

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1566

INTRODUCER: Criminal Justice Committee and Senator Bradley

SUBJECT: Tampering With or Fabricating Physical Evidence

DATE: March 30, 2021

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1566 creates a tiered system of tampering with or fabricating evidence offenses, in addition to the current third degree felonies in s. 918.13(1), F.S.

In s. 918.13(2)(b)1., F.S., the bill creates a second degree felony offense of tampering with or fabricating evidence relating to a criminal trial or proceeding or an investigation involving a violent felony offense described in s. 775.084(1)(b)1., F.S.

In s. 918.13(2)(b)2., F.S., the bill creates a first degree felony offense of tampering with or fabricating evidence relating to a criminal trial or proceeding or an investigation involving a capital offense, or an offense involving the death of a person.

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

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

The bill is effective October 1, 2021.

II. Present Situation:

Tampering With or Fabricating Physical Evidence

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

- Altering, destroying, concealing, or removing any record, document, or thing with the purpose to impair its verity or availability in the proceeding or investigation, or
- Making, presenting, or using any record, document, or thing, knowing it to be false.

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

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

Serious Felony Offenses

Capital Offenses

A capital felony is the most serious classification of felony offenses. A capital felony is a crime that is punishable by either death or life imprisonment without the possibility of parole.³

Violent Felony Offenses

Section 775.084(1)(b)1., F.S., contains a list of criminal offenses that provide for enhanced criminal penalties for a defendant who is classified as a habitual violent felony offender. This list is frequently referred to by the shorthand “violent felony offenses.” This list contains the following offenses:

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or a disabled adult;
- Aggravated assault with a deadly weapon;
- Murder;
- Manslaughter;

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

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

³ Section 775.082(1)(a), F.S. First degree murder and certain drug trafficking offenses are capital offenses. *See* ss. 782.04(2)(a) and 893.135, F.S.

- Aggravated manslaughter of an elderly person or disabled adult;
- Aggravated manslaughter of a child;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary;
- Aggravated battery; and
- Aggravated stalking.

Offense Severity Ranking Chart

Felony offenses subject to the Criminal Punishment Code are listed in a single offense severity ranking chart, which uses 10 offense levels to rank felonies from least severe (Level 1) to most severe (Level 10). A person's primary offense, any other current offenses, and prior offenses are scored using the points designated for the offense severity level of each offense. The final calculation, following the scoresheet formula, determines the lowest permissible sentence that the trial court may impose, absent a valid reason for departure.⁴

If an offense is unranked, the Criminal Punishment Code specifies a default level on the OSRC depending on the felony degree of the offense. The criminal offense of altering, destroying, or concealing physical evidence is ranked as a Level 3 offense on the OSRC.⁵ The criminal offense of making, presenting, or using physical evidence while knowing it is false is not ranked on the OSRC and defaults to a Level 1 offense.⁶

III. Effect of Proposed Changes:

The bill amends s. 918.13, F.S., by adding two new felony offenses building upon the current offense of tampering with or fabricating evidence. The new offenses provide that:

- If a person commits tampering with or fabricating evidence relating to a criminal trial or proceeding or an investigation that relates to a violent felony offense described in s. 775.084(1)(b)1., F.S.,⁷ he or she commits a second degree felony.⁸
- A person commits a first degree felony⁹ if he or she commits tampering with or fabricating evidence relating to a criminal trial or proceeding or an investigation relating to a capital felony, or an offense that results in the death of a person.

By making these amendments to s. 918.13, F.S., the bill creates a tiered system of offenses that are applicable in increasingly serious circumstances. Both of these new offenses are unranked in the OSRC. An unranked second degree felony is a Level 4 and an unranked first degree felony is a Level 7 offense.¹⁰ The bill ranks, the previously unranked, third degree felony offense of

⁴ Section 921.0022(3)(c), F.S.

⁵ *Id.*

⁶ Section 921.0023, F.S.

⁷ See the list of violent felony offenses in Section II, Present Situation.

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

⁹ A first degree felony is punishable by imprisonment up to 30 years and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹⁰ Section 921.0023(2)-(3), F.S.

making, presenting, or using any record, document, or other thing, knowing it to be false, as a Level 3 offense in the OSRC.¹¹

The bill is effective October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) has not yet considered SB 1566. However, the CJIC considered CS/HB 777 on March 8, 2021, which was similar to SB 1566 because they both created a new second degree and first degree felony. The CJIC determined that the House bill would have a positive indeterminate impact on the

¹¹ Section 921.0022(3)(c), F.S.

Department of Corrections. A positive indeterminate fiscal impact means that CS/HB 777 will have an unquantifiable positive prison bed impact.¹²

On March 30, 2021, the Criminal Justice Committee amended SB 1566 making it identical to CS/HB 777 by making a violation of s. 918.13(1)(a), F.S., a Level 3 offense on the OSRC. This means that CS/SB 1566 and CS/HB 777 should have an identical positive indeterminate impact on the Department of Corrections. A positive indeterminate fiscal impact means that CS/HB 777 will have an unquantifiable positive prison bed impact.¹³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

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

IX. Additional Information:

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

CS by Criminal Justice on March 30, 2021:

The committee substitute:

- Conforms the Senate bill to the House bill making stylistic and organizational changes; and
- Ranks the third degree felony offense in s. 918.13(1)(b), F.S., as a Level 3 offense in the Offense Severity Ranking Chart.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹² Economic and Demographic Research, Criminal Justice Impact Conference, (March 8, 2021), available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSHB777.pdf>, (last visited March 23, 2021).

¹³ *Id.*