



Criminal Justice Subcommittee

**Wednesday, December 6, 2023
11:30 AM – 1:30 PM
Sumner Hall (404 HOB)**

Meeting Packet

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time: Wednesday, December 06, 2023 11:30 am
End Date and Time: Wednesday, December 06, 2023 01:30 pm
Location: Sumner Hall (404 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 75 Impeding, Threatening, or Harassing First Responders by Rizo
HB 187 Antisemitism by Gottlieb
HB 401 Tracking Devices and Applications by Overdorf
HB 485 Return of Weapons and Arms Following an Arrest by Brackett

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 11/29/2023 3:54PM by Isenberg.Ben

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 75 Impeding, Threatening, or Harassing First Responders

SPONSOR(S): Rizo

TIED BILLS: IDEN./SIM. BILLS: SB 184

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Butcher	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Florida law prohibits a person from interfering with specified first responders while such an officer or employee is engaged in the lawful performance of a duty in several ways, including, but not limited to, by:

- Prohibiting a person from resisting, obstructing, or opposing a law enforcement officer without offering or doing violence to the person of the officer under s. 843.02, F.S. A violation for resisting an officer without violence is a first degree misdemeanor.
- Prohibiting a person from knowingly and willfully resisting, obstructing, or opposing a law enforcement officer by offering or doing violence to the person of such officer under s. 843.01, F.S. A violation for resisting an officer with violence is a third degree felony.
- Reclassifying the misdemeanor or felony degree of assault, aggravated assault, battery, and aggravated battery when a person is charged with knowingly committing any such offense upon a law enforcement officer, a firefighter, or an emergency medical care provider under s. 784.07, F.S. The penalty for such an offense is reclassified to the next highest degree of misdemeanor or felony.

HB 75 extends protections for first responders by creating s. 843.31, F.S., to prohibit a person, after receiving a verbal warning not to approach from a person he or she knows or reasonably should know is a first responder, who is engaged in the lawful performance of a legal duty, from knowingly and willfully violating such warning and continuing to approach or remain within 20 feet of the first responder with the intent to:

- Interrupt, disrupt, hinder, impede, or interfere with the first responder's ability to perform such duty;
- Threaten the first responder or physically prevent the first responder from performing his or her lawful duties; or
- Harass the first responder.

A violation of the prohibition is a second degree misdemeanor, punishable by up to 60 days in county jail and a \$500 fine.

Under the bill, a first responder includes a law enforcement officer as defined in s. 943.10(1), F.S., a firefighter as defined in s. 784.07(1), F.S., and an emergency medical care provider as defined in s. 784.07(1), F.S.

The bill may have a positive indeterminate impact on jail beds by creating a new second degree misdemeanor for approaching or remaining within a specified distance of a first responder with specified intent after receiving a verbal warning.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

First Responders

Law Enforcement Officers

Section 943.10(1), F.S., defines a “law enforcement officer” as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, and highway laws of the state. The term includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by an employing agency. The term also includes a special officer employed by a Class I, Class II, or Class III railroad pursuant to s. 354.01, F.S.

Firefighters

Under s. 784.07(1)(b), F.S., a “firefighter” is any person employed by any public employer of this state whose duty it is to extinguish fires; to protect life or property; or to enforce municipal, county, and state fire prevention codes, as well as any law pertaining to the prevention and control of fires.

Emergency Medical Care Providers

Section 784.07(1)(a), F.S., defines an “emergency medical care provider” as an ambulance driver, emergency medical technician, paramedic, registered nurse, physician as defined in s. 401.23, F.S., medical director as defined in s. 401.23, F.S., or any person authorized by an emergency medical service licensed under chapter 401, F.S., who is engaged in the performance of his or her duties. The term also includes physicians, employees, agents, or volunteers of hospitals as defined in chapter 395, F.S., who are employed, under contract, or otherwise authorized by a hospital to perform duties directly associated with the care and treatment rendered by the hospital’s emergency department or security thereof.

Criminal Laws Protecting Specified First Responders

Resisting an Officer Without Violence

Section 843.02, F.S., prohibits a person from resisting, obstructing, or opposing, without offering or doing violence to the person of the officer, any:

- *Law enforcement officer*, part-time law enforcement officer, or auxiliary law enforcement officer;
- Correctional officer, part-time correctional officer, or auxiliary correctional officer;
- Correctional probation officer;
- Member of the Florida Commission on Offender Review or any administrative aide or supervisor employed by the commission;
- County probation officer;
- Parole and probation supervisor;
- Personnel or representative of the Department of Law Enforcement; or
- Other person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty.

A violation of the prohibition is a first degree misdemeanor punishable by up to one year in county jail and up to a \$1,000 fine.¹

Florida courts have held that to convict a defendant of obstructing or resisting an officer without violence, the State must prove two elements:

- The officer was engaged in the lawful execution of a legal duty; and
- The defendant's actions constituted obstruction or resistance of that lawful duty.²

There is a difference between an officer who is engaging in the lawful execution of a legal duty and an officer who is merely on the job. "Legal duties" of an officer may include: serving process; legally detaining a person; asking for assistance in an emergency situation; or performing specified undercover activities.³ "If a law enforcement officer is not engaged in executing process on a person, is not legally detaining that person, or has not asked the person for assistance with an ongoing emergency that presents a serious threat of imminent harm to person or property, the person's words alone can rarely, if ever, rise to the level of an obstruction."⁴

Resisting an Officer with Violence

Section 843.01, F.S., prohibits a person from knowingly and willfully resisting, obstructing, or opposing, by offering or doing violence to the person of such officer or legally authorized person, any:

- *Law enforcement officer*, part-time law enforcement officer, or auxiliary law enforcement officer;
- Correctional officer, part-time correctional officer, or auxiliary correctional officer;
- Correctional probation officer;
- Member of the Florida Commission on Offender Review or any administrative aide or supervisor employed by the commission;
- Parole and probation supervisor;
- County probation officer;
- Personnel or representative of the Department of Law Enforcement; or
- Other person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty.

A violation of s. 843.01, F.S., for resisting an officer with violence, is a third degree felony.⁵

Reclassification for Assault or Battery on Specified Officers or Employees

Section 784.07, F.S., reclassifies the misdemeanor or felony degree of assault,⁶ aggravated assault,⁷ battery,⁸ and aggravated battery⁹ when a person is charged with knowingly committing any such offense upon an officer or employee described as follows while that officer or employee is engaged in the lawful performance of his or her duties:

- *A law enforcement officer*,¹⁰

¹ Ss. 775.082 and 775.083, F.S.

² See *C.W. v. State*, 76 So.3d 1093 (Fla. 3d DCA 2011); *J.P. v. State*, 855 So.2d 1262 (Fla. 4th DCA 2003); *Jay v. State*, 731 So.2d 774 (Fla. 4th DCA 1999).

³ *C.W. v. State*, 76 So.3d 1093, 1095 (Fla. 3d DCA 2011).

⁴ *D.G. v. State*, 661 So.2d 75, 76 (Fla. 2d DCA 1995).

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

⁶ Assault, which is a second degree misdemeanor, is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. S. 784.011(1) and (2), F.S.

⁷ Aggravated assault, which is a third degree felony, is the commission of an assault using a deadly weapon without intent to kill or the commission of an assault with the intent to commit a felony. S. 784.021(1) and (2), F.S.

⁸ Simple battery, which is a first degree misdemeanor, is actually and intentionally touching or striking another person against the will of that person or intentionally causing bodily harm to another person. S. 784.03(1), F.S.

⁹ A person commits aggravated battery, a second degree felony, if the person, in committing a battery: intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; uses a deadly weapon; or the person who was the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant. S. 784.045(1) and (2), F.S.

¹⁰ Section 784.07(1)(e), F.S., defines a "law enforcement officer" as a law enforcement officer, a correctional officer, a correctional probation officer, a part-time law enforcement officer, a part-time correctional officer, an auxiliary law enforcement officer, and an

- A firefighter;
- An emergency medical care provider;
- Hospital personnel;
- A railroad special officer;
- A traffic accident investigation officer;
- A nonsworn law enforcement agency employee who is certified as an agency inspector, a blood alcohol analyst, or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI;
- A law enforcement explorer;
- A traffic infraction enforcement officer;
- A parking enforcement specialist;
- A person licensed as a security officer and wearing a uniform bearing at least one patch or emblem that is visible at all times and clearly identifies the person's employing agency and that the person is a licensed security officer; and
- A security officer employed by the board of trustees of a community college.

The reclassification of the degree of the offense is as follows:

- In the case of assault, from a second degree misdemeanor to a first degree misdemeanor.
- In the case of battery, from a first degree misdemeanor to a third degree felony.
- In the case of aggravated assault, from a third degree felony to a second degree felony, and any person convicted of aggravated assault upon a law enforcement officer is subject to a three-year mandatory minimum term of imprisonment.¹¹
- In the case of aggravated battery, from a second degree felony to a first degree felony, and any person convicted of aggravated battery of a law enforcement officer is subject to a five-year mandatory minimum term of imprisonment.¹²

Further, if the person, during the commission of a battery subject to reclassification as a third degree felony, possessed:

- A firearm or destructive device, the person is subject to a mandatory minimum term of imprisonment of three years; or
- A semiautomatic firearm and its high-capacity detachable box magazine or a machine gun, the person is subject to a mandatory minimum term of imprisonment of eight years.¹³

Effect of Proposed Changes

HB 75 creates s. 843.31, F.S., to prohibit a person, after receiving a verbal warning not to approach from a person he or she knows or reasonably should know is a first responder, who is engaged in the lawful performance of a legal duty, from knowingly and willfully violating such warning and continuing to approach or remain within 20 feet of the first responder with the intent to:

- Interrupt, disrupt, hinder, impede, or interfere with the first responder's ability to perform such duty;
- Threaten the first responder or physically prevent the first responder from performing his or her lawful duties; or
- Harass the first responder.

A violation of the prohibition is a second degree misdemeanor, punishable by up to 60 days in county jail and a \$500 fine.

auxiliary correctional officer, as those terms are respectively defined in s. 943.10, and any county probation officer; an employee or agent of the Department of Corrections who supervises or provides services to inmates; an officer of the Florida Commission on Offender Review; a federal law enforcement officer as defined in s. 901.1505; and law enforcement personnel of the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, or the Department of Law Enforcement.

¹¹ S. 784.07(2)(c), F.S.

¹² S. 784.07(2)(d), F.S.

¹³ S. 784.07(3), F.S.

The bill defines the following terms:

- “Harass” means to willfully engage in a course of conduct directed at a first responder which intentionally causes substantial emotional distress in that first responder and serves no legitimate purpose. The peaceful audio or video recording or eyewitness observing of a first responder is a legitimate purpose that does not constitute harassment.
- “First responder” includes a law enforcement officer as defined in s. 943.10(1), F.S., a firefighter as defined in s. 784.07(1), F.S., and an emergency medical care provider as defined in s. 784.07(1), F.S.

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

B. SECTION DIRECTORY:

Section 1: Creates s. 843.31, F.S., relating to approaching a first responder after a warning with intent to impede, threaten, or harass or physically prevent the first responder from performing lawful duties.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have a positive indeterminate impact on jail beds by creating a new second degree misdemeanor for approaching or remaining within a specified distance of a first responder with specified intent after receiving a verbal warning.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

The bill may be subject to an overbreadth challenge. A law is unconstitutionally broad when the law potentially captures both activities that are protected and unprotected by the First Amendment of the United States Constitution, which impedes fundamental rights.¹⁴

In addition, the bill may be subject to vagueness analysis. A law is void on the basis of vagueness when a person of average intelligence would not be on notice of the prohibited criminal activity and the law promotes arbitrary and discriminatory application.¹⁵ It is unclear whether the 20 foot “halo” within which a person is prohibited from continuing to approach or remain is fixed at the time a first responder issues a verbal warning not to approach, or whether the “halo” moves with the officer as he or she moves.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

¹⁴ *State v. Catalano*, 104 So. 3d 1069, 1077 (Fla. 2012).

¹⁵ *Russ v. State*, 832 So. 2d 901, 906 (Fla. 1st DCA 2002); *see also, Kolender v. Lawson*, 461 U.S. 352, 357 (1983).

1 A bill to be entitled
 2 An act relating to impeding, threatening, or harassing
 3 first responders; creating s. 843.31, F.S.; providing
 4 definitions; specifying that peaceful recording or
 5 observation is not harassment; prohibiting approaching
 6 a first responder or remaining within a specified
 7 distance of such person with the intent to impede,
 8 threaten, or harass or physically prevent the person
 9 from performing lawful duties after receiving a
 10 warning not to approach; providing criminal penalties;
 11 providing an effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Section 843.31, Florida Statutes, is created to
 16 read:

17 843.31 Approaching a first responder after a warning with
 18 the intent to impede, threaten, or harass or physically prevent
 19 the first responder from performing lawful duties.—

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

21 (a) "First responder" includes a law enforcement officer
 22 as defined in s. 943.10(1), a firefighter as defined in s.
 23 784.07(1), and an emergency medical care provider as defined in
 24 s. 784.07(1).

25 (b) "Harass" means to willfully engage in a course of

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26 | conduct directed at a first responder which intentionally causes
27 | substantial emotional distress in that first responder and
28 | serves no legitimate purpose. The peaceful audio or video
29 | recording or eyewitness observing of a first responder is a
30 | legitimate purpose that does not constitute harassment.

31 | (2) (a) It is unlawful for a person, after receiving a
32 | verbal warning not to approach from a person he or she knows or
33 | reasonably should know is a first responder, who is engaged in
34 | the lawful performance of a legal duty, to knowingly and
35 | willfully violate such warning and continue to approach or
36 | remain within 20 feet of the first responder with the intent to:

37 | 1. Interrupt, disrupt, hinder, impede, or interfere with
38 | the first responder's ability to perform such duty;

39 | 2. Threaten the first responder or physically prevent the
40 | first responder from performing his or her lawful duties; or

41 | 3. Harass the first responder.

42 | (b) A person who violates this subsection commits a
43 | misdemeanor of the second degree, punishable as provided in s.
44 | 775.082 or s. 775.083.

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

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Criminal Justice
 2 Subcommittee

3 Representative Rizo offered the following:

4

5 **Amendment (with title amendment)**

6 Remove lines 18-40 and insert:

7 intent to impede, threaten, or harass.-

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

9 (a) "First responder" includes a law enforcement officer
 10 as defined in s. 943.10(1), a firefighter as defined in s.
 11 784.07(1), and an emergency medical care provider as defined in
 12 s. 784.07(1).

13 (b) "Harass" means to willfully engage in a course of
 14 conduct directed at a first responder which intentionally causes
 15 substantial emotional distress in that first responder and
 16 serves no legitimate purpose. The peaceful audio or video

Amendment No. 1

17 recording, photographing, or eyewitness observing of a first
18 responder is a legitimate purpose that does not, by itself,
19 constitute harassment.

20 (2)(a) It is unlawful for a person, after receiving a
21 verbal warning not to approach from a person he or she knows or
22 reasonably should know is a first responder, who is engaged in
23 the lawful performance of a legal duty, to knowingly and
24 willfully violate such warning and approach or remain within 20
25 feet of the first responder with the intent to:

26 1. Interrupt, disrupt, hinder, impede, or interfere with
27 the first responder's ability to perform such duty;

28 2. Threaten the first responder with physical harm; or
29
30

31 -----
T I T L E A M E N D M E N T

32 Remove lines 4-9 and insert:
33 definitions; specifying that peaceful recording, photographing,
34 or observation is not harassment; prohibiting approaching a
35 first responder or remaining within a specified distance of such
36 person with the intent to impede, threaten, or harass the person
37 after receiving a

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 187 Antisemitism
SPONSOR(S): Gottlieb
TIED BILLS: **IDEN./SIM. BILLS:** SB 148

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Leshko	Hall
2) Judiciary Committee			

SUMMARY ANALYSIS

Section 877.19, F.S., requires all law enforcement agencies in Florida to submit a monthly report to the Florida Department of Law Enforcement (FDLE) concerning any incidents of criminal acts that evidence prejudice based on race, religion, ethnicity, color, ancestry, sexual orientation, or national origin. FDLE is required to compile and disseminate such information upon request to any local law enforcement agency, unit of local government, or state agency. Additionally, the Florida Attorney General (AGO) must publish an annual summary of the compiled data.

The AGO's 2021 summary on hate crimes detailed a 16.5 percent overall increase in hate crimes in Florida between 2020 and 2021 and noted that in 2021, 13.5 percent of all reported hate crimes were motivated by religion. Moreover, the Anti-Defamation League (ADL) reports that since 2020, antisemitic incidents in Florida increased over 100 percent, rising from 127 incidents in 2020 to 269 incidents in 2022. On a national level, Federal Bureau of Investigation data shows the number of reported hate crimes in the United States are the highest since collection of such data began in 1991, and more than doubled between 2014 and 2022. According to the ADL, in 2022, Florida was in the top five states where the highest number of antisemitic incidents occurred.

The International Holocaust Remembrance Alliance (IHRA), formerly known as the Task Force for International Cooperation on Holocaust Education, Remembrance, and Research, was formed in 1998, and its current membership consists of 35 countries. IHRA's Committee on Antisemitism and Holocaust Denial crafted a non-legally binding working definition of "antisemitism," which was fully adopted by the IRHA in 2016. The working definition was constructed by building an international consensus on the meaning of "antisemitism" in order to assist nations in addressing the rise in hate and discrimination. Subsequently, 43 United Nations member states, including the United States, a wide range of other political entities, including a large number of regional, state, and local governments, and various international organizations have adopted or endorsed IHRA's working definition.

Florida law currently codifies a definition of "anti-Semitism" in s. 1000.05(8), F.S., relating to the identification of discrimination in K-20 public education, which closely mirrors the IHRA working definition of antisemitism. However, the definition does not apply generally to all sections of Florida law and thus is not applicable in identifying and reporting other instances of discrimination or incidents of hate crimes.

HB 187 creates s. 1.015, F.S., to define "antisemitism" based on the working definition developed and adopted by the IHRA as – a certain perception of Jewish individuals which may be expressed as hatred toward such individuals. Rhetorical and physical manifestations of antisemitism are directed toward Jewish and non-Jewish individuals and their property and toward Jewish community institutions and religious facilities – and to provide contemporary examples of antisemitism. The bill codifies the definition and examples in Chapter 1 of the Florida Statutes, relating to Definitions, making them applicable to all sections of Florida Law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Evidencing Prejudice While Committing an Offense

Section 775.085, F.S., reclassifies the penalty for any felony or misdemeanor to the next highest degree if the commission of the offense evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, or advanced age of the victim, as follows:

- A misdemeanor of the second-degree is reclassified to a misdemeanor of the first-degree.
- A misdemeanor of the first-degree is reclassified to a felony of the third-degree.
- A felony of the third-degree is reclassified to a felony of the second-degree.
- A felony of the second-degree is reclassified to a felony of the first-degree.
- A felony of the first-degree is reclassified to a life felony.

The offender must have perceived, known, or have had reasonable grounds to perceive or know that the victim was within one of the classes delineated above for the penalty reclassification to apply.¹

Reporting of Hate Crimes

Section 877.19, F.S., requires all law enforcement agencies in Florida to submit a monthly report to the Florida Department of Law Enforcement (FDLE) concerning any incidents of criminal acts that evidence prejudice based on race, religion, ethnicity, color, ancestry, sexual orientation, or national origin. FDLE is required to compile and disseminate such information upon request to any local law enforcement agency, unit of local government, or state agency. Additionally, the Florida Attorney General (AGO) must publish an annual summary of the compiled data.²

The AGO's 2021 summary on hate crimes detailed a 16.5 percent overall increase in hate crimes in Florida between 2020 and 2021 and noted that in 2021, 13.5 percent of all reported hate crimes were motivated by religion.³ Moreover, the Anti-Defamation League (ADL) reports that since 2020, antisemitic incidents in Florida increased over 100 percent, rising from 127 incidents in 2020 to 269 incidents in 2022.^{4,5} On a national level, Federal Bureau of Investigation data shows the number of reported hate crimes in the United States are the highest since collection of such data began in 1991, and more than doubled between 2014 and 2022.⁶ According to the ADL, in 2022, Florida was in the top five states where the highest number of antisemitic incidents occurred.⁷

International Holocaust Remembrance Alliance

¹ S. 775.085(1)(a) and (3), F.S.

² S. 877.19(2) and (4), F.S.

³ Florida Attorney General, *Hate Crimes in Florida January 1, 2021 – December 31, 2021*, <https://www.myfloridalegal.com/files/pdf/page/BE0185D36969417B852589270066D783/Web+Link.pdf> (last visited Nov. 29, 2023).

⁴ Center for Extremism, *Audit of Antisemitic Incidents 2022*, ADL (Mar. 23, 2023), <https://www.adl.org/resources/report/audit-antisemitic-incidents-2022> (last visited Nov. 29, 2023).

⁵ Center for Extremism, *Hate in the Sunshine State: Extremism & Antisemitism in Florida, 2020-2022*, ADL (Sept. 13, 2022), <https://www.adl.org/resources/report/hate-sunshine-state-extremism-antisemitism-florida-2020-2022> (last visited Nov. 29, 2023).

⁶ Tori Morales Pinales, *How reports of hate crimes in the US were already at record highs, in 4 charts*, CNN (Oct. 29, 2023), <https://www.cnn.com/2023/10/29/us/hate-crimes-antisemitism-anti-muslim-dg/index.html> (last visited Nov. 29, 2023) (Hate crime reporting to the FBI is voluntary and only about 80% of agencies submit data; compliance changes from year to year. Additionally, according to the FBI's National Crime Victimization Survey, fewer than half of hate crime victims report to police.)

⁷ Center for Extremism, *supra*, at 4.

The International Holocaust Remembrance Alliance (IHRA), formerly known as the Task Force for International Cooperation on Holocaust Education, Remembrance, and Research, was formed in 1998 by the former Swedish Prime Minister Göran Persson, and its current membership consists of 35 countries.⁸ IHRA's mission is to uphold the commitments contained in its founding document, the Declaration of the Stockholm International Forum on the Holocaust (Stockholm Declaration).

The Stockholm Declaration is the product of the January 2000 International Forum convened in Stockholm. The Forum was attended by representatives of 46 governments, including: 23 Heads of State or Prime Ministers and 14 Deputy Prime Ministers or Ministers.⁹ Some of the main tenants of the Stockholm Declaration include promoting the education, remembrance, and research of the Holocaust, commemorating victims of the Holocaust, and encouraging an annual day of remembrance in each member country.¹⁰

IHRA's Committee on Antisemitism and Holocaust Denial crafted a non-legally binding working definition of "antisemitism," which was fully adopted by the IHRA in 2016.¹¹ The working definition was constructed by building an international consensus on the meaning of "antisemitism" in order to assist nations in addressing the rise in hate and discrimination. Subsequently, 43 United Nations member states, including the United States, and a wide range of other political entities, including a large number of regional, state, and local governments have adopted or endorsed IHRA's working definition.¹² Moreover, the following international organizations have expressed support for the working definition of antisemitism: the United Nations, the European Union, the Organization of American States, the Council of Europe, and PARLASUR, the Parliament of MERCOSUR.^{13,14}

IHRA's working definition of antisemitism provides:

Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.¹⁵

IHRA also provides the following contemporary examples of antisemitism:

- Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion.
- Making mendacious, dehumanizing, or stereotypical allegations about Jews as such or the power of Jews as collective – such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.
- Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews.
- Denying the fact, scope, mechanisms (e.g. gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (the Holocaust).

⁸ IHRA, *Introduction*, <https://www.holocaustremembrance.com/about-us> (last visited Nov. 29, 2023).

⁹ IHRA, *Stockholm Declaration*, <https://www.holocaustremembrance.com/about-us/stockholm-declaration> (last visited Nov. 29, 2023).

¹⁰ *Id.*

¹¹ IHRA, *What is antisemitism?*, <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism> (last visited Nov. 29, 2023).

¹² IHRA, *Information on endorsement and adoption of the IHRA working definition of antisemitism*, <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism/adoption-endorsement> (last visited Nov. 29, 2023).

¹³ *Id.*

¹⁴ MERCOSUR is a regional trade bloc comprised of Argentina, Brazil, Paraguay, and Uruguay. Celeste Castillejo, Nicki Fleischner, Chase Harrison, Luisa Horwitz, Mark Keller, and Jon Orbach, *Explainer: What Is Mercosur?*, American Society Council of the Americas (Aug. 23, 2022), <https://www.as-coa.org/articles/explainer-what-mercotur> (last visited Nov. 29, 2023).

¹⁵ IHRA, *supra*, at 11.

- Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.
- Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.
- Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor.
- Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.
- Using the symbols and images associated with classic antisemitism (e.g. claims of Jews killing Jesus or blood libel) to characterize Israel and Israelis.
- Drawing comparisons of contemporary Israeli policy to that of the Nazis.
- Holding Jews collectively responsible for actions of the state of Israel.¹⁶

Current Definition in Florida Law

Florida law currently codifies a definition of “anti-Semitism” in s. 1000.05(8), F.S., relating to the identification of discrimination in K-20 public education. The definition closely mirrors IHRA’s working definition of antisemitism and specifies that the term “anti-Semitism” includes:

A certain perception of the Jewish people, which may be expressed as hatred toward Jewish people, rhetorical and physical manifestations of anti-Semitism directed toward a person, his or her property, or toward Jewish community institutions or religious facilities.¹⁷

Additionally, s. 1000.05(8), F.S., also includes the following examples of anti-Semitism, including those related to Israel, which are almost identical to those provided by IHRA:

- Calling for, aiding, or justifying the killing or harming of Jews, often in the name of a radical ideology or an extremist view of religion.
- Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as a collective, especially, but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.
- Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, the State of Israel, or even for acts committed by non-Jews.
- Accusing Jews as a people or the State of Israel of inventing or exaggerating the Holocaust.
- Accusing Jewish citizens of being more loyal to Israel, or the alleged priorities of Jews worldwide, than to the interest of their own nations.¹⁸
- Demonizing Israel by using the symbols and images associated with classic anti-Semitism to characterize Israel or Israelis, drawing comparisons of contemporary Israeli policy to that of the Nazis, or blaming Israel for all inter-religious or political tensions.
- Applying a double standard to Israel by requiring behavior of Israel that is not expected or demanded of any other democratic nation or focusing peace or human rights investigations only on Israel.
- Delegitimizing Israel by denying the Jewish people their right to self-determination and denying Israel the right to exist.¹⁹

However, s. 1000.05(8), F.S., specifies that criticism of Israel that is similar to criticism toward any other country may not be regarded as anti-Semitic.

¹⁶ *Id.*

¹⁷ S. 1000.05(8), F.S.

¹⁸ S. 1000.05(8)(a), F.S.

¹⁹ S. 1000.05(8)(b), F.S.

Although currently codified, the definition and examples of antisemitism do not apply generally to all sections of Florida law and thus are not applicable in identifying and reporting other instances of discrimination or incidents of hate crimes.

Effect of Proposed Changes

HB 187 creates s. 1.015, F.S., to define “antisemitism” based on the working definition developed and adopted by the IHRA and to provide contemporary examples of antisemitism. The bill defines “antisemitism” as:

A certain perception of Jewish individuals which may be expressed as hatred toward such individuals. Rhetorical and physical manifestations of antisemitism are directed toward Jewish and non-Jewish individuals and their property and toward Jewish community institutions and religious facilities.

Additionally, the bill provides the following contemporary examples of antisemitism:

- Calling for, aiding, or justifying the killing or harming of Jewish individuals in the name of a radical ideology or an extremist view of a religion.
- Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jewish individuals as such or the power of Jewish people as a collective, such as the myth of a worldwide Jewish conspiracy or of Jewish individuals controlling the media, economy, government, or other societal institutions.
- Accusing Jewish people as a collective of being responsible for real or imagined wrongdoing committed by a single Jewish person or group or for acts committed by non-Jewish individuals.
- Denying the fact, scope, and mechanisms, such as gas chambers, or the intentionality of the genocide of the Jewish people at the hands of Nazi Germany and its supporters and accomplices during the Holocaust.
- Accusing Jewish people as a collective, or Israel as a state, of inventing or exaggerating the Holocaust.
- Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jewish individuals worldwide, than to the interests of their respective nations.
- Denying the Jewish people their right to self-determination, such as claiming that the existence of a State of Israel is a racist endeavor.
- Applying double standards by requiring of the Jewish State of Israel a standard of behavior not expected or demanded of any other democratic nation.
- Using the symbols and images associated with classic antisemitism, such as claims of Jews killing Jesus or blood libel, to characterize Israel or Israelis.
- Drawing comparisons of contemporary Israeli policy to that of the Nazis.
- Holding Jewish individuals collectively responsible for actions of the State of Israel.

The bill codifies the definition and examples in Chapter 1 of the Florida Statutes, relating to Definitions, making them applicable to all sections of Florida Law.

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

B. SECTION DIRECTORY:

Section 1: Creates s. 1.015, F.S., relating to antisemitism.

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:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

1 A bill to be entitled
 2 An act relating to antisemitism; creating s. 1.015,
 3 F.S.; providing legislative intent; defining the term
 4 "antisemitism"; providing contemporary examples of
 5 antisemitism; providing an effective date.

6
 7 WHEREAS, in 1998, Swedish Prime Minister Göran Persson
 8 initiated the Task Force for International Cooperation on
 9 Holocaust Education, Remembrance, and Research, and

10 WHEREAS, an international forum was held January 27-29,
 11 2000, and was attended by representatives of 46 governments,
 12 including 23 heads of state or prime ministers and 14 deputy
 13 prime ministers or ministers, and

14 WHEREAS, the task force issued the Declaration of the
 15 Stockholm International Forum on the Holocaust, also known as
 16 the Stockholm Declaration, and

17 WHEREAS, the Stockholm Declaration is the founding document
 18 for the International Holocaust Remembrance Alliance (IHRA), the
 19 successor organization to the Task Force for International
 20 Cooperation on Holocaust Education, Remembrance, and Research,
 21 and

22 WHEREAS, in 2016, the IHRA adopted a working definition of
 23 antisemitism to assist governments, organizations, and
 24 individuals in their efforts to identify antisemitism, and

25 WHEREAS, as a part of this working definition, the IHRA

26 | included contemporary examples of antisemitism from around the
 27 | globe, and

28 | WHEREAS, the IHRA's adoption of a working definition has
 29 | empowered many governments, organizations, and individuals to
 30 | identify and address the rise in hate and discrimination against
 31 | Jewish individuals, NOW, THEREFORE,

32 |

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

34 |

35 | Section 1. Section 1.015, Florida Statutes, is created to
 36 | read:

37 | 1.015 Antisemitism.—

38 | (1) It is the intent of the Legislature to adopt the
 39 | working definition developed by the International Holocaust
 40 | Remembrance Alliance (IHRA) of the term "antisemitism" to assist
 41 | in the monitoring and reporting of anti-Semitic hate crimes and
 42 | discrimination and to make residents aware of and to combat such
 43 | incidents in this state.

44 | (2) As adopted by the IHRA on May 26, 2016, and as used in
 45 | these statutes, the term "antisemitism" means a certain
 46 | perception of Jewish individuals which may be expressed as
 47 | hatred toward such individuals. Rhetorical and physical
 48 | manifestations of antisemitism are directed toward Jewish and
 49 | non-Jewish individuals and their property and toward Jewish
 50 | community institutions and religious facilities.

51 (3) Contemporary examples of antisemitism include, but are
52 not limited to, all of the following:

53 (a) Calling for, aiding, or justifying the killing or
54 harming of Jewish individuals in the name of a radical ideology
55 or an extremist view of a religion.

56 (b) Making mendacious, dehumanizing, demonizing, or
57 stereotypical allegations about Jewish individuals as such or
58 the power of Jewish people as a collective, such as the myth of
59 a worldwide Jewish conspiracy or of Jewish individuals
60 controlling the media, economy, government, or other societal
61 institutions.

62 (c) Accusing Jewish people as a collective of being
63 responsible for real or imagined wrongdoing committed by a
64 single Jewish person or group or for acts committed by non-
65 Jewish individuals.

66 (d) Denying the fact, scope, and mechanisms, such as gas
67 chambers, or the intentionality of the genocide of the Jewish
68 people at the hands of Nazi Germany and its supporters and
69 accomplices during the Holocaust.

70 (e) Accusing Jewish people as a collective, or Israel as a
71 state, of inventing or exaggerating the Holocaust.

72 (f) Accusing Jewish citizens of being more loyal to
73 Israel, or to the alleged priorities of Jewish individuals
74 worldwide, than to the interests of their respective nations.

75 (g) Denying the Jewish people their right to self-

76 determination, such as claiming that the existence of a State of
77 Israel is a racist endeavor.

78 (h) Applying double standards by requiring of the Jewish
79 State of Israel a standard of behavior not expected or demanded
80 of any other democratic nation.

81 (i) Using the symbols and images associated with classic
82 antisemitism, such as claims of Jews killing Jesus or blood
83 libel, to characterize Israel or Israelis.

84 (j) Drawing comparisons of contemporary Israeli policy to
85 that of the Nazis.

86 (k) Holding Jewish individuals collectively responsible
87 for actions of the State of Israel.

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

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		Butcher	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

When used for its intended purpose, a consumer tracking device can help track missing items when attached to belongings such as a user's purse, keys, wallet, or luggage. Unfortunately, as affordable consumer tracking devices have grown in popularity, so too have concerns about the potential for nefarious uses of such technology. In recent years, there have been numerous reports of tracking devices being discovered surreptitiously slipped into clothing and purses or attached to the vehicle of another person. 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 have legitimate uses, but may be accessed by third parties without the user's consent, while others are developed and marketed as surveillance applications, commonly targeting potential customers interested in using the technology to track the movements and communications of a romantic partner.

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*, 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.

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. Additionally, by prohibiting the placement, in addition to the installation, of a tracking device or application, the bill may clarify that a person may also commit a violation by simply dropping such a device into another person's property, such as a purse or coat pocket.

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

Global Positioning System

The Global Positioning System (GPS) is a space-based radio navigation system, owned by the United States Government and operated by the United States Space Force. GPS consists of three segments, including the:

- Space Segment: A constellation of 31 operational satellites that circle the Earth at an altitude of approximately 11,000 miles every 12 hours;
- Control Segment: Stations on Earth that monitor and maintain the GPS satellites; and
- User Segment: Receivers that process the navigation signals from the GPS satellites and calculate position and time.¹

Each GPS satellite transmits its position and time at regular intervals and the signals are intercepted by GPS receivers. The receiver is then able to determine its position by calculating how long it took for the signal to reach the receiver. GPS currently provides two levels of services: standard positioning service and precise positioning service. 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.² GPS is widely used in a variety of applications because its capabilities are accessible using small, inexpensive equipment.³

Wi-Fi Positioning

Wi-Fi is a radio-frequency technology for wireless communication that is used by nearly all devices and network infrastructure, including smartphones, computers, Internet of Things devices, routers, and more and can be used to transmit data between devices using radio waves.⁴ 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. Alternatively, the signal strength of nearby access points can be used to determine a device's location.⁵ Wi-Fi positioning technology is particularly popular in providing location services in indoor spaces where GPS may not work as effectively.

Bluetooth Low Energy

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

² *Id.*

³ *Satellite Navigation- Global Positioning System (GPS)*, Federal Aviation Administration, https://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/techops/navservices/gnss/gps (last visited Dec. 1, 2023)

⁴ *What is Wi-Fi Positioning*, Inpixon Indoor Intelligence, <https://www.inpixon.com/technology/standards/wifi> (last visited Dec. 1, 2023).

⁵ *Id.*

Bluetooth Low Energy (BLE) is a radio frequency technology for wireless communication that can be leveraged to detect and track the location of people, devices, and assets in indoor spaces. 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.⁶

Ultra-Wideband Technology

Ultra-Wideband (UWB) technology 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.⁷

Abuse of Location Tracking Technology

When used for its intended purpose, a consumer tracking device (typically a small coin-sized device equipped with a speaker, antenna, and battery) can help users track missing items when attached to belongings such as a user's purse, keys, wallet, or luggage. If the user's item goes missing, the tracking device pings nearby products also connected to the network in order to determine the devices location. The device then sends its current location back to the user, and in some cases, provides the user with directions to the device's location.⁸ 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.⁹

Unfortunately, as affordable consumer tracking devices have gained popularity, 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 surreptitiously slipped into clothing and purses or attached to the vehicle of another person.¹⁰ 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.¹¹ Additionally, some companies have developed applications that can be used by consumers to scan for nearby tracking devices.¹² 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

⁶ Bluetooth RTLS, Location Tracking, & Positioning, Inpixon Indoor Intelligence, <https://www.inpixon.com/technology/standards/bluetooth-low-energy> (last visited Dec. 1, 2023).

⁷ Robert Triggs, Calvin Wankhede, What is UWB, and why is it in my phone? Ultra wideband technology, explained, Android Authority, (Aug. 30, 2023), <https://www.androidauthority.com/what-is-uw-1151744/> (last visited Dec. 1, 2023).

⁸ 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 Dec. 1, 2023).

⁹ 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 Dec. 1, 2023).

¹⁰ 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> (last visited Dec. 1, 2023); 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 Dec. 1, 2023).

¹¹ 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 Dec. 1, 2023).

¹² *Id.*

information can and will be shared with law enforcement at the company's discretion to aid in the investigation and prosecution of suspected stalking.¹³

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.¹⁴ 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.¹⁵

Cyberstalking

Section 784.048, F.S., prohibits a person from willfully, maliciously, and repeatedly following, harassing, or cyberstalking another person. Under s. 784.048(1)(d), F.S., "cyberstalking" means to engage in the following conduct when such conduct causes substantial emotional distress to the person targeted and serves no legitimate purpose:

- 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
- To access, or attempt to access, the online accounts or Internet-connected home electronic systems of another person without that person's permission.

Generally, a person who commits a cyberstalking violation commits a first degree misdemeanor.¹⁶ However, such a violation is enhanced to aggravated stalking, a third degree felony,¹⁷ if any of the following circumstances are present:

- The offender makes a credible threat¹⁸ to the targeted person;
- The violation occurred after an injunction for protection against repeat violence, sexual violence, or dating violence pursuant to s. 784.046, F.S., or an injunction for protection against domestic violence pursuant to s. 741.30, F.S., or any other court-imposed prohibition of conduct toward the targeted person or his or her property was ordered; or
- The offender was previously sentenced for a violation of s. 794.011, F.S., relating to sexual battery, s. 800.04, F.S., relating to lewd or lascivious offenses, or s. 847.0135(5), F.S., prohibited computer transmissions to persons less than 16 years old, and prohibited from contacting the targeted person.

Unlawful Installation of a Tracking Device or Application

¹³ 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 Dec. 1, 2023).

¹⁴ 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 Dec. 1, 2023).

¹⁵ 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 Dec. 1, 2023).

¹⁶ 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.

¹⁷ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

¹⁸ A "credible threat" means a verbal or nonverbal threat, or a combination of the two, including threats delivered by electronic communication or implied by a pattern of conduct, which places the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her family members or individuals closely associated with the person, and which is made with the apparent ability to carry out the threat to cause such harm. It is not necessary to prove that the person making the threat had the intent to actually carry out the threat. The present incarceration of the person making the threat is not a bar to prosecution under this section. S. 784.048(1)(c), F.S.

Unless exempted, s. 934.425, F.S., prohibits a person from knowingly installing a tracking device¹⁹ or tracking application²⁰ 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.;²¹ 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.²²

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.²³

A violation of the prohibition is punishable as a second degree misdemeanor.²⁴

¹⁹ 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.

²⁰ 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.

²¹ "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.

²² S. 934.425(4)(a-e), F.S.

²³ S. 934.425(3)(a-b), F.S.

²⁴ 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.

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.; or
- 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.²⁵

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.”²⁶ 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.”²⁷

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 aide in a criminal investigation.

Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code²⁸ are listed in a single offense severity ranking chart (OSRC),²⁹ 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.^{30,31} 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.^{32,33} The final score

²⁵ S. 933.02, F.S.

²⁶ *Bordo, Inc. v. State*, 627 So. 2d 561, 563 (Fla. 4th DCA 1993).

²⁷ *Id.* at 564.

²⁸ 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.

²⁹ S. 921.0022, F.S.

³⁰ S. 921.0022(2), F.S.

³¹ 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.

³² Ss. 921.0022 and 921.0024, F.S.

³³ 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.

calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.³⁴

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.

Additionally the bill 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.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

³⁴ 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 nonprison sanction, such as a county jail sentence, probation, or community control. S. 921.0024(2), F.S.

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 485 Return of Weapons and Arms Following an Arrest

SPONSOR(S): Brackett

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Padgett	Hall
2) Judiciary Committee			

SUMMARY ANALYSIS

Generally, a law enforcement officer is authorized to search a person incident to a lawful arrest and seize items discovered on the person arrested or within his or her immediate control if the seizure is necessary to protect the officer from attack, prevent an escape, or assure the subsequent lawful custody of the fruits of a crime or the articles used in the commission of a crime. A law enforcement agency holds seized property that is needed for the prosecution of a crime as evidence. All other seized property that is not contraband is either held by a law enforcement agency as “personal property” or “safekeeping property.”

Section 790.08, F.S., requires every law enforcement officer who makes an arrest under s. 790.07, F.S., which prohibits the use or attempted use of a weapon, electric weapon or device, or arms (weapon or firearm) in committing a felony, or under any other law or municipal ordinance to take possession of any weapon or firearm found upon the person arrested and deliver such weapon or firearm to the sheriff or chief of police of the jurisdiction in which the arrest was made. The sheriff or the chief of police must retain such weapon or firearm until after the trial of the person arrested.

Sections 790.08(2) and (3), F.S., require the forfeiture of a weapon or firearm if a person is convicted of violating s. 790.07, F.S., or a similar offense involving the *use or attempted use* of a weapon or firearm in committing a felony, and the return of a weapon or firearm if a person is acquitted or such charges are dismissed. The forfeiture and return requirements do *not* apply in circumstances where a weapon or firearm was seized as evidence but was not *used* in committing a felony or where a weapon or firearm is seized and held by a law enforcement agency as safekeeping property. Because there is currently no statute prescribing procedures for the return of a weapon or firearm held as safekeeping property, the specific procedures for returning such property vary by jurisdiction. Certain general procedures, such as requiring a person to produce photo identification and complete a background check prior to the release of a firearm, appear universal. However, the specifics of such procedures, such as the proof of ownership required to claim property, the time required to complete a background check, and the need for judicial approval prior to releasing a weapon or firearm, may vary.

HB 485 amends s. 790.08, F.S., to delete the requirement for a sheriff or chief of police to retain custody of all weapons or firearms seized incident to an arrest until after the trial of the person arrested. Instead, the bill requires a law enforcement agency to return any weapons or firearms that are taken from a person following an arrest, but that are not seized as evidence, upon request of the person arrested, if he or she:

- Has been released from detention;
- Provides a form of government-issued photographic identification; and
- If requesting the return of a firearm, successfully completes a criminal history background check confirming the person is not prohibited from possessing a firearm under state or federal law, including not having any prohibition arising from an injunction, a risk protection order, or any other court order prohibiting the person from possessing a firearm.

The bill authorizes a sheriff or chief of police to develop reasonable procedures to ensure the timely return of weapons or firearms which are not inconsistent with the bill. The bill prohibits a sheriff or chief of police from requiring a court order to release weapons or firearms that are not seized as evidence in a criminal proceeding unless there are competing claims of ownership of such weapons or firearms.

The bill does not appear to have a fiscal impact on state or local governments.

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: h0485.CRJ

DATE: 11/29/2023

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Seizing Property Following an Arrest

Generally

Section 901.21, F.S., authorizes a law enforcement officer to search a person who is lawfully arrested and the area within the person's immediate presence for the purpose of:

- Protecting the officer from attack;
- Preventing the person from escaping; or
- Discovering the fruits of a crime.

A law enforcement officer conducting such a lawful search without a warrant may seize all instruments, articles, or things discovered on the person arrested or within the person's immediate control, the seizure of which is reasonably necessary for the purpose of:

- Protecting the officer from attack;
- Preventing the escape of the arrested person; or
- Assuring subsequent lawful custody of the fruits of a crime or of the articles used in the commission of a crime.

A law enforcement agency holds seized property that is needed for the prosecution of a crime as evidence.¹ All other seized property that is not contraband is either held by a law enforcement agency as "personal property" or "safekeeping property."²

Weapons, Electric Weapons or Devices, or Arms

Section 790.08, F.S.,³ requires every law enforcement officer,³ who makes an arrest under s. 790.07, F.S.,⁴ or under any other law or municipal ordinance to take possession of any weapons,⁵ electric weapons or devices,⁶ or arms mentioned in s. 790.07, F.S.,⁷ (weapons or firearms) found upon the person arrested and deliver such weapons or firearms⁸ to the sheriff or chief of police of the jurisdiction

¹ Broward County Sheriff's Office, *Evidence Unit*, <https://www.sheriff.org/LE/Pages/Evidence-and-Property-Unit.aspx> (last visited Nov. 29, 2023). Nassau County Sheriff's Office, *Property & Evidence*, <https://nassauso.com/administrative-services/property-evidence/> (last visited Nov. 29, 2023).

² *Id.* Personal property includes items such as a wallet, keys, or watch. All other non-evidentiary items seized from a person at the time of arrest, such as weapons or firearms, are generally held by a law enforcement agency as safekeeping property.

³ Section 790.08, F.S., does not apply to a municipality in a county that has home rule under the Florida Constitution. S. 790.08(7), F.S. These counties include Duval, Monroe, Miami-Dade, and Hillsborough. 95-82 Fla. Op. Att'y Gen. (1995).

⁴ Section 790.07, F.S., prohibits a person from displaying, using, threatening, or attempting to use:

- Any weapon or electric weapon or device or carrying a concealed weapon while committing or attempting to commit any felony or while under indictment; or
- A firearm while committing or attempting to commit any felony.

A violation involving a weapon or electric weapon or device is a third degree felony, punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084. A violation involving a firearm is a second degree felony, punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084.

⁵ "Weapon" means any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife. S. 790.001(20), F.S.

⁶ "Electric weapon or device" means any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury. S. 790.001(7), F.S.

⁷ The term "arms" is not defined in ch. 790, F.S., or in s. 790.07, F.S. However, from the context of s. 790.07, F.S., the term "arms" appears to mean a firearm. See *infra*, note 4. For purposes of this analysis, the terms "arms" and "firearms" are interchangeable.

⁸ "Firearm" means any weapon, including a starter gun, which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime. S. 790.001(9), F.S.

in which the arrest was made.⁹ The sheriff or the chief of police must retain such weapons or firearms until after the trial of the person arrested.¹⁰

Return of Seized Property Held by a Law Enforcement Agency

Weapons or Firearms Held as Evidence

Section 790.08(1), F.S., requires a sheriff or chief of police to retain a seized weapon or firearm until after the trial of the person arrested.¹¹ If a person arrested is convicted of violating s. 790.07, F.S., a similar offense under any municipal ordinance, or any other offense involving the *use or attempted use* of a weapon or firearm, such weapon or firearm is forfeited to the state.¹² If a person arrested is acquitted of such an offense or the charges against a person are dismissed, the weapon or firearm seized must be returned to the person.¹³ If a person fails to claim a weapon or firearm within 60 days of his or her acquittal or the dismissal of charges, the weapon or firearm must be delivered to the sheriff of the county in which the person was arrested.¹⁴ If a person fails to claim a weapon or firearm within six months from the date it was delivered to the sheriff, such weapon or firearm is forfeited to the state.¹⁵

The forfeiture and return requirements in s. 790.08(2) and (3), F.S., do *not* apply if a person is arrested for committing an offense in which a weapon or firearm is seized and held as evidence but was not *used* in committing a felony (e.g. unlawfully carrying a concealed firearm in violation of s. 790.01(3), F.S.)¹⁶ In such circumstances, the return of such a weapon or firearm is governed by s. 705.105, F.S., which generally provides for the disposition of unclaimed evidence following the conclusion of a criminal proceeding.¹⁷

Weapons or Firearms Held as Safekeeping Property

Similarly, the forfeiture and return requirements in s. 790.08(2) and (3), F.S., do *not* apply to a weapon or firearm seized incident to an arrest that is held as safekeeping property and not needed as evidence since the weapon or firearm was neither *used* in committing a felony nor related to the crime for which the person was arrested (e.g. a person is arrested for driving with a suspended license and is lawfully carrying a concealed firearm at the time of his or her arrest). Because there is currently no statute providing for the return of a weapon or firearm held as safekeeping property, the specific procedures for returning such property may vary by jurisdiction.¹⁸ Certain general procedures, such as requiring a person to produce photo identification and complete a background check prior to the release of a firearm, appear universal.¹⁹ However, the specifics of such procedures, such as the proof of ownership required to claim property, the time required to complete a background check, and the need for judicial

⁹ S. 790.08(1), F.S.

¹⁰ *Id.*

¹¹ It appears, in practice, that the requirement in s. 790.08(1), F.S., to retain a weapon or firearm until after the trial of the person arrested applies only to a weapon or firearm that is seized as evidence. See *infra* note 21.

¹² S. 790.08(2), F.S.

¹³ S. 790.08(3), F.S.

¹⁴ If the weapon, electric weapon or device, or firearm was delivered to the sheriff immediately following a person's arrest, no transfer is necessary. *Id.*

¹⁵ S. 790.08(5), F.S.

¹⁶ See *Darman v. State*, 774 So. 2d 798 (Fla. 4th DCA 2000).

¹⁷ Under s. 705.105, F.S., title to unclaimed evidence or unclaimed tangible personal property lawfully seized pursuant to a law full investigation in the custody of the court or clerk of the court from a criminal proceeding or seized as evidence by and in the custody of a law enforcement agency vests permanently in the law enforcement agency 60 days after the conclusion of the proceeding. S. 705.105(1), F.S.

¹⁸ Brevard County Sheriff's Office, *Evidence Unit*, <https://www.brevardsheriff.com/home/commands-services/administrative-services-command/evidence-unit/> (last visited Nov. 29, 2023). Broward County Sheriff's Office, *Evidence Unit*, <https://www.sheriff.org/LE/Pages/Evidence-and-Property-Unit.aspx> (last visited Nov. 29, 2023). Escambia County Sheriff's Office, *Evidence Unit*, <https://www.escambiaso.com/departments/specialized-units/evidence-unit/> (last visited Nov. 29, 2023). Hillsborough County Sheriff's Office, *Return of Property*, <https://www.teamhcs.com/Section/d8e5482d-66a8-44bf-9ac6-8913eca8da4c/Property-and-Evidence#:~:text=Return%20of%20Property&text=You%20must%20bring%20the%20original,be%20presented%20to%20claim%20property> (last visited Nov. 29, 2023). Nassau County Sheriff's Office, *Property & Evidence*, <https://nassauso.com/administrative-services/property-evidence/> (last visited Nov. 29, 2023). Pinellas County Sheriff's Office, *Property & Evidence*, <https://pcsoweb.com/property-evidence> (last visited Nov. 29, 2023).

¹⁹ *Id.*

approval prior to releasing a weapon or firearm, may vary.²⁰ The lack of any standardized procedures across jurisdictions for returning a weapon or firearm that is held as safekeeping property may cause confusion and delay in returning a weapon or firearm to its owner. In addition, in those jurisdictions that require a court order to release a weapon or firearm, the owner of the weapon or firearm may incur the added expense of hiring an attorney to file a motion for the return of his or her property with the court.

Effect of Proposed Changes

HB 485 amends s. 790.08, F.S., to delete the requirement for a sheriff or chief of police to retain custody of all weapons or firearms seized incident to an arrest until after the trial of the person arrested. Instead, the bill requires a law enforcement agency to return any weapons or firearms that are taken from a person following an arrest, but that are *not* seized as evidence, upon request of the person arrested if he or she:

- Has been released from detention;
- Provides a form of government-issued photographic identification; and
- If requesting the return of a firearm, successfully completes a criminal history background check confirming the person is not prohibited from possessing a firearm under state or federal law, including not having any prohibition arising from an injunction, a risk protection order, or any other court order prohibiting the person from possessing a firearm.

The bill authorizes a sheriff or chief of police to develop reasonable procedures to ensure the timely return of weapons or firearms which are not inconsistent with the bill. The bill prohibits a sheriff or chief of police from requiring a court order to release weapons or firearms that are not seized as evidence in a criminal proceeding unless there are competing claims of ownership of such weapons or firearms.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 790.08, F.S., relating to taking possession of weapons and arms; reports; disposition; custody.

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:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

²⁰ *Id.*

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to the return of weapons and arms
 3 following an arrest; amending s. 790.08, F.S.;
 4 requiring weapons, electric weapons or devices, or
 5 arms taken from a person pursuant to an arrest that
 6 are not seized as evidence to be returned to the
 7 person from whom they were taken if specified
 8 conditions are met; authorizing a sheriff or chief of
 9 police to develop procedures to ensure the timely
 10 return of certain weapons, electric weapons or
 11 devices, or arms; prohibiting a sheriff or chief of
 12 police from requiring a court order before releasing
 13 certain weapons, electric weapons or devices, or arms;
 14 providing an exception; providing an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Subsection (1) of section 790.08, Florida
 19 Statutes, is amended to read:

20 790.08 Taking possession of weapons and arms; reports;
 21 disposition; custody.—

22 (1) (a) Every officer making an arrest under s. 790.07, or
 23 under any other law or municipal ordinance within the state,
 24 shall take possession of any weapons, electric weapons or
 25 devices, or arms mentioned in s. 790.07 found upon the person

26 arrested and deliver them to the sheriff of the county, or the
27 chief of police of the municipality wherein the arrest is made,
28 ~~who shall retain the same until after the trial of the person~~
29 ~~arrested.~~

30 (b) Any weapons, electric weapons or devices, or arms that
31 are taken from a person under paragraph (a) that are not seized
32 as evidence must be returned upon request to the person from
33 whom the weapons, electric weapons or devices, or arms were
34 taken if the person meets all of the following criteria:

35 1. The person has been released from detention.

36 2. The person provides a form of government-issued
37 photographic identification.

38 3. If requesting the return of a firearm, a completed
39 criminal history background check confirms the person is not
40 prohibited from possessing a firearm under state or federal law,
41 including not having any prohibition arising from an injunction,
42 a risk protection order, or any other court order prohibiting
43 the person from possessing a firearm.

44 (c) The sheriff or chief of police may develop reasonable
45 procedures to ensure the timely return of weapons, electric
46 weapons or devices, or arms which are not inconsistent with this
47 subsection.

48 (d) The sheriff or chief of police may not require a court
49 order to release weapons, electric weapons or devices, or arms
50 that are not seized as evidence in a criminal proceeding unless

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51 | there are competing claims of ownership of such weapons,
52 | electric weapons or devices, or arms.

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