

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 76-E

SPONSOR: Criminal Justice Committee and Senators Villalobos, Peaden and Campbell

SUBJECT: Falsification of Records

DATE: May 7, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Favorable/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 76-E does the following:

Makes it a third degree felony, ranked in level 4, for any person to knowingly falsify, alter, destroy, deface, overwrite, remove, or discard an official record relating to an individual in the care and custody of a state agency, which act has the potential to detrimentally affect the health, safety, or welfare of that individual.

Makes it a second degree felony, ranked in level 5, for any person to commit the above-described violation if the violation contributes to great bodily harm to or the death of an individual in the care and custody of a state agency.

Provides that, for the purpose of the paragraphs creating the above-described third degree felony and second degree felony offenses, the term “care and custody” includes, but is not limited to, a child abuse protective investigation, protective supervision, foster care and related services, or a protective investigation or protective supervision of a vulnerable adult, as defined in chapters 39, 409, or 415, F.S.

Makes it a third degree felony, ranked in level 4, for any person to knowingly falsify, alter, destroy, deface, overwrite, remove, or discard an official record of the Department of Children and Family Services (DCF) or its contract provider with the intent to conceal a fact material to a child abuse protective investigation, protective supervision, foster care and related services, or a protective investigation or protective supervision of a vulnerable adult, as defined in chapters 39, 409, or 415, F.S.

This CS substantially amends the following sections of the Florida Statutes: s. 839.13;
s. 921.0022.

II. Present Situation:

A. Falsification of State Agency Records

There are several Florida statutes that may possibly apply to falsification of state agency records (*the statutes described herein do not constitute an exhaustive list of statutes that may possibly apply to falsification of state agency records*).

Section 831.02, F.S., provides, in part, that it is a third degree felony for a person to utter and publish “as true a false, forged, or altered record . . . mentioned in s. 831.02 knowing the same to be false, altered, forged, or counterfeited, with intent to injure or defraud any person.” Section 831.02, F.S., (Forgery) includes a public record. It is sufficient for purpose of this statute that the record is “passed off . . . as an official public record.” *Parker v. State*, 20 Fla. L. Weekly (Fla. 3rd DCA July 19, 1995).

Section 839.13, F.S., provides, in part, that it is a first degree misdemeanor for “any person whatsoever” to “knowingly and willfully” conceal any record or “fraudulently alter, deface or falsify any . . . documents . . . of or belonging to any public office within this state. . . .”

Section 839.25, F.S., provides, in part, that it is a third degree felony for a “public servant” to “cause unlawful harm to another” by “knowingly falsifying, or causing another to falsify, any official record or official document.”

Senate Bill 140 (ordered enrolled on March 22, 2002, and awaiting action by the Governor) would make it a crime to knowingly use any public record or information obtainable only through a public record, to facilitate or further the commission of a first degree misdemeanor or a felony. The crime is a first degree misdemeanor, if the public record is used to facilitate or further the commission of a first degree misdemeanor, and is a third degree felony, if the public record is used to facilitate or further the commission of a felony.

B. Care and Custody

The Florida state agencies that appear to have “care and custody” of certain individuals (see description of the bill in the “Effect of Proposed Changes” section of this analysis) are the Department of Children and Family Services, the Department of Juvenile Justice and the Department of Corrections. Provided is a non-exhaustive list of the subject populations that appear to be within the “care and custody” of one of those agencies:

An individual incarcerated in a correctional facility.

An individual committed to the Department of Juvenile Justice.

Children who have been abused, neglected, or abandoned that are removed from the home and placed in the custody of DCF until the risk of danger is eliminated or another permanency placement is achieved.

Elderly individuals or adults with disabilities who are being abused, neglected, or exploited (under certain circumstances).

Individuals with developmental disabilities who have been involuntarily admitted to residential services.

Individuals who are mentally ill and who have been ordered by the court for involuntary admission to a mental health institution.

III. Effect of Proposed Changes:

Provided is a section-by-section analysis of CS/SB 76-E:

Section 1.

This section amends s. 839.13, F.S., to:

Specify that the first degree misdemeanor offense for falsification of records includes an employee or agent of or contractor with a public agency.

Make it a third degree felony, ranked in level 4, for any person to knowingly falsify, alter, destroy, deface, overwrite, remove, or discard an official record relating to an individual in the care and custody of a state agency, which act has the potential to detrimentally affect the health, safety, or welfare of that individual.

Make it a second degree felony, ranked in level 5, for any person to commit the above-described violation if the violation contributes to great bodily harm to or the death of an individual in the care and custody of a state agency.

Provide that, for the purpose of the paragraphs creating the above-described third degree felony and second degree felony offenses, the term “care and custody” includes, but is not limited to, a child abuse protective investigation, protective supervision, foster care and related services, or a protective investigation or protective supervision of a vulnerable adult, as defined in chapters 39, 409, or 415, F.S.

Make it a third degree felony, ranked in level 4, for any person to knowingly falsify, alter, destroy, deface, overwrite, remove, or discard an official record of the Department of Children and Family Services or its contract provider with the intent to conceal a fact material to a child abuse protective investigation, protective supervision, foster care and

related services, or a protective investigation or protective supervision of a vulnerable adult, as defined in chapters 39, 409, or 415, F.S.

Provide that nothing in the paragraph creating the third degree felony offense for falsification of DCF records shall be construed to prohibit prosecution for the other falsification of records felony offenses described above and created by this CS.

Provide that the newly created section does not prohibit the disposing or archiving of records as otherwise provided by law, and does not prohibit any person from correcting or updating records.

Section 2.

This section amends s. 921.0022, F.S., the offense severity level ranking chart of the Criminal Punishment Code, to specifically rank the Level 4 third degree felony created by this CS.

Section 3.

This section provides that if any law that is amended by this act was also amended by a law enacted at the 2002 Regular Session of the Legislature, such laws shall be construed as if they had been enacted at the same session of the Legislature, and full effect shall be given to each if that is possible.

Section 4.

This section provides that this act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Courts have rejected various challenges to the words “official record” as those words appear in s. 839.25, F.S., which pertains to official misconduct (whether the words are vague or whether, in the context of record falsification found to constitute official misconduct, that record was an “official record” within the meaning of s. 899.25, F.S.)

See Brown v. State, 22 Fla. L. Weekly (Fla. 4th DCA March 5, 1997); *Harnum v. State*, 384 So.2d 1320 (Fla. 2d DCA 1985); *State v. Riley*, 381 So.2d 1359 (Fla. 1980).

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

An analysis of the prison bed impact of this CS was not available when this analysis was completed. However, no offense created by this bill would (on the basis of the offense alone) score a minimum sentence of imprisonment that *must* be imposed by the trial court, absent a valid mitigating factor.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.