

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 796

INTRODUCER: Criminal Justice Committee and Senator Bradley

SUBJECT: Tampering with or Fabricating Physical Evidence

DATE: January 25, 2022

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 796 creates a second degree felony offense of tampering with or fabricating evidence relating to a criminal trial or proceeding or an investigation involving a capital offense, or an offense involving the death of a person. The bill ranks the offense as a Level 6 offense in the Offense Severity Ranking Chart (OSRC).

The bill makes a violation of s. 918.13(1)(b), F.S., a Level 3 offense in the OSRC.

This bill will likely have a “positive indeterminate” prison bed impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2022.

II. Present Situation:

Tampering With or Fabricating Physical Evidence

Section 918.13, F.S., prohibits a person, knowing that a criminal trial or proceeding, or an investigation by a prosecuting authority, law enforcement agency, grand jury, or legislative committee is pending or about to be instituted, from:

- Altering, destroying, concealing, or removing any record, document, or thing with the purpose to impair its verity or availability in the proceeding or investigation, or

- Making, presenting, or using any record, document, or thing, knowing it to be false.

A person convicted of tampering with or fabricating physical evidence commits a third degree felony.¹ Under current law, the criminal penalty does not vary based on the severity of the underlying crime that is being investigated or prosecuted, so a person convicted of tampering with evidence in a murder investigation is subject to the same penalty as a person that tampers with evidence in a case involving misdemeanor marijuana possession.

A person may only be convicted of tampering with evidence in circumstances where the person has the specific intent to destroy or conceal evidence to such an extent that it is unavailable for trial or investigation.²

Capital Offenses

A capital felony is the most serious classification of felony offenses. A capital felony is a crime that is punishable by either death or life imprisonment without the possibility of parole.³ Currently, first degree murder and certain drug trafficking offenses are capital offenses.⁴

Offense Severity Ranking Chart

Felony offenses subject to the Criminal Punishment Code are listed in a single offense severity ranking chart (OSRC), which uses 10 offense levels to rank felonies from least severe (Level 1) to most severe (Level 10). A person's primary offense, any other current offenses, and prior offenses are scored using the points designated for the offense severity level of each offense. The final calculation, following the scoresheet formula, determines the lowest permissible sentence that the trial court may impose, absent a valid reason for departure.⁵

If an offense is unranked, the Criminal Punishment Code specifies a default level on the OSRC depending on the felony degree of the offense. The criminal offense of altering, destroying, or concealing physical evidence is ranked as a Level 3 offense on the OSRC.⁶ The criminal offense of making, presenting, or using physical evidence while knowing it is false is not currently ranked in the OSRC and defaults to a Level 1 offense.⁷

III. Effect of Proposed Changes:

The bill creates a new felony offense building upon the current offense of tampering with or fabricating evidence. The new offense provides that tampering with or fabricating evidence relating to a criminal trial or proceeding or an investigation involving a capital offense, or an offense involving the death of a person is a second degree felony.⁸ The bill ranks the new second

¹ A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

² *E.I. v. State*, 25 So.3d 626 (Fla. 2d DCA 2009).

³ Section 775.082(1)(a), F.S.

⁴ *See* ss. 782.04(2)(a) and 893.135, F.S.

⁵ Section 921.0022(3)(c), F.S.

⁶ *Id.*

⁷ Section 921.0023, F.S.

⁸ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

degree felony offense as a Level 6 in the OSRC. Additionally, the bill makes a violation of s. 918.13(1)(b), F.S., a Level 3 offense in the OSRC.

The bill is effective October 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not yet considered CS/SB 796, however the Office of Economic and Demographic Research has provided a Proposed Estimate for CS/HB 287 which is identical to CS/SB 796.⁹ The Proposed Estimate for CS/HB 287 is that the bill will have a Positive Indeterminate impact (an unquantifiable increase in prison beds) on the Department of Corrections.¹⁰

⁹ The Proposed Estimates for CS/HB 287 and SB 796 are on file with the Senate Criminal Justice Committee.

¹⁰ *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 918.13 and 921.0022.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on January 25, 2022:

The committee substitute:

- Includes s. 918.13(1)(b), F.S., the third degree felony crime of fabricating physical evidence in the Offense Severity Ranking Chart at Level 3.
- Ranks the second degree felony offense of tampering with or fabricating evidence relating to a criminal trial or proceeding or an investigation involving a capital offense, or an offense involving the death of a person in the Offense Severity Ranking Chart at Level 6. This offense is created in the bill.
- Deletes a second degree felony offense of tampering with or fabricating evidence relating to a criminal trial or proceeding or an investigation involving a violent felony offense described in s. 775.084(1)(b)1., F.S.

- B. **Amendments:**

None.