



Justice Appropriations Subcommittee

**Wednesday, January 10, 2024
1:30 PM – 3:30 PM
17 HOB (Morris Hall)**

MEETING PACKET

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Justice Appropriations Subcommittee

Start Date and Time: Wednesday, January 10, 2024 01:30 pm
End Date and Time: Wednesday, January 10, 2024 03:30 pm
Location: Morris Hall (17 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 401 Tracking Devices and Applications by Overdorf
HB 531 Traveling Across County Lines to Commit Criminal Offenses by Snyder
CS/HB 607 Retention of Sexual Offense Evidence by Criminal Justice Subcommittee, Plakon

To submit an electronic appearance form, and for information about attending or testifying at a committee meeting, please see the "Visiting the House" tab at www.myfloridahouse.gov.

NOTICE FINALIZED on 01/08/2024 4:07PM by RSD

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 401 Tracking Devices and Applications

SPONSOR(S): Overdorf

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	18 Y, 0 N	Butcher	Hall
2) Justice Appropriations Subcommittee		Smith	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

A consumer tracking device is intended to help track missing items when attached to belongings such as a user's purse, keys, wallet, or luggage. As availability and use of affordable consumer tracking devices has increased, so too have concerns about the potential for nefarious uses of such technology. In recent years, there have been numerous reports of tracking devices having been planted into clothing and purses or attached to the vehicle of another person without their knowledge. In addition to tracking devices, tracking applications that are downloadable to mobile devices can also be used to follow the location or movement of another person, potentially without that person's knowledge or consent.

Unless exempted, s. 934.425, F.S., prohibits a person from knowingly installing a tracking device or tracking application on another person's property without the other person's consent. A violation of the prohibition is punishable as a second degree misdemeanor. Current law does not specifically prohibit the *placement*, as it does the installation of a tracking device or application on another person's property without his or her consent; or prohibit the unconsented *use* of a tracking device or tracking application by a person other than the one responsible for installing the device or application.

HB 401 amends s. 934.425, F.S., to prohibit a person from knowingly:

- *Placing*, in addition to installing, a tracking device or tracking application on another person's property without that person's consent; or
- Using a tracking device or tracking application to determine the location or movement of another person or another person's property without that person's consent.

The bill expands the scope of prohibited conduct to capture those persons who do not install or place a tracking device or tracking application on another person's property themselves, but who nonetheless access and use such a device or application to determine the location or movement of another person or another person's property without that person's consent.

The bill increases the penalty for a violation of s. 934.425, F.S., from a second degree misdemeanor to a third degree felony, punishable by up to five years imprisonment and a \$5,000 fine.

The bill may have a positive indeterminate impact on jail and prison beds by expanding the scope of prohibited conduct under s. 934.425, F.S., and increasing the penalty for a violation from a second degree misdemeanor to a third degree felony, which may result in longer jail sentences and new prison admissions.

The bill provides an effective date of October 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Location Tracking Technology

Affordable consumer tracking products are derived from three methods of functionality, including:

- *The Global Positioning System (GPS)*: A space-based radio navigation system, owned by the United States Government and operated by the United States Space Force. Access to precise positioning service is restricted to the United States Armed Forces, Federal agencies, and select allied armed forces and governments. Standard positioning service is available to all users on a continuous basis, free of any direct charge to users.¹ GPS is widely used in a variety of applications because its capabilities are accessible using small, inexpensive equipment.²
- *Wi-Fi Positioning*: Wi-Fi can be leveraged to detect and track the location of people, devices, and assets, and can be easily activated for indoor positioning with existing Wi-Fi access points. The most commonly used Wi-Fi positioning techniques determine a device's location by using a measure called received signal strength indicator (RSSI). In RSSI applications, multiple existing Wi-Fi access points or Wi-Fi enabled sensors deployed in a fixed position detect transmitting Wi-Fi devices and the received signal strength of a device's signal. The location data collected by the access points or sensors is sent to the central indoor positioning or real-time location system, which analyzes the data to estimate the position of the transmitting device.³
- *Bluetooth Low Energy (BLE)*: BLE uses small Bluetooth transmitters, called Beacons, to detect wireless devices such as BLE-enabled smart phones. Beacons broadcast signals at regular intervals that can be detected by other BLE-enabled devices. Location data from Beacons are collected by a BLE device and forwarded to an internal positioning system to determine the devices location. Like Wi-Fi, BLE primarily uses RSSI to detect the location of people, devices, and assets.⁴
- *Ultra-Wideband (UWB) Technology*: UWB allows for information to be transmitted across a wide radio bandwidth. While similar to Wi-Fi and Bluetooth technology, UWB technology measures time of flight (ToF) as opposed to utilizing RSSI. Utilizing ToF, an electromagnetic impulse is sent from one device to another, measuring the time it takes from transmission to receipt of the impulse, and allowing for the determination of distance between devices. Measurements are then able to be correlated to determine a signal's angle of arrival, allowing UWB "tagged" objects to be located with accuracy down to the centimeter, which is far more precise than Bluetooth technology permits.⁵

¹ Catherine G. Manning, *What is GPS*, NASA, (Sept. 25, 2023) <https://www.nasa.gov/directorates/somd/space-communications-navigational-program/gps/> (last visited Jan. 4, 2024).

² *Satellite Navigation- Global Positioning System (GPS)*, Federal Aviation Administration, [Satellite Navigation - Global Positioning System \(GPS\) | Federal Aviation Administration \(faa.gov\)](https://www.faa.gov/air_traffic/technology/satellite_navigation_global_positioning_system_gps) (last visited Jan. 4, 2024).

³ *What is Wi-Fi Positioning*, Inpixon Indoor Intelligence, <https://www.inpixon.com/technology/standards/wifi> (last visited Jan. 4, 2024).

⁴ *Bluetooth RTLS, Location Tracking, & Positioning*, Inpixon Indoor Intelligence, <https://www.inpixon.com/technology/standards/bluetooth-low-energy> (last visited Jan. 4, 2024).

⁵ Robert Triggs, Calvin Wankhede, *What is UWB, and why is it in my phone? Ultra wideband technology, explained*, Android Authority, (Aug. 30, 2023), [What is UWB used for in phones? Ultra wideband technology, explained \(androidauthority.com\)](https://www.androidauthority.com/what-is-uwband-used-for-in-phones-3231111/) (last visited Jan. 4, 2024).

Abuse of Location Tracking Technology

A consumer tracking device is intended to help users track missing items when attached to belongings such as a user's purse, keys, wallet, or luggage. In the case of a missing item, the device sends its current location back to the user, and in some cases, provides the user with directions to the device's location.⁶ These popular devices sell from around twenty five to thirty five dollars for one unit to around one hundred dollars for a four-pack of units.⁷

As availability and use of affordable consumer tracking devices has increased, so too have concerns about the potential for nefarious uses of such tracking technology. In recent years, there have been numerous reports of consumer trackers being discovered having been planted into clothing and purses or attached to the vehicle of another person without their knowledge.⁸ In response, the manufacturers of some tracking devices have made efforts to curb their misuse and make consumers aware if a device has gone out of range or if a device is away from its owner and nearby another networked device for an extended period of time.⁹

Additionally, some companies have developed applications that can be used by consumers to scan for nearby tracking devices.¹⁰ Other companies have specifically employed anti-stalking measures in the functionality of the tracking device itself, such as requiring a user to register using multi-factor authentication, provide government identification, and acknowledge that personal information can and will be shared with law enforcement at the company's discretion to aid in the investigation and prosecution of suspected stalking.¹¹

In addition to tracking devices, tracking applications can also be used to follow the location or movement of another person, potentially without that person's knowledge or consent. Some applications, such as Find My iPhone and other applications developed to help parents keep tabs on minor children, have legitimate uses but may be accessed by third parties without the consent of the user. Other applications are developed and marketed as surveillance applications, commonly targeting potential customers interested in the using the technology to track the movements and communications of a romantic partner.¹² Some tech platforms have responded to the proliferation of these applications by banning companies from advertising applications on their platforms with the express purpose of tracking and monitoring another person or their activities without their authorization.¹³

⁶ Samantha Cole, *Police Records Show Women Are Being Stalked With Apple AirTags Across the Country*, Motherboard Tech by VICE, (Apr. 6, 2022) <https://www.vice.com/en/article/y3vj3y/apple-airtags-police-reports-stalking-harassment> (last visited Jan. 4, 2024).

⁷ Kevin Webb and Annabelle Williams, *Apple's AirTag is designed to compete with Tile's family of Bluetooth trackers-here's how they stack up*, Business Insider, (Aug. 24, 2022) <https://www.businessinsider.com/guides/tech/apple-airtags-vs-tile-tracker-bluetooth> (last visited Jan. 4, 2024).

⁸ Emily J. Hanson and Kristin Finklea, *Stalking Concerns Raised by Bluetooth Tracking Technologies: In Brief, Congressional Research Service*, (Feb. 15, 2022), <https://crsreports.congress.gov/product/pdf/R/R47035/2> (last visited Jan. 4, 2024); Lisa Zobel, Mark Muldofsky, Nicole Mastrangelo, Deborah Kim, Anneke Ball, Rachel Wenzlaff, and Ivan Pereira, *Apple AirTags causing major security concerns over reports of stalking*, ABC News, (Jan. 20, 2023) <https://abcnews.go.com/US/apple-airtags-causing-major-security-concerns-reports-stalking/story?id=96531871> (last visited Jan. 4, 2024).

⁹ For example, iPhone owners should receive a push alert whenever an unknown AirTag is nearby for an extended period of time and away from its owner. Reece Rogers, *Are you Being Tracked by an AirTag? Here's How to Check*, Wired, (Aug. 11, 2023) <https://www.wired.com/story/how-to-find-airtags/> (last visited Jan. 4, 2024).

¹⁰ *Id.*

¹¹ Sarah Perez, *Tile takes extreme steps to limit stalkers and thieves from using its Bluetooth trackers*, TechCrunch (Feb. 16, 2023), <https://techcrunch.com/2023/02/16/tile-takes-extreme-steps-to-limit-stalkers-and-thieves-from-using-its-bluetooth-trackers/> (last visited Jan. 4, 2024).

¹² Jennifer Valentino-DeVries, *Hundreds of Apps Can Empower Stalkers to Track Their Victims*, The New York Times, (May 19, 2018) <https://www.nytimes.com/2018/05/19/technology/phone-apps-stalking.html> (last visited Jan. 4, 2024).

¹³ Zack Whittaker, *'Stalkerware' phone spying apps have escaped Google's ad ban*, TechCrunch, (Aug. 11, 2023) <https://techcrunch.com/2020/08/11/stalkerware-apps-google-ads/> (last visited Jan. 4, 2024).

Unlawful Installation of a Tracking Device or Application

Unless exempted, s. 934.425, F.S., prohibits a person from knowingly installing a tracking device¹⁴ or tracking application¹⁵ on another person's property without the other person's consent.

Section 934.425, F.S., specifies that the prohibition does not apply to:

- A law enforcement officer as defined in s. 943.10, F.S., or any local, state, federal, or military law enforcement agency, that lawfully installs a tracking device or tracking application on another person's property as part of a criminal investigation;
- A parent or legal guardian of a minor child who installs a tracking device or tracking application on the minor child's property if:
 - The parents or legal guardians are lawfully married to each other and are not separated or otherwise living apart, and either parent or legal guardian consents to the installation of the tracking device or tracking application;
 - The parent or legal guardian is the sole surviving parent or legal guardian of the minor child;
 - The parent or legal guardian has sole custody of the minor child; or
 - The parents or legal guardians are divorced, separated, or otherwise living apart and both consent to the installation of the tracking device or tracking application;
- A caregiver of an elderly person or disabled adult, as those terms are defined in s. 825.101, F.S., if the elderly person or disabled adult's treating physician certifies that the installation of a tracking device or tracking application onto the elderly person or disabled adult's property is necessary to ensure the safety of the elderly person or disabled adult;
- A person acting in good faith on behalf of a business entity for a legitimate business purpose, except for persons engaged in private investigation, as defined in s. 493.6101, F.S.;¹⁶ or
- An owner or lessee of a motor vehicle that installs, or directs the installation of, a tracking device or tracking application on such vehicle during the period of ownership or lease, provided that:
 - The tracking device or tracking application is removed before the vehicle's title is transferred or the vehicle's lease expires;
 - The new owner or lessor of the vehicle consents in writing for the tracking device or tracking application to remain installed; or
 - The owner of the vehicle at the time of the installation of the tracking device or tracking application was the original manufacturer of the vehicle.¹⁷

Additionally, s. 934.425, F.S., specifies that a person's consent to be tracked is presumed to be revoked if:

- The consenting person and the person to whom consent was given are lawfully married and one person files a petition for dissolution of marriage from the other; or
- The consenting person or the person to whom consent was given files an injunction for protection against the other person pursuant to s. 741.30, F.S., relating to domestic violence, s. 741.315, F.S., relating to foreign protection orders, s. 784.046, F.S., relating to repeat violence, sexual violence, or dating violence, or s. 784.0485, F.S., relating to stalking.¹⁸

¹⁴ A "tracking device" means any device whose primary purpose is to track or identify the location or movement of an individual. S. 934.425(1)(c), F.S.

¹⁵ A "tracking application" means any software program whose primary purpose is to track or identify the location or movement of an individual. S. 934.425(1)(b), F.S.

¹⁶ "Private investigation" means the investigation by a person or persons for the purpose of obtaining information with reference to any of the following matters: crime or wrong done or threatened against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for such investigation; to identify habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or groups of persons; the credibility of witnesses or other persons; the whereabouts of missing persons, owners of unclaimed property or escheated property, or heirs to estates; the location or recovery of lost or stolen property; the causes and origin of, or responsibility for, fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property; or the business of securing evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation thereof. S. 493.6101(17), F.S.

¹⁷ S. 934.425(4)(a-e), F.S.

¹⁸ S. 934.425(3)(a-b), F.S.

A violation of the prohibition is punishable as a second degree misdemeanor.¹⁹

Current law does not specifically prohibit the *placement*, rather than the installation, of a tracking device or application on another person's property without his or her consent or prohibit the unconsented to use of a tracking device or tracking application by a person other than the one responsible for installing the device or application.

Grounds for Issuance of a Search Warrant

Under s. 933.02, F.S., a search warrant may be issued upon the following grounds:

- When the property shall have been stolen or embezzled in violation of law:
- When any property shall have been used:
 - As a means to commit any crime;
 - In connection with gambling, gambling implements and appliances; or
 - In violation of s. 847.011, F.S., or other laws in reference to obscene prints and literature.
- When any property constitutes evidence relevant to proving that a felony has been committed:
- When property is being held or possessed:
 - In violation of any of the laws prohibiting the manufacture, sale, and transportation of intoxicating liquors;
 - In violation of the fish and game laws;
 - In violation of the laws relative to food and drug; or
 - In violation of the laws relative to citrus disease pursuant to s. 581.184, F.S.
- When the laws in relation to cruelty to animals, as provided in ch. 828, F.S., have been or are violated in any particular building or place.²⁰

Summarizing the distinction between misdemeanor and felony crimes in relation to obtaining property via a search warrant, the Fourth District Court of Appeal has said, "property used to commit any crime—whether felony or misdemeanor—may be seized under a warrant; while property merely constituting relevant evidence of a crime may be seized only if the suspected crime is a felony."²¹ Regarding a misdemeanor crime, "property seized can be retained only if it constitutes property actually used to commit the misdemeanors alleged as the basis for the warrant."²²

Under current law, because a violation of s. 934.425, F.S., for the unlawful installation of a tracking device or application is a second degree misdemeanor, evidence such as subscriber information or application, location, or download data may fall outside the scope of property for which a law enforcement officer may obtain a search warrant and thus is unavailable to aid in a criminal investigation.

Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code²³ are listed in a single offense severity ranking chart (OSRC),²⁴ which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense listed in the OSRC is assigned a level according to the severity of the

¹⁹ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Ss. 775.082 and 775.083, F.S.

²⁰ S. 933.02, F.S.

²¹ *Bordo, Inc. v. State*, 627 So. 2d 561, 563 (Fla. 4th DCA 1993).

²² *Id.* at 564.

²³ All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. S. 921.002, F.S.

²⁴ S. 921.0022, F.S.

offense.^{25,26} A person's primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense.^{27,28} The final score calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.²⁹

Effect of Proposed Changes

HB 401 amends s. 934.425, F.S., to prohibit a person from knowingly:

- *Placing*, in addition to installing, a tracking device or tracking application on another person's property without that person's consent; or
- Using a tracking device or tracking application to determine the location or movement of another person or another person's property without that person's consent.

The bill expands the scope of prohibited conduct by capturing the unlawful *placement* of a tracking device or tracking application on another person's property, rather than just the installation of a tracking device or tracking application on another person's property. The change may clarify that in order to commit a violation a person need not be required to affix a tracking device or application to a piece of property, but also commits a violation by simply dropping such a device into another person's property, such as a purse or coat pocket.

The bill also expands the scope of prohibited conduct by also capturing those persons who do not install or place a tracking device or tracking application on another person's property themselves, but who nonetheless access and use such a device or application to determine the location or movement of another person or another person's property without that person's consent.

The bill increases the penalty for a violation of s. 934.425, F.S., from a second degree misdemeanor to a third degree felony, punishable by up to five years imprisonment and a \$5,000 fine. However, the bill does not rank the offense on the OSRC, and as such, under s. 921.0023, F.S., the offense defaults to a level 1 offense.

Additionally, because the bill increases the penalty for a violation from a second degree misdemeanor to a third degree felony, a law enforcement officer may be able to obtain a search warrant under s. 933.02, F.S., for property constituting evidence relevant to proving that a felony has been committed. As such, law enforcement may be able to obtain a search warrant to access evidence such as subscriber information and application, location, and download data from a tracking device, which may be essential to properly investigating unlawful tracking violations.

The bill provides an effective date of October 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 934.425, F.S., relating to installation of tracking devices or tracking applications; exceptions; penalties.

Section 2: Provides an effective date of October 1, 2024.

²⁵ S. 921.0022(2), F.S.

²⁶ Felony offenses that are not listed in the OSRC default to statutorily assigned levels, as follows: an unlisted third-degree felony defaults to a level 1; an unlisted second-degree felony defaults to a level 4; an unlisted first-degree felony defaults to a level 7; an unlisted first-degree felony punishable by life defaults to a level 9; and an unlisted life felony defaults to a level 10. S. 921.0023, F.S.

²⁷ Ss. 921.0022 and 921.0024, F.S.

²⁸ A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers. S. 921.0024(1), F.S.

²⁹ If a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula. If a person scores 44 points or fewer, the court may impose a non-prison sanction, such as a county jail sentence, probation, or community control. S. 921.0024(2), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a positive indeterminate impact on jail and prison beds by expanding the scope of prohibited conduct under s. 934.425, F.S., and increasing the penalty for a violation from a second degree misdemeanor to a third degree felony, which may result in longer jail sentences and new prison admissions.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to tracking devices and applications;
 3 amending s. 934.425, F.S.; prohibiting the placement
 4 or use of a tracking device or tracking application to
 5 determine the location or movement of another person
 6 or another person's property without that person's
 7 consent; providing criminal penalties; providing an
 8 effective date.

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

11
 12 Section 1. Section 934.425, Florida Statutes, is amended
 13 to read:

14 934.425 Installation or use of tracking devices or
 15 tracking applications; exceptions; penalties.—

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

17 (a) "Business entity" means any form of corporation,
 18 partnership, association, cooperative, joint venture, business
 19 trust, or sole proprietorship that conducts business in this
 20 state.

21 (b) "Tracking application" means any software program
 22 whose primary purpose is to track or identify the location or
 23 movement of an individual.

24 (c) "Tracking device" means any device whose primary
 25 purpose is to reveal its location or movement by the

26 | transmission of electronic signals.

27 | (d) "Person" means an individual but does not include a
28 | business entity.

29 | (2) Except as provided in subsection (4), a person may not
30 | knowingly:

31 | (a) Install or place a tracking device or tracking
32 | application on another person's property without that ~~the other~~
33 | person's consent; or

34 | (b) Use a tracking device or tracking application to
35 | determine the location or movement of another person or another
36 | person's property without that person's consent.

37 | (3) For purposes of this section, a person's consent is
38 | presumed to be revoked if:

39 | (a) The consenting person and the person to whom consent
40 | was given are lawfully married and one person files a petition
41 | for dissolution of marriage from the other; or

42 | (b) The consenting person or the person to whom consent
43 | was given files an injunction for protection against the other
44 | person pursuant to s. 741.30, s. 741.315, s. 784.046, or s.
45 | 784.0485.

46 | (4) This section does not apply to:

47 | (a) A law enforcement officer as defined in s. 943.10, or
48 | any local, state, federal, or military law enforcement agency,
49 | that lawfully installs or places a tracking device or tracking
50 | application on another person's property as part of a criminal

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51 investigation.

52 (b) A parent or legal guardian of a minor child who
53 installs or places a tracking device or tracking application on
54 the minor child's property if:

55 1. The parents or legal guardians are lawfully married to
56 each other and are not separated or otherwise living apart, and
57 either parent or legal guardian consents to the installation or
58 placement of the tracking device or tracking application;

59 2. The parent or legal guardian is the sole surviving
60 parent or legal guardian of the minor child;

61 3. The parent or legal guardian has sole custody of the
62 minor child; or

63 4. The parents or legal guardians are divorced, separated,
64 or otherwise living apart and both consent to the installation
65 or placement of the tracking device or tracking application.

66 (c) A caregiver of an elderly person or disabled adult, as
67 those terms are defined in s. 825.101, if the elderly person's
68 or disabled adult's treating physician certifies that the
69 installation or placement of a tracking device or tracking
70 application onto the elderly person's or disabled adult's
71 property is necessary to ensure the safety of the elderly person
72 or disabled adult.

73 (d) A person acting in good faith on behalf of a business
74 entity for a legitimate business purpose. This paragraph does
75 not apply to a person engaged in private investigation, as

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76 defined in s. 493.6101, on behalf of another person unless such
77 activities would otherwise be exempt under this subsection if
78 performed by the person engaging the private investigator.

79 (e) An owner or lessee of a motor vehicle that installs or
80 places, or directs the installation or placement of, a tracking
81 device or tracking application on such vehicle during the period
82 of ownership or lease, provided that:

83 1. The tracking device or tracking application is removed
84 before the vehicle's title is transferred or the vehicle's lease
85 expires;

86 2. The new owner of the vehicle, in the case of a sale, or
87 the lessor of the vehicle, in the case of an expired lease,
88 consents in writing to the nonremoval of the tracking device or
89 tracking application; or

90 3. The owner of the vehicle at the time of the
91 installation or placement of the tracking device or tracking
92 application was the original manufacturer of the vehicle.

93 (5) A person who violates this section commits a felony
94 ~~misdemeanor~~ of the third ~~second~~ degree, punishable as provided
95 in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

96 Section 2. This act shall take effect October 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 531 Traveling Across County Lines to Commit Criminal Offenses

SPONSOR(S): Snyder

TIED BILLS: IDEN./SIM. BILLS: SB 538

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 2 N	Leshko	Hall
2) Justice Appropriations Subcommittee		Smith	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

Under s. 812.014, F.S., a person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either: temporarily or permanently deprive the other person of a right to the property or a benefit from the property; or appropriate the property to his or her own use or to the use of any person not entitled to the use of such property. Theft offense levels are generally categorized based on the value of the property stolen. If the property is valued at:

- \$100,000 or more, the offender commits grand theft in the first degree, a first-degree felony.
- \$20,000 or more, but less than \$100,000, the offender commits grand theft in the second degree, a second-degree felony.
- \$750 or more, but less than \$20,000, the offender commits grand theft of the third degree, a third-degree felony.
- \$100 or more, but less than \$750, and is taken from a dwelling or unclosed curtilage of a dwelling, the offender commits grand theft of the third degree, a third-degree felony.

Forcible felonies, as defined in s. 776.08, F.S., include treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

Under s. 843.22, F.S., a burglary offense may be reclassified one degree higher and re-ranked one level above the ranking specified in the offense severity ranking chart (OSRC) when the person committing the burglary travels any distance with the intent to commit the burglary in a county that is not his or her county of residence. A person who is arrested for a burglary offense that is subject to reclassification under s. 843.22, F.S., cannot be released on bail until he or she appears for a first appearance hearing and a court determines bond.

HB 531 amends s. 843.22, F.S., to reclassify the penalty for all forcible felonies and grand theft offenses when the offense is committed by an offender who travels any distance with the intent to commit the forcible felony or grand theft in a county other than his or her county of residence. The bill also specifies that a forcible felony or grand theft that is reclassified under the bill is ranked one level above the ranking normally specified in the OSRC for the offense committed. Additionally, the bill prohibits a person who is arrested for a forcible felony or grand theft offense that is subject to reclassification under s. 843.22, F.S., from being released on bail until he or she appears for a first appearance hearing and a court determines bond.

The bill may have a positive indeterminate impact on jail and prison beds by expanding the offenses eligible for reclassification under s. 843.22, F.S., which may result in more jail and prison admissions and more offenders being held in jail prior to first appearance.

The bill provides an effective date of upon becoming a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0531b.JUA

DATE: 1/8/2024

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Grand Theft

A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property¹; or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.²

Section 812.014, F.S., defines theft offenses and generally categorizes the offense level based on the value of the property stolen. Whether a theft is a misdemeanor or a felony may also depend on the offender's prior history of theft convictions or the type of property stolen. The offense levels for theft crimes based on property value thresholds are classified as follows:

	Property Value	Offense Level
Grand Theft	≥ \$100,000	First-degree felony ³
	≥ \$20,000, but < \$100,000	Second-degree felony ⁴
	≥ \$10,000, but < \$20,000	Third-degree felony ⁵
	≥ \$5,000, but < \$10,000	Third-degree felony
	≥ \$750, but < \$5,000	Third-degree felony
	≥ \$100, but < \$750 if taken from a dwelling or unenclosed curtilage ⁶ of a dwelling	Third-degree felony
Petit Theft	≥ \$100, but < \$750	First-degree misdemeanor ⁷
	< \$100	Second-degree misdemeanor ⁸

Additionally, s. 812.014, F.S., increases the severity of a petit theft offense if a person has one or more prior theft convictions. Petit theft committed by a person with a previous theft conviction is a first-degree misdemeanor.⁹ Petit theft committed by a person with two or more previous theft convictions is a third-degree felony.¹⁰

¹ S. 812.014(1)(a), F.S.

² S. 812.014(1)(b), F.S.

³ A first-degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, and 775.084, F.S.

⁴ A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, and 775.084, F.S.

⁵ A third-degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, and 775.084, F.S.

⁶ "Unenclosed curtilage of a dwelling" means the unenclosed land or grounds, or any outbuildings, directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling. S. 810.09(1)(b), F.S.

⁷ A first-degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

⁸ A second-degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Ss. 775.082 and 775.083, F.S.

⁹ S. 812.014(3)(b), F.S.

¹⁰ S. 812.014(3)(c), F.S.

Forcible Felonies

Under s. 776.08, F.S., forcible felonies include:

- Treason (a first-degree felony);¹¹
- Murder (ranges from a second-degree felony to a capital felony);¹²
- Manslaughter (a second or first-degree felony);¹³
- Sexual battery (ranges from a second-degree felony to a capital felony);¹⁴
- Carjacking (a first-degree felony);¹⁵
- Home-invasion robbery (a first-degree felony);¹⁶
- Robbery (a second or a first-degree felony);¹⁷
- Burglary (ranges from a third-degree felony to a first-degree felony);¹⁸
- Arson (a second or first-degree felony);¹⁹
- Kidnapping (a first-degree or life felony);²⁰
- Aggravated assault (a third-degree felony);²¹
- Aggravated battery (a second-degree felony);²²
- Aggravated stalking (a third-degree felony);²³
- Aircraft piracy (a first-degree felony);²⁴
- Unlawful throwing, placing, or discharging of a destructive device or bomb (ranges from a third-degree felony to a capital felony);²⁵ and
- Any other felony which involves the use or threat of physical force or violence against any individual.²⁶

Traveling Across County Lines with Intent to Commit a Burglary

Under s. 843.22, F.S., a burglary offense is reclassified one degree higher²⁷ and re-ranked one level above the ranking specified in the offense severity ranking chart when the offender committing the burglary travels any distance with the intent to commit the burglary in a county that is not his or her county of residence.²⁸

A person commits burglary by:²⁹

- Entering a dwelling, structure, or conveyance with the intent to commit an offense therein, unless the premises are at the time open to the public or the person's entry is licensed or invited; or
- Remaining in a dwelling, structure, or conveyance:
 - Surreptitiously, with the intent to commit an offense therein;
 - After permission to remain is withdrawn, with the intent to commit an offense therein; or
 - To commit or attempt to commit a forcible felony.³⁰

¹¹ S. 876.32, F.S.

¹² Ss. 782.04, 782.065, and 782.09, F.S.

¹³ S. 782.07, F.S.

¹⁴ S. 794.011, F.S.

¹⁵ S. 812.133, F.S.

¹⁶ S. 812.135, F.S.

¹⁷ S. 812.13, F.S.

¹⁸ S. 810.02, F.S.

¹⁹ S. 806.01, F.S.

²⁰ S. 787.01, F.S.

²¹ S. 784.021, F.S.

²² S. 784.045, F.S.

²³ S. 784.048, F.S.

²⁴ S. 860.16, F.S.

²⁵ Ss. 790.161 and 790.1615, F.S.

²⁶ S. 776.08, F.S.

²⁷ A capital felony cannot be reclassified. See *Miller v. State*, 438 So. 2d 83 (4th DCA 1983).

²⁸ S. 843.22(2), F.S.

²⁹ S. 810.02, F.S.

³⁰ S. 810.02(1)(b), F.S.

While a burglary offense is always classified as a felony, the felony offense level may change according to the offense's specific circumstances.³¹

Under s. 843.22, F.S., a person's "county of residence" means the county in which he or she resides within Florida, and evidence of a person's county of residence may include, but is not limited to:

- The address on a person's driver license or state identification card;
- Records of real property or mobile home ownership;
- Records of a lease agreement for residential property;
- The county in which a person's motor vehicle is registered;
- The county in which a person is enrolled in an educational institution; and
- The county in which a person is employed.³²

A person who is arrested for a burglary offense that is subject to reclassification under s. 843.22, F.S., cannot be released on bail until he or she appears for a first appearance hearing and a court determines bond.³³

The Florida Department of Law Enforcement's Computerized Criminal History (CCH) Data indicates that from January 1, 2014, through August 2023, 44 arrests for a violation of s. 843.22, F.S., were made, two prosecutions were pending, and one person has been convicted for a burglary offense enhanced under s. 843.22, F.S., statewide.^{34, 35}

Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code³⁶ are listed in a single offense severity ranking chart (OSRC),³⁷ which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense listed in the OSRC is assigned a level according to the severity of the offense.^{38, 39} A person's primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense.^{40, 41} The final score calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.⁴²

³¹ S. 810.02(2)-(4), F.S.

³² S. 843.22(1)(a), F.S.

³³ S. 903.046(2)(l), F.S.

³⁴ However, Florida Statute is an optional field in the arrest data; as such, 12.7% of arrests in the CCH data for the time period reported do not include a statutory reference. Florida Department of Law Enforcement, *CCH Data for Section 843.22, Florida Statutes* (on file with the House Criminal Justice Subcommittee).

³⁵ While an offender may be charged with a particular offense or enhancement by a law enforcement officer at the time of his or her arrest, the prosecutor has the discretion to determine which offenses or enhancements with which to formally charge a person, based on his or her assessment of the evidence and consideration of whether or not certain charges or enhancements can be proven to a jury beyond a reasonable doubt.

³⁶ All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. S. 921.002, F.S.

³⁷ S. 921.0022, F.S.

³⁸ S. 921.0022(2), F.S.

³⁹ Felony offenses that are not listed in the OSRC default to statutorily assigned levels, as follows: an unlisted third-degree felony defaults to a level 1; an unlisted second-degree felony defaults to a level 4; an unlisted first-degree felony defaults to a level 7; an unlisted first-degree felony punishable by life defaults to a level 9; and an unlisted life felony defaults to a level 10. S. 921.0023, F.S.

⁴⁰ Ss. 921.0022 and 921.0024, F.S.

⁴¹ A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers. S. 921.0024(1), F.S.

⁴² If a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula. If a person scores 44 points or fewer, the court may impose a non-prison sanction, such as a county jail sentence, probation, or community control. S. 921.0024(2), F.S.

Effect of Proposed Changes

HB 531 amends s. 843.22, F.S., to reclassify the penalty for all forcible felonies and grand theft offenses when the offense is committed by an offender who travels any distance with the intent to commit the forcible felony or grand theft in a county other than his or her county of residence. The bill also specifies that a forcible felony or grand theft that is reclassified under the bill is ranked one level above the ranking normally specified in the OSRC for the offense committed.

The bill also prohibits a person who is arrested for a forcible felony or grand theft offense that is subject to reclassification under s. 843.22, F.S., from being released on bail until he or she appears for a first appearance hearing and a court determines bond.

The bill provides an effective date of upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 843.22, F.S., relating to traveling across county lines with intent to commit a burglary.

Section 2: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a positive indeterminate impact on jail and prison beds by expanding the offenses eligible for reclassification when an offender travels across county lines with intent to commit one of the specified offenses, which may result in more jail and prison admissions and more offenders being held in jail prior to first appearance.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

26 registered.~~;~~

27 (e)5. The county in which a person is enrolled in an
28 educational institution.~~;~~~~and~~

29 (f)6. The county in which a person is employed.

30 ~~(b) "Burglary" means burglary as defined in s. 810.02,~~
31 ~~including an attempt, solicitation, or conspiracy to commit such~~
32 ~~offense.~~

33 (2) If a person who commits a grand theft or a forcible
34 felony, as defined in s. 776.08, ~~burglary~~ travels any distance
35 with the intent to commit the offense ~~burglary~~ in a county in
36 this state other than the person's county of residence, the
37 degree of the offense ~~burglary~~ shall be reclassified to the next
38 higher degree. For purposes of sentencing under chapter 921 and
39 determining incentive gain-time eligibility under chapter 944,
40 an offense a ~~burglary~~ that is reclassified under this section is
41 ranked one level above the ranking specified in s. 921.0022 or
42 s. 921.0023 for the offense ~~burglary~~ committed.

43 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 607 Retention of Sexual Offense Evidence
SPONSOR(S): Criminal Justice Subcommittee, Plakon and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	16 Y, 0 N, As CS	Leshko	Hall
2) Justice Appropriations Subcommittee		Saag	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

A sexual assault kit (SAK), sometimes referred to as a “rape kit,” is a medical kit used to collect evidence from a sexual assault victim’s body and clothing during a forensic physical examination. SAKs collected from reporting victims are submitted by law enforcement agencies (LEA) to crime laboratories for DNA analysis and resulting DNA profiles are uploaded to local, state, and federal DNA databases to determine whether a match identifying the perpetrator can be made.

Under s. 943.326, F.S., a SAK collected from a reporting victim and received by a LEA must be submitted to the statewide criminal analysis laboratory system for forensic testing within 30 days after the evidence is: received by a LEA and a report of the sexual offense has been made to the LEA; or within 30 days after the alleged victim or his or her parent, guardian, or legal or personal representative, if the alleged victim is a minor or is deceased, requests the evidence to be tested. A Florida Department of Law Enforcement (FDLE) or regional county laboratory may only process SAK evidence if there is an accompanying law enforcement report. SAKs from non-reporting victims who choose not to report an offense to law enforcement are not tested unless the victim later reports the offense or requests such testing. SAK testing must be completed no later than 120 days after the SAK is submitted to the statewide criminal analysis laboratory system. A SAK must be retained in a secure, environmentally safe manner until the agency prosecuting the associated offense approves the kit’s destruction. An alleged victim, or his or her parent, guardian, or legal or personal representative must be informed of the purpose of submitting evidence for testing and of the right to request testing.

While s. 943.326, F.S., provides specific guidance controlling the retention period and destruction of SAKs collected from reporting victims, there is no clear guidance on retention or destruction procedures for SAKs collected from non-reporting victims.

CS/HB 607 amends s. 943.326, F.S., to require a SAK collected from a non-reporting victim to be retained for a minimum of eight years from the collection date by the medical facility that collected the kit, a certified rape crisis center with appropriate storage capabilities, or a LEA. The bill requires a SAK collected from a non-reporting victim to be stored anonymously, in a secure, environmentally safe manner, and with a documented chain of custody. Under the bill, if a non-reporting victim later makes a report to law enforcement or requests, or has a request made on his or her behalf by an authorized representative, to have his or her SAK tested, the kit must then be retained until the prosecuting agency authorizes its destruction. Additionally, the bill requires DNA evidence not contained in a SAK and collected from a reporting victim to be retained until the prosecuting agency authorizes its destruction.

The bill may have an indeterminate, but likely insignificant fiscal impact on state, local, or private entities required to retain SAKs collected from non-reporting victims based on the costs associated with storing the kits in a manner consistent with the requirements of the bill.

The bill provides an effective date of July 1, 2024.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0607b.JUA

DATE: 1/8/2024

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Forensic Physical Exams and Sexual Assault Kits

In Florida, a victim of certain sexual offenses may have a forensic physical examination conducted by a healthcare provider without cost to the victim, or the victim's parent or guardian if the victim is a minor, regardless of whether the victim participates in the criminal justice system or cooperates with law enforcement.¹ A sexual assault kit (SAK), sometimes referred to as a "rape kit," is a medical kit used to collect evidence from a sexual assault victim's body and clothing during a forensic physical examination. A SAK typically contains standardized items including swabs, tubes, glass slides, containers, and plastic bags used to collect and preserve bodily fluids, hair, and fibers that may contain the perpetrator's DNA or other forensic evidence.² SAKs collected from reporting victims are submitted by law enforcement agencies to crime laboratories for DNA analysis and resulting DNA profiles are uploaded to local, state, and federal DNA databases to determine whether a match identifying the perpetrator can be made.

Department of Legal Affairs SAK Protocols

According to protocols developed by the Florida Department of Legal Affairs (DLA), healthcare providers conducting a forensic physical examination should complete a Sexual Assault Kit Form for Healthcare Providers (SAK form).³ The SAK form includes an exam consent form, applicable to both reporting and non-reporting victims, that requires the victim to indicate that he or she consents to a forensic physical examination for the preservation of evidence of a sexual offense. If a victim chooses to make a report to law enforcement, a separate form authorizing the release of collected evidence and report to law enforcement must be signed by the victim.⁴ All consent forms must be retained by the rape crisis center⁵ or medical facility conducting the examination.⁶

A non-reporting victim is one who does not authorize reporting an offense to law enforcement. The medical provider still carries out the complete forensic and medical examination and the SAK evidence is preserved and maintained in a manner that protects the victim's identity. If the victim later chooses to file a report with law enforcement, he or she must sign a release authorizing the medical provider to make his or her identity known and the forensic examination record available to the law enforcement agency.⁷

¹ S. 960.28, F.S. The Crime Victims' Services Office of the Department of Legal Affairs pays for medical expenses connected with an initial forensic physical examination of a victim of sexual battery or a lewd or lascivious offense.

² The White House, Office of the Press Secretary, *Fact Sheet: Investments to Reduce The National Rape Kit Backlog And Combat Violence Against Women*, (Mar. 16, 2015) <https://obamawhitehouse.archives.gov/the-press-office/2015/03/16/fact-sheet-investments-reduce-national-rape-kit-backlog-and-combat-viole> (last visited Jan. 3, 2024).

³ Florida Department of Legal Affairs, Division of Victim Services and Criminal Justice Programs, *Adult and Child Sexual Assault Protocols: Initial Forensic Physical Examination*, (Apr. 2015), pp. 12-13, [https://myfloridalegal.com/webfiles.nsf/WF/JFAO-77TKCT/\\$file/ACSP.pdf](https://myfloridalegal.com/webfiles.nsf/WF/JFAO-77TKCT/$file/ACSP.pdf) (last visited Jan. 3, 2024).

⁴ Sections 39.201(1) and (5), F.S., require any person that knows, or has reasonable cause to suspect, that a child has been sexually abused to make a report to the central abuse hotline. Within 48 hours after the central abuse hotline receives such a report the Department of Children and Families must conduct an assessment and send a written report to the appropriate county sheriff's office.

⁵ A "rape crisis center" is any public or private agency that offers assistance to victims of sexual assault or sexual battery and their families. S. 90.5035(1)(a), F.S.

⁶ *Id.*

⁷ Florida Department of Law Enforcement, *Sexual Assault Kit Submissions Frequently Asked Questions*, p. 1, https://www.fdle.state.fl.us/Forensics/Documents/Sexual-Assault-Kit-FAQs-for-LEA_Final.aspx (last visited Jan. 3, 2024).

DLA protocols provide instructions for sealing the SAK once a victim's exam is complete and require the SAK to stay with the examiner or to be secured in a locked area with limited access and proper chain of custody procedures until it is transferred to the proper law enforcement agency. Additionally, DLA protocols require the examiner to check the local area guidelines for storage procedures for non-reporting kits. However, DLA recommends a law enforcement agency to be utilized for long-term evidence storage.⁸

SAK Submission and Testing

Under s. 943.326, F.S.:

- A SAK from a reporting victim, received by an agency must be submitted to the statewide criminal analysis laboratory system⁹ for forensic testing within 30 days after the evidence is:
 - Received by a law enforcement agency and a report of the sexual offense has been made to the law enforcement agency; or
 - Within 30 days after the alleged victim or his or her parent, guardian, or legal representative, if the alleged victim is a minor, or the victim's personal representative if the alleged victim is deceased, requests the evidence to be tested.
- A Florida Department of Law Enforcement (FDLE) or regional county laboratory may only process evidence from a SAK if there is an accompanying law enforcement report. SAKs collected from non-reporting victims¹⁰ are not tested unless an alleged victim later reports the offense or requests such testing.
- SAK testing must be completed no later than 120 days after the SAK is submitted to the statewide criminal analysis laboratory system.¹¹
- A SAK must be retained in a secure, environmentally safe manner until the agency prosecuting the associated offense approves the kit's destruction.
- An alleged victim, or his or her parent, guardian, or legal or personal representative, if the alleged victim is a minor or deceased, must be informed of the purpose of submitting evidence for testing and of the right to request testing by either a medical provider conducting a forensic physical examination for the purpose of collecting a SAK, or by a law enforcement agency that collects other DNA evidence associated with the sexual offense if no SAK is collected.¹²

While s. 943.326, F.S., currently provides specific guidance controlling the retention period and destruction of SAKs collected from reporting victims, there is no clear guidance on retention or destruction procedures for SAKs collected from non-reporting victims. Accordingly, under current practice, a kit collected from a non-reporting victim is destroyed at an undefined interval or, in some cases, retained indefinitely, as it never reaches the purview of any prosecuting agency.

Florida Track-Kit

Florida Track-Kit, established by FDLE pursuant to s. 943.326, F.S., is a statewide database that allows law enforcement, an alleged victim, and an alleged victim's parent, guardian, or legal representative, if the alleged victim is a minor, or an alleged victim's personal representative if the alleged victim is deceased to track the location, processing status, and storage of each SAK collected.

The database tracks a SAK's status throughout the criminal justice process, including the kit's initial collection at a medical facility, storage, analysis, and eventual destruction. Law enforcement agencies,

⁸ *Id.* at pp. 20-21.

⁹ Generally, law enforcement agencies in Florida submit SAKs for DNA testing to the statewide criminal analysis laboratory system, which consists of six laboratories operated by FDLE in Ft. Myers, Jacksonville, Pensacola, Orlando, Tallahassee, and Tampa and five regional county laboratories in Broward, Indian River, Miami-Dade, Palm Beach, and Pinellas Counties. S. 943.32, F.S.

¹⁰ According to FDLE protocols, testing a non-reporting victim's SAK would violate the confidentiality and privacy of the victim's health records under the Health Insurance Portability and Accountability Act. Florida Department of Law Enforcement, *supra*, at 3.

¹¹ The statutory timeline is satisfied when a member of the statewide criminal analysis laboratory system tests the contents of the SAK in an attempt to identify the foreign DNA attributable to a suspect. S. 943.326(4)(b), F.S.

¹² S. 943.326, F.S.

medical facilities, crime laboratories, and any other facility that collects, receives, maintains, stores, or preserves SAKs are required to participate in the database.

FDLE is required to notify every alleged victim, and his or her parent, guardian, or legal or personal representative, if the alleged victim is a minor or deceased, that the database exists and to provide instructions on how to use the database. Additionally, an alleged victim or his or her parent, guardian, or legal or personal representative must be notified if the victim's SAK testing results in a DNA match, but such notification must not release any genetic or other identifying information about the match. The required notification may only be delayed up to 180 days after the date the match is made, if law enforcement determines notification would negatively affect an investigation.¹³

Time Limitations for Prosecution

The statute of limitations (SOL) determines the timeframe in which a criminal prosecution must be initiated.¹⁴ The SOL in effect at the time a crime is committed controls.¹⁵ In general, time is calculated from the day after a person commits an offense, and the filing of a charging document such as an indictment or information initiates the prosecution for the purpose of satisfying the time limitations.¹⁶ Regardless of whether a charging document is filed, the time limitation does not run during any time an offender is continuously absent from the state or otherwise undiscoverable because he or she lacks a reasonably ascertainable home address or place of employment; however, an extension under this scenario may not exceed the normal time limitation by more than three years.¹⁷

Capital felonies,¹⁸ life felonies,¹⁹ and felonies resulting in a death are not subject to time constraints, and the state may bring charges at any time.²⁰ The standard time limitations for other crimes are:²¹

- Four years for a first-degree felony.
- Three years for a second or third-degree felony.
- Two years for a first-degree misdemeanor.
- One year for a second-degree misdemeanor.

Exceptions to Standard SOL for Sexual Battery Offenses

Exceptions to the standard SOL apply to certain crimes and circumstances. In particular, Florida extends or removes time limitations or changes the date on which calculation of the SOL begins²² for specified sexual battery offenses.²³

Under s. 775.15, F.S., the following SOL apply to sexual battery prosecutions:

- No SOL, and prosecution may be commenced at any time, for a specified:
 - Sexual battery involving a victim under 16;²⁴
 - Sexual battery involving a victim under 18;²⁵
 - First-degree felony sexual battery involving a victim under 18;²⁶ and

¹³ S. 943.326(4)(c-e), F.S.

¹⁴ S. 775.15, F.S.

¹⁵ *Beyer v. State*, 76 So. 3d 1132, 1135 (Fla. 4th DCA 2012).

¹⁶ S. 775.15(3-4), F.S.

¹⁷ S. 775.15(5), F.S.

¹⁸ S. 775.082, F.S.

¹⁹ *Id.*

²⁰ S. 775.15(1), F.S.

²¹ S. 775.15(2), F.S.

²² See s. 775.15, F.S.

²³ An extension of a particular crime's SOL does not violate the ex post facto clause of the Florida Constitution if the extension takes effect before prosecution of an offense is barred by the old SOL and the new SOL clearly indicates it applies to cases pending upon its effective date. s. 10, art. I, Fla. Const.; *Andrews v. State*, 392 So. 2d 270, 271 (Fla. 2d DCA 1980).

²⁴ Prosecution must not have been barred by s. 775.15(2), F.S., on or before July 1, 2010. S. 775.15(13)(c), F.S.

²⁵ Prosecution must not have been barred by s. 775.15(2), F.S., on or before July 1, 2020. S. 775.15(20), F.S.

²⁶ Prosecution must not have been barred by s. 775.15(2), F.S., on or before October 1, 2003. S. 775.15(13)(b), F.S.

- First or second-degree felony sexual battery involving a victim 16 or older but less than 18 years of age,²⁷ if the offense is reported within 72 hours of commission.²⁸
- If not reported within 72 hours of commission, prosecution of a specified first or second-degree felony sexual battery involving a victim 16 or older must be commenced within eight years.²⁹
- However, if a victim is under 18 at the time any of the above sexual battery offenses are committed, the applicable SOL does not begin to run until he or she turns 18 or the violation is reported to law enforcement or a governmental agency, whichever occurs earlier.³⁰

Effect of Proposed Changes

CS/HB 607 amends s. 943.326, F.S., to require a SAK collected from a non-reporting victim to be retained for a minimum of eight years from the collection date by the medical facility that collected the kit, a certified rape crisis center with appropriate storage capabilities, or a law enforcement agency. The bill requires a SAK collected from a non-reporting victim to be stored:

- Anonymously;
- In a secure, environmentally safe manner; and
- With a documented chain of custody.

Under the bill, if a non-reporting victim later makes a report to law enforcement or requests, or has a request made on his or her behalf by an authorized representative, to have his or her SAK tested, his or her kit must then be retained until the prosecuting agency authorizes its destruction.

Additionally, the bill requires DNA evidence not contained in a SAK and collected from a reporting victim to be retained until the prosecuting agency authorizes its destruction.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 943.326, F.S., relating to DNA evidence collected in sexual offense investigations.

Section 2: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

²⁷ If a victim is less than 18 years of age, prosecution of the offense must not have been barred by s. 775.15(2), F.S., on or before December 31, 1984. S. 775.15(13)(a), F.S.

²⁸ S. 775.15(13)(a) and (14)(a), F.S.

²⁹ Prosecution must not have been barred by s. 775.15(2), F.S., on or before July 1, 2015. S. 775.15(14)(b), F.S.

³⁰ S. 775.15(13)(a), F.S.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The bill may have an indeterminate, but likely insignificant fiscal impact on medical facilities, rape crisis centers, and law enforcement agencies required to retain SAKs collected from non-reporting victims based on the costs associated with storing the kits for a minimum of eight years. FDLE has indicated that the number of kits required for storage by law enforcement agencies, medical facilities, or other entities as a result of the bill is not expected to require increased storage facilities or programs to remain compliant.³¹

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On December 12, 2023, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarified that DNA evidence not contained in a SAK and collected from a reporting victim must be retained until the prosecuting agency authorizes its destruction.
- Clarified that if a non-reporting victim later makes a report to law enforcement or requests, or has a request made on his or her behalf by an authorized representative, to have his or her SAK tested, the kit must be retained until the prosecuting agency authorizes its destruction.
- Removed the requirement that a SAK collected from a non-reporting victim must be stored in such a manner that it will not be submitted for testing unless an appropriate request is made.
- Made technical changes.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

³¹ Florida Department of Law Enforcement, *Agency Analysis of 2024 SB 764*, p. 3 (Dec. 14, 2023)
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26 2. The alleged victim's parent, guardian, or legal
27 representative, if the alleged victim is a minor; or

28 3. The alleged victim's personal representative, if the
29 alleged victim is deceased.

30 (3) (a) Except as provided in paragraph (b) a collected
31 sexual offense evidence kit, or other DNA evidence if a kit is
32 not collected, collected from an alleged victim who reports a
33 sexual offense to a law enforcement agency or who makes a
34 request, or on whose behalf a request is made, for testing in
35 compliance with paragraph (1)(b), must be retained in a secure,
36 environmentally safe manner until the prosecuting agency has
37 approved its destruction.

38 (b)1. A sexual offense evidence kit collected from a
39 person who does not report a sexual offense to a law enforcement
40 agency during the forensic physical examination and who does not
41 make a request, or have a request made on his or her behalf, in
42 compliance with paragraph (1)(b) must be retained for a minimum
43 of 8 years from the collection date by the medical facility that
44 collected the kit, a certified rape crisis center with
45 appropriate storage capabilities, or a law enforcement agency. A
46 sexual offense evidence kit retained pursuant to this
47 subparagraph must be stored anonymously, in a secure,
48 environmentally safe manner, and with a documented chain of
49 custody.

50 2. If, at any time following the initial retention of a

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51 sexual offense evidence kit pursuant to subparagraph (b)1., an
52 alleged victim makes a report to a law enforcement agency or
53 makes a request, or has a request made on his or her behalf, for
54 testing in compliance with paragraph (1) (b), the kit must be
55 retained as described in paragraph (3) (a).

56 Section 2. This act shall take effect July 1, 2024.