22

Meeting Date

1380

Bill Number or Topic

Judiciary
Committee

Amendment Barcode (if applicable)

Name

Chris Moya

Phone

850-321-6692

Address

Street

Email

Cmoya@deanmeach.com

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:

City Parking

☐

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 \(flsenote.gov\)](#)

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

S-001 (08/10/2021)

1/31/22

Meeting Date

The Florida Senate
APPEARANCE RECORD

SB 1380

Bill Number or Topic

Judiciary

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

Committee

Amendment Barcode (if applicable)

Name **French Brown**

Phone **850-459-0992**

Address **106 E. College Ave, Suite 1200**

Email **fbrown@deanmead.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:

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



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 Judiciary

BILL: SB 262

INTRODUCER: Senator Rodriguez and others

SUBJECT: Damages Recoverable by Parents of an Adult Child in Medical Negligence Actions

DATE: January 28, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Bond	Cibula	JU	Pre-meeting
2. _____	_____	BI	_____
3. _____	_____	RC	_____

I. Summary:

SB 262 allows a parent to recover damages for mental pain and suffering in a lawsuit against a health care provider whose medical negligence causes the death of an adult child due to medical negligence, provided that the adult child does not have a spouse or a child under 25 years of age. Under existing law, the damages that a parent may recover in these situations are limited to economic damages such as medical and funeral expenses, lost earnings, and the value of lost support and services. Damages for pain and suffering authorized by the bill tend to be unpredictable, but they will likely be much greater than the economic damages available under existing law.

The bill is effective July 1, 2022.

II. Present Situation:

Most of the state's tort law is in the common law. At common law, there was no right to recover for the negligent wrongful death of another person.¹ Rights to recover for wrongful death are thus only available to the extent provided by statute. Florida has long had some form of wrongful death statute that authorizes wrongful death actions.

The wrongful death law was substantially re-written in 1972.² That law provides the framework of the current law. The amount of damages that a survivor is entitled to depends upon the classification of the survivor. The 1972 law allows all survivors to recover the value of lost support and services. A surviving spouse may also recover loss of marital companionship and pain and suffering. Minor children, then defined as under age 21³ and unmarried, may also

¹ *Louisville & Nashville Railroad Co. v Jones*, 45 Fla. 407, 416 (Fla. 1903).

² Chapter 72-35, Laws of Fla.

³ Florida changed the age of majority from 21 to 18 in the following year, but that act did not change the reference to age 21 in the wrongful death law. Section 743.07, F.S.; chapter 73-21, Laws of Fla.

recover loss of parental companionship and pain and suffering. The parents of a deceased minor child may also recover pain and suffering. Any survivor who paid them may recover final medical, funeral and burial expenses. The estate of the decedent may recover lost earnings from date of injury to date of death, plus net accumulations, which is essentially an estimate of the present value of the future estate that would have been available for inheritance.

A 1981 act expanded the definition of “minor children” to include all children of the decedent under age 25, regardless of whether such child is married or dependent.⁴ The statutes did not authorize a wrongful death action by a nondependent, adult child for the loss of a parent or an action by a parent for the loss of an adult child.⁵

In 1990, the Legislature expanded the rights to recover for a wrongful death.⁶ Specifically, the act added:

- If there is no surviving spouse of the deceased, a wrongful death action by a nondependent, adult child (ages 25 and up) for lost parental companionship, instruction, guidance, and for mental pain and suffering is authorized.⁷
- If there are no survivors (no spouse or children) of a deceased adult child (ages 25 and up), a wrongful death action by a parent for mental pain and suffering is authorized.⁸
- However, neither of these new claims are authorized if the wrongful death action is based on a claim of medical negligence.⁹

In 2000, the Florida Supreme Court issued its opinion in *Mizrahi v. North Miami Medical Center, Ltd.*, a case challenging the constitutionality of the medical negligence exception. The Court found that the exception was rationally related to the need to control the costs of health care and medical malpractice insurance due to a medical malpractice insurance crisis. However, Justice Pariente, in her dissenting opinion, argued that the exception should be found to be unconstitutional because of her belief that the medical malpractice insurance crisis, which initially justified the exception, no longer existed.¹⁰ The Florida Supreme Court later found that the malpractice crisis is over,¹¹ but that finding does not overrule the ruling in *Mizrahi* that s. 768.21(8), F.S. is constitutional.¹²

Currently, neither an adult (25+) child of an unmarried person who dies due to medical negligence, nor the parents of an adult (25+) child who dies due to medical negligence, may recover pain and suffering damages. They can recover through the estate other damages such as net accumulations, final medical bills, and funeral and burial expenses. Plaintiff’s attorneys

⁴ Chapter 81-183, Laws of Fla.

⁵ *Mizrahi v. North Miami Medical Center, Ltd.*, 761 So. 2d 1040, 1042 (Fla. 2000).

⁶ Chapter 90-14, Laws of Fla.

⁷ Section 768.21(3), F.S.

⁸ Section 768.21(4), F.S.

⁹ Section 768.21(8), F.S.

¹⁰ *Mizrahi*, *infra*.

¹¹ *Estate of McCall v. United States*, 134 So. 3d 894 (Fla. 2014). *North Broward Hospital District v. Kalitan*, 219 So. 3d 49 (Fla. 2017).

¹² *Santiago v. Rodriguez*, 281 So. 3d 603 (Fla. 2nd DCA 2019), *rev. dismissed*, 2020 WL 927717 (Fla. 2020).

report that these other damages are insufficient to warrant the cost and time required to prosecute a medical negligence case, and therefore, they commonly refuse to accept such cases.¹³

III. Effect of Proposed Changes:

The bill repeals a portion of the medical malpractice exception to the Wrongful Death Act at s. 768.21(8), F.S. This repeal allows a parent to recover damages for mental pain and suffering from a health care provider whose medical negligence causes the death of an adult child due to medical negligence where the adult child had no other survivors.

The bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 262 may provide for wrongful death recoveries by parents that are barred by current law, and may correspondingly increase medical malpractice insurance premiums or

¹³ Fasig Brooks Law Offices, Unfair and Illogical: Florida's Wrongful Death Medical Malpractice Law, <https://www.fasigbrooks.com/2019/02/unfair-and-illogical-floridas-wrongful-death-med/>, last accessed Jan. 11, 2022 (stating that "such limited recovery would not make a malpractice lawsuit financially feasible.").

medical malpractice self-insurance costs of medical providers. Similarly, the availability of damages for mental pain and suffering may provide a sufficient incentive for plaintiff attorneys who work on a contingency-fee basis to pursue more medical negligence lawsuits.

C. Government Sector Impact:

The bill may create an indeterminate negative fiscal impact to the state and local governments to the extent that the state or a local government operates or controls a medical care facility. Any such claims, however, would be limited by the state's sovereign immunity limits.¹⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 768.21 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

¹⁴ Section 768.28, F.S.



260514

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsections (5) and (8) of section 768.21,
Florida Statutes, are amended, and subsections (3) and (4) of
that section are republished, to read:

768.21 Damages.—All potential beneficiaries of a recovery
for wrongful death, including the decedent's estate, shall be
identified in the complaint, and their relationships to the



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decedent shall be alleged. Damages may be awarded as follows:

(3) Minor children of the decedent, and all children of the decedent if there is no surviving spouse, may also recover for lost parental companionship, instruction, and guidance and for mental pain and suffering from the date of injury. For the purposes of this subsection, if both spouses die within 30 days of one another as a result of the same wrongful act or series of acts arising out of the same incident, each spouse is considered to have been predeceased by the other.

(4) Each parent of a deceased minor child may also recover for mental pain and suffering from the date of injury. Each parent of an adult child may also recover for mental pain and suffering if there are no other survivors.

(5)(a) Medical or funeral expenses due to the decedent's injury or death may be recovered by a survivor who has paid them.

(b) Notwithstanding chapter 766, the presuit procedures in chapter 766 do not apply to a wrongful death action in which the estate and survivors do not seek noneconomic damages, but seek reimbursement of or recovery for medical costs paid by or incurred by the decedent in the course of treatment or care related to medical negligence that resulted in the decedent's death.

(8) The damages specified in subsection (3) ~~are shall~~ not ~~be~~ recoverable by an adult child ~~children~~ and the damages specified in subsection (4) ~~are shall~~ not ~~be~~ recoverable by a parent ~~parents~~ of an adult child with respect to claims for medical negligence as defined by s. 766.106(1), unless the survivor regularly relied on the decedent for services and



260514

financial support and had a reasonable expectation that those services and support would continue to be provided at the same or similar level in the future.

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

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to wrongful death actions; amending s.
768.21, F.S.; limiting the application of presuit
procedures for medical negligence claims in certain
wrongful death actions; allowing certain survivors to
recover noneconomic damages for medical negligence if
they relied upon the decedent for services and
financial support; providing an effective date.

By Senator Rodriguez

39-00319-22

2022262__

A bill to be entitled

An act relating to damages recoverable by parents of an adult child in medical negligence actions; amending s. 768.21, F.S.; deleting a provision prohibiting parents of an adult child from recovering damages for mental pain and suffering in a medical negligence suit; providing an effective date.

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

Section 1. Subsection (8) of section 768.21, Florida Statutes, is amended, and subsection (4) of that section is republished, to read:

768.21 Damages.—All potential beneficiaries of a recovery for wrongful death, including the decedent's estate, shall be identified in the complaint, and their relationships to the decedent shall be alleged. Damages may be awarded as follows:

(4) Each parent of a deceased minor child may also recover for mental pain and suffering from the date of injury. Each parent of an adult child may also recover for mental pain and suffering if there are no other survivors.

(8) The damages specified in subsection (3) shall not be recoverable by adult children ~~and the damages specified in subsection (4) shall not be recoverable by parents of an adult child~~ with respect to claims for medical negligence as defined by s. 766.106(1).

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



The Florida Senate

Committee Agenda Request

To: Senator Jennifer Bradley, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: October 20, 2021

I respectfully request that **Senate Bill #262**, relating to Damages Recoverable by Parents of an Adult Child in Medical Negligence Actions, be placed on the:

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

A handwritten signature in black ink, appearing to read "Ana Maria Rodriguez".

Senator Ana Maria Rodriguez
Florida Senate, District 39

The Florida Senate

APPEARANCE RECORD

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

Jan. 31, 2022

Meeting Date

Judiciary

Committee

SB242

Bill Number or Topic

Amendment Barcode (if applicable)

Name Denise Rock

Phone 561-502-0393

Address 11447 Blue Violet Lane

Email _____

Street

WFB

City

FL

State

33411

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

Deliver both copies of this form to
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1/31/2022
Meeting Date
Judiciary
Committee

SB 262
Bill Number or Topic

Name Jen DePercio

Amendment Barcode (if applicable)
954 993 0469

Address 555 Gunston Ct
Street

Email JDawto@hotmail.com

Davenport FL 33837
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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

1/31/2022

Meeting Date

SB262

Bill Number or Topic

Sudiciary

Committee

Amendment Barcode (if applicable)

Name LAurette Philipson

Phone 727-484-0237

Address 7240 Westwind drive

Street

Email advocate.philipson@gmail.com

Port Richey FL 34668

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

1/31/22

Meeting Date

Judiciary Comm.

Committee

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

262

Bill Number or Topic

N/A

Amendment Barcode (if applicable)

Name TRAVIS CREIGHTON

Phone 813-264-7060

Address 4228 AUTUMN LEAVES DR

Email _____

Street

TAMPA

City

FL

State

33624-1108

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)

January 31, 2022

Meeting Date

Judiciary

Committee

Name Stacy Waner

Address 201 SE Grove Ave

Street

Port St Lucie

City

FL

State

34983

Zip

The Florida Senate

APPEARANCE RECORD

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

SB262

Bill Number or Topic

N/A
Amendment Barcode (if applicable)

Phone 772-201-2023

Email stacy@hwrealestategroup.com

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 \(flsenate.gov\)](#)

Part of the public record for this meeting.

S-001 (08/10/2021)

1/31/22

Meeting Date

Judiciary

Committee

Name **Marcia Scheppler**

Phone **561-401-7350**

Address **712 SE 5th St**

Street

Stuart

City

FL

State

34994

Zip

Email **marciafl2@icloud.com**

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
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SB262

Bill Number or Topic

Amendment Barcode (if applicable)

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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* part of the public record for this meeting.

S-001 (08/10/2021)

1/31/2022

Meeting Date

The Florida Senate APPEARANCE RECORD

Deliver both copies of this form to
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862

Bill Number or Topic

N/A

Amendment Barcode (if applicable)

Judiciary
Committee

Name Belinda Warren

Phone 330-241-2440

Address 201 Liberty St
Street

Email MorningStar362@gmail.com

Spencer Ohio
City State

Zip 44275

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 (08/10/202

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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262

Bill Number or Topic

N/A

Amendment Barcode (if applicable)

Meeting Date

Judiciary

Committee

Name

Melody Page-McDonald

Phone

561-676-6892

Address

25 W Plumosa Ln.

Email

0072melody@gmail.com

Street

LW FL 33467

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)

The Florida Senate

January 31, 2022

APPEARANCE RECORD

SB262 and SB560

Meeting Date

Judiciary Committee

Committee

Deliver both copies of this form to
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Bill Number or Topic

Amendment Barcode (if applicable)

Name **Mary Jo Cain Reis**

Phone **(708) 860-5000**

Address **505 N. LaSalle Street - Suite 575**

Email **maryjo@maryjocainreis.com**

Street

Chicago

IL

60654

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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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

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1/31/22
Meeting Date

262
Bill Number or Topic

Judiciary
Committee

Name Chris Lyon

Amendment Barcode (if applicable)
850/222-5702
Phone

Address 315 S. Calhoun St., Ste. 850

Email clyon@llw-law.com

Tall FL 32309
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 Osteopathic Medical 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 \(flsenate.gov\)](#)

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S-001 (08/10/2021)

01/31/2022

Meeting Date

Judiciary

Committee

The Florida Senate

APPEARANCE RECORD

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SB 0262

Bill Number or Topic

Amendment Barcode (if applicable)

Name AARP - Ivonne Fernandez - AARP Phone 954-850-7262

Address 215 S Monroe Street , Suite 603 Email ifernandez@aarp.org

Street

Tallahassee

FL

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:

AARP



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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S-001 (08/10/2021)

January 31, 2022

Meeting Date

Judiciary

Committee

Name

Sabrina Davis

Phone

813.300.5014

Address

5011 SW 47TH WAY

Email

Sabrinarawr@yahoo.com

Street

GAINESVILLE

FL

32608

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)

Record for this meeting.

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
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SB 262

Bill Number or Topic

Amendment Barcode (if applicable)

01.31.22

Meeting Date

The Florida Senate

APPEARANCE RECORD

262

Bill Number or Topic

Judiciary

Committee

Deliver both copies of this form to
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Amendment Barcode (if applicable)

Name

William Large

Phone

850-222-0170

Address

210 South Monroe Street

Email

William@fljustice.org

Street

Tallahassee

FL

32301

City

State

Zip

Speaking:

☐ For☒ Against☐ Information

OR

Waive Speaking:

☐ In Support☐ Against

☐ I am appearing without
compensation or sponsorship.

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am a registered lobbyist,
representing:

Florida Justice Reform Institute

☐ 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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S-001 (08/10/2021)

The Florida Senate

01.31.22

Meeting Date

APPEARANCE RECORD

Deliver both copies of this form to
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262

Bill Number or Topic

Judiciary

Committee

260514

Amendment Barcode (if applicable)

Name William Large

Phone 850-222-0170

Address 210 South Monroe Street
Street

Email William@fljustice.org

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 Justice Reform Institute

☐ 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)

CourtSmart Tag Report

Room: KB 412

Case No.: -

Type:

Caption: Senate Judiciary Committee

Judge:

Started: 1/31/2022 3:02:55 PM

Ends: 1/31/2022 4:59:42 PM **Length:** 01:56:48

3:02:53 PM Meeting called to order by Chair Burgess
3:02:58 PM Roll call by CAA Celia Georgiades
3:03:03 PM Quorum present
3:03:17 PM Comments from Chair Burgess
3:03:34 PM Tab 11, SB 262 Temporarily postponed
3:03:49 PM Introduction of Tab 1, CS/SB 772 by Chair Burgess
3:04:00 PM Explanation of CS/SB 772, Protection of Victims and Witnesses by Senator Diaz
3:04:36 PM Comments from Chair Burgess
3:04:48 PM Speaker Nancy Daniels, Florida Public Defender Association in opposition
3:05:51 PM Theodore Mannelli, State Attorney's Office, 11th Circuit waives in support
3:06:51 PM Comments from Chair Burgess
3:07:01 PM Senator Diaz in closure
3:07:14 PM Roll call by CAA
3:07:22 PM CS/SB 772 reported favorably
3:07:40 PM Introduction of Tab 5, SB 654 by Chair Burgess
3:08:01 PM Explanation of SB 654, Protective Injunctions by Senator Cruz
3:09:12 PM Introduction of Amendment Barcode No. 851076 by Chair Burgess
3:10:12 PM Explanation of Amendment by Senator Cruz
3:10:46 PM Comments from Chair Burgess
3:11:03 PM Closure waived
3:11:05 PM Amendment adopted
3:11:11 PM Comments from Chair Burgess
3:11:19 PM Speaker Cindy Stuart, Clerk of Court, Hillsborough County in support
3:11:44 PM Mindy Murphy, CEO, The Spring Tampa Bay waives in support
3:12:15 PM Jenna Hodgens, Government Relations, Clerk of Court, Hillsborough County waives in support
3:12:19 PM Comments from Chair Burgess
3:12:47 PM Comments from Senator Rouson
3:12:55 PM Senator Cruz in closure
3:12:59 PM Roll call by CAA
3:13:10 PM CS/SB 654 reported favorably
3:13:27 PM Introduction of Tab 7, SB 630 by Chair Burgess
3:13:42 PM Explanation of SB 630, Pregnant Women in Custody by Senator Jones
3:14:34 PM Introduction of Amendment Barcode No. 715928 by Chair Burgess
3:15:34 PM Explanation of Amendment by Senator Jones
3:16:12 PM Comments from Chair Burgess
3:16:22 PM Closure waived
3:16:29 PM Amendment adopted
3:16:31 PM Comments from Chair Burgess
3:16:45 PM Neisha-Rose Hines, ACLU FL waives in support
3:16:49 PM Barbara DeVane, FL National Organization for Women waives in support
3:16:54 PM Nina Manning, Dignity Power waives in support

3:16:57 PM Speaker Tray Johns, Dignity Power in support
3:20:28 PM Jemerica Jones waives in support
3:20:37 PM Speaker Trish Brown in support
3:21:48 PM Brenda Spitzbarth waives in support
3:22:50 PM Anna Guevara, Florida Student Power waives in support
3:22:56 PM Mary-Elizabeth Estrada, Florida Student Power waives in support
3:23:00 PM Annie Filkowski, Florida Alliance of Planned Parenthood Affiliates waives in support
3:23:09 PM Ida Eskamani, Florida Rising & Florida Immigrant Coalition waives in support
3:23:15 PM Pamela Burch Fort, NAACP Florida State Conference waives in support
3:23:19 PM Brian Jogerst, Florida Association of Healthy Start Coalitions waives in support
3:23:25 PM Karen Woodall, FL Center for Fiscal & Economic Policy waives in support
3:23:29 PM Don Scott, Jr., SPLC Action Fund waives in support
3:23:39 PM Jen Delpercio waives in support
3:23:41 PM Laurette Philipsen waives in support
3:23:44 PM Denise Rock waives in support
3:23:49 PM Comments from Chair Burgess
3:23:54 PM Senator Gibson in debate
3:25:46 PM Comments from Chair Burgess
3:25:51 PM Senator Baxley in debate
3:27:45 PM Senator Jones in closure
3:27:49 PM Roll call by CAA
3:28:36 PM CS/SB 630 reported favorably
3:29:08 PM Chair passed to Vice-chair Gibson
3:29:18 PM Introduction of Tab 6, SB 1664 by Chair Gibson
3:29:30 PM Explanation of SB 1664, Unlawful Assemblies by Senator Perry
3:30:26 PM Comments from Chair Gibson
3:30:32 PM Introduction of Amendment Barcode No. 121202 by Chair Gibson
3:30:49 PM Explanation of Amendment by Senator Perry
3:30:52 PM Comments from Chair Gibson
3:31:16 PM Closure waived
3:31:18 PM Amendment adopted
3:31:24 PM Comments from Chair Gibson
3:31:29 PM Question from Senator Bradley
3:31:35 PM Response from Senator Perry
3:32:33 PM Question from Senator Rouson
3:32:38 PM Response from Senator Perry
3:33:00 PM Follow-up question from Senator Rouson
3:33:45 PM Response from Senator Perry
3:34:18 PM Follow-up question from Senator Rouson
3:34:25 PM Response from Senator Perry
3:34:37 PM Question from Senator Polsky
3:34:42 PM Response from Senator Perry
3:36:05 PM Follow-up question from Senator Polsky
3:36:12 PM Response from Senator Perry
3:37:10 PM Question from Senator Broxson
3:37:16 PM Response from Senator Perry
3:38:13 PM Question from Senator Polsky
3:38:21 PM Response from Senator Perry
3:38:56 PM Speaker Rev. Dr. Russell Meyer, FL Faith Advocacy Center in opposition
3:42:52 PM Speaker Lieutenant Mike Crabb, Orange County Sheriff's Office in support
3:43:21 PM Question from Senator Polsky
3:44:21 PM Response from Lt. Crabb

3:45:31 PM Question from Chair Gibson
3:46:30 PM Response from Lt. Crabb
3:47:14 PM Ana Guevara, Florida Student Power in opposition
3:47:16 PM Mary-Elizabeth Estrada, Florida Student Power waives in opposition
3:47:23 PM Pamela Burch Fort, NAACP Florida State Conference waives in opposition
3:47:37 PM Francesca Menes, The Black Collective waives in opposition
3:47:39 PM Ida Eskamani, Florida Rising waives in opposition
3:47:45 PM Neisha-Rose Hines, ACLU FL waives in opposition
3:47:59 PM Comments from Chair Gibson
3:48:04 PM Senator Boyd in debate
3:49:01 PM Senator Rouson in debate
3:51:21 PM Senator Baxley in debate
3:56:31 PM Chair Gibson in debate
3:57:35 PM Closure by Senator Perry
3:57:57 PM Roll call by CAA
3:58:57 PM CS/SB 1664 reported favorably
3:59:19 PM Introduction of Tab 10, SB 1380 by Chair Gibson
3:59:45 PM Explanation of SB 1380, Real Property Rights by Senator Rodriguez
4:00:07 PM Comments from Chair Gibson
4:00:31 PM French Brown, The Real Property, Probate, and Trust Law Section of the Florida Bar waives in support
4:00:44 PM Chris Moya, City Parking waives in support
4:00:55 PM Jess McCarty, Executive Assistant County Attorney, Miami-Dade County waives in opposition
4:01:16 PM Comments from Chair Gibson
4:01:21 PM Closure waived
4:01:45 PM Roll call by CAA
4:01:48 PM SB 1380 reported favorably
4:01:53 PM Introduction of Tab 2, SB 1304 by Chair Gibson
4:02:10 PM Explanation of SB 1304, Public Records/Trust Proceedings by Senator Gruters
4:02:30 PM Comments from Chair Gibson
4:02:30 PM Introduction of Amendment Barcode No. 848676 by Chair Gibson
4:02:39 PM Explanation of Amendment by Senator Gruters
4:03:06 PM Comments from Chair Gibson
4:03:17 PM Closure waived
4:03:20 PM Amendment adopted
4:03:24 PM Comments from Chair Gibson
4:03:37 PM Question from Senator Rodrigues
4:03:45 PM Response from Senator Gruters
4:04:19 PM Comments from Chair Gibson
4:04:36 PM Closure waived
4:04:37 PM Roll call by CAA
4:04:43 PM CS/SB 1304 reported favorably
4:05:06 PM Introduction of Tab 3, SB 1368 by Chair Gibson
4:05:31 PM Explanation of SB 1368, Trusts by Senator Gruters
4:05:52 PM Comments from Chair Gibson
4:06:33 PM Closure waived
4:06:38 PM Roll call by CAA
4:06:44 PM SB 1368 reported favorably
4:07:03 PM Introduction of Tab 4, SB 974 by Chair Gibson
4:07:16 PM Introduction of Amendment Barcode No. 660804 by Chair Gibson
4:07:38 PM Explanation of Amendment by Senator Gruters

4:08:02 PM Comments from Chair Gibson
4:08:11 PM Question from Senator Rouson
4:08:16 PM Response from Senator Gruters
4:08:34 PM Follow-up question from Senator Rouson
4:08:43 PM Response from Senator Gruters
4:09:06 PM Response from Senator Rouson
4:09:15 PM Response from Senator Gruters
4:09:21 PM Comments from Chair Burgess
4:09:36 PM David Cruz, Florida League of Cities waives in support
4:09:42 PM Lindy Kennedy, Safety Net Hospital Alliance of Florida waives in opposition
4:09:51 PM Chair Burgess in debate
4:10:49 PM Senator Gibson in debate
4:11:32 PM Senator Boyd in debate
4:13:15 PM Senator Rouson in debate
4:14:38 PM Senator Broxson in debate
4:16:39 PM Senator Bradley in debate
4:17:13 PM Senator Rodrigues in debate
4:18:18 PM Senator Gruters in closure
4:18:52 PM Comments from Chair Burgess
4:19:53 PM Amendment adopted
4:20:05 PM Comments from Chair Burgess
4:20:09 PM Bob Harris, Panhandle Area Educational Consortium waives in opposition
4:20:16 PM Sabrina Davis waives in support
4:20:20 PM Marcia Scheppler waives in support
4:20:25 PM Stacy Warner waives in support
4:20:29 PM Melody Page-McDonald waives in support
4:20:34 PM Speaker William Large, Florida Justice Reform Institute in opposition
4:25:44 PM Comments from Chair Burgess
4:25:50 PM Question from Senator Rouson
4:26:01 PM Response from Mr. Large
4:27:00 PM Comments from Chair Burgess
4:27:04 PM Senator Polsky in debate
4:29:23 PM Comments from Chair Burgess
4:29:28 PM Senator Gruters in closure
4:29:33 PM Roll call by CAA
4:30:14 PM CS/SB 974 reported favorably
4:30:30 PM Chair passed to Senator Gibson
4:30:52 PM Introduction of Tab 8, SB 702 by Chair Gibson
4:31:07 PM Explanation of SB 702, Photographic Enforcement of School Bus Safety by Senator Burgess
4:32:25 PM Comments from Chair Gibson
4:32:40 PM Question from Senator Broxson
4:32:48 PM Response from Senator Burgess
4:35:03 PM Follow-up question from Senator Broxson
4:35:11 PM Response from Senator Burgess
4:36:19 PM Question from Senator Rodrigues
4:36:35 PM Response from Senator Burgess
4:36:55 PM Follow-up question from Senator Rodrigues
4:37:02 PM Response from Senator Burgess
4:37:23 PM Follow-up question from Senator Rodrigues
4:37:32 PM Response from Senator Burgess
4:37:59 PM Follow-up question from Senator Rodrigues

4:38:07 PM Response from Senator Burgess
4:38:32 PM Follow-up question from Senator Rodrigues
4:38:43 PM Response from Senator Burgess
4:38:57 PM Comments from Chair Gibson
4:39:27 PM Introduction of Amendment Barcode No. 743940 by Chair Gibson
4:39:32 PM Explanation of Amendment by Senator Burgess
4:39:57 PM Comments from Chair Gibson
4:40:10 PM Jennifer Cook Pritt, FL Police Chiefs Association waives in support
4:40:24 PM Comments from Chair Gibson
4:40:35 PM Closure waived
4:40:42 PM Amendment adopted
4:40:54 PM Comments from Chair Gibson
4:41:05 PM Question from Senator Rodrigues
4:41:12 PM Response from Senator Burgess
4:41:22 PM Question from Senator Bradley
4:41:27 PM Response from Senator Burgess
4:42:15 PM Follow-up question from Senator Bradley
4:42:26 PM Response from Senator Burgess
4:43:41 PM Question from Senator Rodrigues
4:43:48 PM Response from Senator Burgess
4:44:02 PM Question from Chair Gibson
4:44:06 PM Response from Senator Burgess
4:44:16 PM Follow-up question from Chair Gibson
4:44:26 PM Response from Senator Burgess
4:45:12 PM Follow-up question from Chair Gibson
4:45:21 PM Response from Senator Burgess
4:45:40 PM Follow-up question from Chair Gibson
4:45:52 PM Response from Senator Burgess
4:47:24 PM Follow-up question from Chair Gibson
4:48:26 PM Response from Senator Burgess
4:49:05 PM Comments from Chair Gibson
4:49:17 PM Ederline Joseph-Theophile, Florida PTA waives in support
4:49:26 PM Lieutenant Mike Crabb, Orange County Sheriff's Office waives in support
4:49:32 PM Monte Stevens, AAA waives in support
4:49:45 PM Jennifer Cook Pritt, FL Police Chiefs Associations waives in support
4:49:51 PM Senator Broxson in debate
4:51:42 PM Senator Baxley in debate
4:53:07 PM Senator Rodrigues in debate
4:54:17 PM Comments from Chair Gibson
4:54:25 PM Chair Gibson in debate
4:55:04 PM Closure waived
4:55:26 PM Roll call by CAA
4:55:34 PM CS/SB 702 reported favorably
4:56:08 PM Introduction of Tab 9, SB 1012 by Chair Gibson
4:56:14 PM Explanation of SB 1012, Victims of Crimes by Senator Burgess
4:56:42 PM Introduction of Amendment Barcode No. 506646 by Chair Gibson
4:57:04 PM Explanation of Amendment by Senator Burgess
4:57:24 PM Paul Hawkes, Marsy's Law for Florida waives in support
4:57:44 PM Amendment adopted
4:57:47 PM Comments from Chair Gibson
4:57:55 PM Adam Ross, State Attorney's Office, Sixth Judicial Circuit waives in support
4:58:05 PM Comments from Chair Gibson

4:58:10 PM Closure waived
4:58:18 PM Roll call by CAA
4:58:24 PM CS/SB 1012 reported favorably
4:58:35 PM Senator Polsky would like to be shown voting in the affirmative on Tabs 1, 5, 10
4:58:58 PM Chair Burgess would like to be shown voting in the affirmative on Tabs 6, 10, 3, 2
4:59:06 PM Senator Boyd would like to be shown voting in the affirmative on Tabs 5 and 7
4:59:11 PM Senator Bradley would like to be shown voting in the affirmative on Tabs 1, 5, 10
4:59:26 PM Senator Polsky moves to adjourn
4:59:32 PM Meeting adjourned