

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 152

INTRODUCER: Senator Grimsley

SUBJECT: Law Enforcement and Correctional Officers

DATE: January 3, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>JU</u>	_____

I. Summary:

SB 152 eliminates the need for a law enforcement officer to be in the actual presence of the person they are swearing in under the officer's authority to administer an oath found in s. 117.10, F.S. Under s. 117.10, F.S., law enforcement officers, correctional officers, correctional probation officers, traffic accident investigation officers, and traffic infraction enforcement officers are currently authorized to administer oaths when engaged in the performance of their official duties, but s. 117.10, F.S., does not specify whether the officer administering the oath needs to be in the presence of the person taking the oath.

The bill adds law enforcement officers, correctional officers, correctional probation officers, traffic accident investigation officers, and traffic infraction enforcement officers to the list of people who are currently authorized to verify documents under ss. 92.50 and 92.525, F.S. Document verification requires the affiant to sign or execute the document and state under oath, or by writing, that the facts or matters contained in the document are true.¹

The bill provides that oath administration or document verification by an officer could be accomplished in the presence of the affiant or completely electronically under the procedure described in s. 117.10, F.S., as amended by the bill.

II. Present Situation:

Law Enforcement Administering Oaths

Under current law, law enforcement officers, correctional officers, correctional probation officers, traffic accident investigation officers, and traffic infraction enforcement officers are authorized to administer oaths when engaged in the performance of their official duties.²

¹ s. 92.525(3), F.S.

² Section 117.10, F.S.

The origin of officers' authority to administer oaths is found in Chapter 83-147, Laws of Florida, which created that authority for limited purposes.³ Following its enactment, the Attorney General opined that "[t]he power to administer oaths under Ch. 83-147 extends only to sworn statements of witnesses taken during the law enforcement officer's informal gathering, authentication and preservation of information during an inquiry into the facts...an officer is not empowered to take the sworn statement of another officer or witness for the sole intended purpose of using that document to establish probable cause or to serve as a complaint for direct submission to a magistrate or court..."⁴

The following year, 1984, the Legislature created s. 117.10, F.S., which read:

Law enforcement officers and correctional officers, as defined in s. 943.10, are notaries public for the purpose of notarizing, certifying, or attesting to documents in connection with the performance of official duties. Sections 117.01, 117.04, 117.05, 117.07, and 117.08 shall not apply to the provisions of this section. An officer may not notarize his own signature.⁵

Section 117.10, F.S., has been amended over the last 30 years to include correctional probation officers, traffic accident investigation officers, and traffic infraction enforcement officers. The reference to officers being notaries public for various purposes has been deleted so that the statute now simply states that the listed officers "are authorized to administer oaths when engaged in the performance of official duties."⁶

It is not uncommon for law enforcement agencies to utilize officers for the purpose of verifying signatures, both electronic and actual, on official documents such as probable cause affidavits, reports, or sworn complaints. Under the authority of s. 117.10, F.S., one officer may place another under oath and be a witness to the latter's having sworn to and subscribed (signed) an official document.

Because so much business is conducted by computer, the officer who is swearing in the other officer and witnessing the signature is quite often witnessing the application of an electronic signature rather than an actual one. The convenience of computer-generated documents is reported to be somewhat diminished, because one officer must still meet with another to lawfully complete the "sworn signature" requirements where one officer gives the oath and witnesses the sworn electronic signature of the other.⁷

³ "All law enforcement and correctional officers as defined in s. 943.10 may administer oaths, to witnesses, in connection with the taking of a sworn statement during a criminal investigation..." s. 925.095, F.S. (1983).

⁴ Fla. AGO 83-85, in response to a question from the Havana, Florida, Chief of Police regarding whether law enforcement officers were authorized under Ch. 83-147, L.O.F. to administer oaths to, and attest to the signatures of, persons (presumably other law enforcement officers) sworn complaints or probable cause affidavits.

⁵ Chapter 84-87, L.O.F. which also repealed s. 925.095, F.S. (1983).

⁶ s. 117.10, F.S.

⁷ Telephone interview with Major Larry Williams, Polk County Sheriff's Office, December 19, 2013.

Verification of Documents

The requirement that a document be verified means that it must be signed or executed by a person who must state under oath (or affirmation) that the facts or matters stated in the document are true, or words to that import or effect.⁸

Document verification may be accomplished by one of two methods:

- Under oath or affirmation taken or administered before an officer authorized under s. 92.50, F.S., to administer oaths. These officers are currently limited to any judge, clerk or deputy clerk of court, or any notary public; or
- The document may be verified by the signing of the written declaration set forth in subsection (2) of s. 92.525, F.S.

The above referenced written declaration states:

“Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true,” followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words “to the best of my knowledge and belief” may be added.

The written declaration shall be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration.⁹

Perjury

A person who knowingly makes a false declaration under s. 92.525(2), F.S., is subject to prosecution for the third degree felony crime of perjury by false written declaration.¹⁰

A person who knowingly makes a false statement under oath in regard to any material matter commits perjury, a first degree misdemeanor under s. 837.012, F.S.¹¹

III. Effect of Proposed Changes:

The bill eliminates the need for a law enforcement officer to be in the actual presence of the person they are swearing in (the affiant) under the officer’s authority to administer an oath found in s. 117.10, F.S.

The bill adds law enforcement officers, correctional officers, correctional probation officers, traffic accident investigation officers, and traffic infraction enforcement officers to the list of

⁸ s. 92.525(4)(c), F.S.

⁹ s. 92.525(2), F.S.

¹⁰ s. 92.525(3), F.S.

¹¹ “Whoever makes a false statement, which he or she does not believe to be true, under oath, not in an official proceeding, in regard to any material matter shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.”

people who are currently authorized to verify documents. The people (called “officers” in the current s. 92.525(1)(a), F.S.) who are currently authorized to verify documents under s. 92.525, F.S., are: judges, clerks, deputy clerks and notaries public.¹²

The bill provides that document verification by an officer could be accomplished in the presence of the affiant or completely electronically under the procedure described in s. 117.10, F.S., as amended by the bill. Judges, clerks and deputy clerks of court, and notaries public are restricted to giving an oath in person.¹³

The details surrounding the electronic oath administration and document verification procedure are somewhat unclear particularly with regard to electronic security measures that may be necessary in order to enforce related perjury laws. (see Technical Deficiencies section below for details).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Law enforcement and correctional agencies may realize a financial benefit by passage of the bill as the effect should eliminate some costs and man-hours associated with the current restrictions on affixing sworn signatures to official documents.

¹² s. 92.50, s. 92.525(1)(a), F.S.

¹³ “Under oath or affirmation *taken or administered before* an officer authorized under s. 92.50 to administer oaths.” s. 92.525(1)(a), F.S. (emphasis added).

VI. Technical Deficiencies:

Lines 34-37 in the bill create a procedure whereby an officer can administer an oath by electronic means, however the procedure is somewhat unclear. It appears that the affiant will sign and transmit a document electronically, then the affiant will be issued an electronic receipt which indicates the date and time the (signed) document was submitted. Clarification regarding the following is suggested:

- To whom is the document being transmitted by the affiant (line 35);
- Is the document submitted to a different party subsequently (line 37);
- How and by whom is the electronic receipt issued (line 36);
- At what point during the process is the oath administered; and
- How will the signature of the affiant or the document itself be verifiable should either be called into question; should security measures be addressed in the bill.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 92.525 and 117.10.

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.