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**CRIMINAL JUSTICE  
COMMITTEE  
MEETING**

**Wednesday, January 25, 2006  
9:30 a.m. – 12:00 p.m.  
(404 HOB)**

**MEETING PACKET**

Allan G. Bense  
Speaker

Dick Kravitz  
Chair

Wilbert "Tee" Holloway  
Vice Chair

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

### Criminal Justice Committee

**Start Date and Time:** Wednesday, January 25, 2006 09:30 am

**End Date and Time:** Wednesday, January 25, 2006 12:00 pm

**Location:** 404 HOB

**Duration:** 2.50 hrs

**Consideration of the following proposed committee bill(s):**

PCB CRJU 06-02 -- Stolen Property

**Workshop on the following:**

PCB CRJU 06-03--Criminal Background Screening for Contractual School Personnel

HB 61 CS Postsentencing Testing of DNA Evidence by Quinones, Bogdanoff

**Consideration of the following bill(s):**

HB 271 Custody of Criminal Defendants by Kreegel

HB 297 Driving and Boating Under the Influence by Harrell

HB 339 Sexual Predators by Brandenburg

HB 399 Criminal Offenses by Davis, D.

**NOTICE FINALIZED on 01/13/2006 12:48 by THOMPSON.SONJA**



# ***FLORIDA HOUSE OF REPRESENTATIVES***

*Allan G. Bense, Speaker*

## **Justice Council Criminal Justice Committee**

**Dick Kravitz**  
Chair

**Wilbert "Tee" Holloway**  
Vice Chair

**Meeting Agenda**  
**Wednesday, January 25, 2006**  
**404 House Office Building**  
**9:30 a.m. – 12:00 p.m.**

- I. Opening remarks by Chair Kravitz**
- II. Roll call**
- III. Consideration of the following proposed committee bill:**  
  
PCB CRJU 06-02—Stolen Property
- IV. Workshop on the following:**  
  
PCB CRJU 06-03—Criminal Background Screening for Contractual School Personnel

HB 61 CS—Postsentencing Testing of DNA Evidence by  
Quinones, Bogdanoff

**V. Consideration of the following bills:**

HB 271—Custody of Criminal Defendants by Kreegal

HB 297—Driving and Boating Under the Influence by Harrell

HB 339—Sexual Predators by Brandenburg

HB 399—Criminal Offenses by Davis, D.

**VI. Closing comments / Meeting adjourned**



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJU 06-02 Stolen Property  
SPONSOR(S): Criminal Justice Committee  
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Criminal Justice Committee		Cunningham <i>JC</i>	Kramer <i>JK</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

PCB 02 provides that proof that a person was in possession of a stolen motor vehicle and that the ignition mechanism of the motor vehicle had been bypassed or the steering wheel locking mechanism had been broken or bypassed gives rise to an inference that the person in possession of the stolen motor vehicle knew or should have known that the motor vehicle had been stolen.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government** – The PCB provides that certain evidence creates an inference of proof relating to theft of a motor vehicle.

#### B. EFFECT OF PROPOSED CHANGES:

**Theft** → Section 812.014, F.S., provides that a person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

1. Deprive the other person of a right to the property or a benefit from the property, or
2. Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.<sup>1</sup>

Section 812.014, F.S., provides in part that, except as provided for in s. 812.014(2)(a), F.S.,<sup>2</sup> it is grand theft of the third degree and a third degree felony if the property stolen is a motor vehicle.

**Dealing in Stolen Property** → Section 812.019, F.S., provides that any person who traffics<sup>3</sup> in, or endeavors to traffic in, property that he or she knows or should know was stolen commits a second degree felony. Any person who initiates, organizes, plans, finances, directs, manages, or supervises the theft of property and traffics in such stolen property commits a first degree felony.

An offender can be charged, when appropriate, with theft and dealing in stolen property in connection with the same property but cannot be convicted of both offenses.<sup>4</sup>

**Inferences** → Section 812.022, F.S. provides several inferences relating to evidence of theft or dealing in stolen property such as:

- Except as provided in s. 812.022(5), F.S., proof of possession of property recently stolen, unless satisfactorily explained, gives rise to an inference that the person in possession of the property knew or should have known that the property had been stolen.
- Proof of the purchase or sale of stolen property at a price substantially below the fair market value, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property knew or should have known that the property had been stolen.
- Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business or without the usual indicia of ownership other than mere possession, unless satisfactorily

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<sup>1</sup> Section 812.012, F.S. contains definitions of the terms "obtains or uses", "property". The section also defines the term "property of another" to mean "property in which a person has an interest upon which another person is not privileged to infringe without consent, whether or not the other person also has an interest in the property."

<sup>2</sup> Section 812.014(2)(a), F.S., provides that an offender commits grand theft of the first degree and a first degree felony if:

1. the property stolen is valued at \$100,000 or more; or
2. the property stolen is cargo valued at \$50,000 or more that has entered the stream of interstate or intrastate commerce from the shipper's loading platform to the consignee's receiving dock; or
3. the offender commits any grand theft and:
  - a. In the course of committing the offense the offender uses a motor vehicle as an instrumentality, other than merely as a getaway vehicle, to assist in committing the offense and thereby damages the real property of another; or
  - b. In the course of committing the offense the offender causes damage to the real or personal property of another in excess of \$1,000.

<sup>3</sup> Section 812.012(8), F.S. contains a definition of the term "traffic".

<sup>4</sup> s. 812.025, F.S.

explained, gives rise to an inference that the person buying or selling the property knew or should have known that it had been stolen.

In *Edwards v. State*, 381 So.2d 696 (Fla. 1980), the court considered whether the inference relating to proof of possession of recently stolen property violated a defendant's due process rights. The court held that "[s]ince there is a rational connection between the fact proven (the defendant possessed stolen goods) and the fact presumed (the defendant knew the goods were stolen), the inference created by section 812.022(2) does not violate [a defendant's] due process rights." See also, *Walker v. State*, 896 So.2d 712 (Fla. 2005).

**Effect of PCB 02** → PCB 02 amends section 812.022, F.S. to provide that proof that a person was in possession of a stolen motor vehicle and that the ignition mechanism of the motor vehicle had been bypassed or the steering wheel locking mechanism had been broken or bypassed gives rise to an inference that the person in possession of the stolen motor vehicle knew or should have known that the motor vehicle had been stolen.

#### C. SECTION DIRECTORY:

**Section 1.** Amends s. 812.022, F.S., to create an inference relating to stolen vehicles.

**Section 2.** This acts takes effect October 1, 2006.

## 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:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**



PCB CRJU 06-02

ORIGINAL

2006

1                                   A bill to be entitled  
 2           An act relating to stolen property; providing an effective  
 3           date.

4  
 5 Be It Enacted by the Legislature of the State of Florida:

6  
 7           Section 1. Subsection (6) is added to section 812.022,  
 8 Florida Statutes, to read:

9           812.022 Evidence of theft or dealing in stolen property.--

10           (6) Proof that a person was in possession of a stolen motor  
 11 vehicle and that the ignition mechanism of the motor vehicle had  
 12 been bypassed or the steering wheel locking mechanism had been  
 13 broken or bypassed gives rise to an inference that the person in  
 14 possession of the stolen motor vehicle knew or should have known  
 15 that the motor vehicle had been stolen.

16           Section 2. This act shall take effect July 1, 2006.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB CRJU 06-03 Criminal Background Screening for Contractual School Personnel  
**SPONSOR(S):** Criminal Justice Committee  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Criminal Justice Committee		Kramer <i>TK</i>	Kramer <i>TK</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

**SUMMARY ANALYSIS**

During the 2005 session, HB 1877, known as the Jessica Lunsford Act, passed the legislature and was signed by the Governor on May 2, 2005. The bill had an effective date of September 1, 2005. Section 21 of the act amended section 1012.465, F.S. to require noninstructional contractual personnel who are permitted access on school grounds when students are present to meet level 2 screening requirements. After the legislative session, school districts and businesses contracting with school districts expressed concerns with this provision of the bill. PCB CRJU 06-03 removes the language from section 1012.465, F.S. that was added during the 2005 session and creates a new section of statute relating to criminal history checks for noninstructional personnel of any school district contractor that:

- Requires that a federal and state fingerprint-based criminal history check be performed at least once every three years on the noninstructional personnel of any school district contractor who is permitted access on school grounds when students are present;
- Provides that any fee for this check charged by a district school board may not exceed the sum of the fee charged by FDLE plus the fee charged by the FBI plus 30 percent of the total of the two fees;
- Provides that if a person has been convicted of a criminal offense specified in the bill, he or she will be disqualified from employment as a noninstructional personnel of a school district contractor who is permitted access on school grounds when students are present;
- Requires FDLE to implement a system that allows for criminal history record information provided to a school district to be shared with other school districts through a secure website or other electronic means;
- Requires that for any check required by another school district in the three years subsequent to the initial check, the individual must inform the district school board requiring the check that he or she has already completed a current records check and that district must, without charge to the individual, check the individual's history using the shared system;
- Provides that the section does not apply to law enforcement officers assigned to work on school grounds or to contractual personnel who due to the nature of their occupation or business are otherwise required to submit to a level 2 background screening;
- Provides that contractual personnel employed by a public utility must be checked against the state and national sexual offender registries and are not required to undergo additional screening.

The bill has an effective date of July 1, 2006.

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

**STORAGE NAME:** pcb03.CRJU.doc  
**DATE:** 1/18/2006

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: To the extent that the list of enumerated offenses set forth in the bill is more restricted than a school district's interpretation of the term "moral turpitude", the bill may limit the number of contractual personnel who are prohibited from working on school grounds while students are present.

#### B. EFFECT OF PROPOSED CHANGES:

During the 2005 session, HB 1877, known as the Jessica Lunsford Act, passed the legislature and was signed by the Governor on May 2, 2005. [Ch. 2005-28, Laws of Fla.] The bill had an effective date of September 1, 2005.

The bill amended several statutes relating to sexual predators and sexual offenders, required electronic monitoring of certain probationers who had committed a sexual offense and mandated lifetime imprisonment or lifetime supervision with electronic monitoring for persons convicted of lewd and lascivious molestation of a child under the age of 12. Additionally, section 21 of the act amended section 1012.465, F.S. Prior to this bill, this section had required noninstructional school district employees or contractual personnel who had direct contact with students or had access to or control of school funds to meet level 2 screening requirements as described in s. 1012.32, F.S.<sup>1</sup> The bill expanded this requirement to contractual personnel who are permitted access on school grounds when students are present. The bill defined the term "contractual personnel" to include "any vendor, individual or entity under contract with the school board."

A level 2 screening includes a statewide criminal records check through the Florida Department of Law Enforcement (FDLE) and a federal criminal records check through the Federal Bureau of Investigation (FBI).<sup>2</sup> Section 1012.32, F.S. provides persons "found through fingerprint processing to have been convicted of a crime involving *moral turpitude* shall not be employed, engaged to provide services, or serve in any position requiring direct contact with students."

A screening required under the Jessica Lunsford Act is accomplished by the contractor submitting his or her fingerprints to school district personnel who submits the fingerprints to FDLE. FDLE then submits the fingerprints to the FBI for the federal check. FDLE sends the results of the state and federal check back to the school district. The school district then determines whether the results indicate that the contractor has been convicted of a crime involving moral turpitude.

After the legislative session, school districts and businesses that contract with school districts expressed difficulties in implementing the criminal history screening provisions of the bill. The most common complaints can be characterized as follows:

- Many contractors work in multiple school districts throughout the state and have been required to undergo a separate criminal history check for each school district. Although school districts are authorized to share screening results with other school districts, initially there was no central database to facilitate sharing of the results.

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<sup>1</sup> Additionally, section 943.04351, F.S. requires that "a state agency or governmental subdivision, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, must conduct a search of that person's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by the Department of Law Enforcement".

<sup>2</sup> See ss. 1012.465(2) and 435.04, F.S.

- Contractors claimed that some school districts have charged processing fees for a criminal history screening that are cost prohibitive, particularly if a business has many employees who conduct business in multiple school districts.
- School districts and contractors expressed confusion as to who should be considered contractual personnel and what should be considered school grounds.
- Because there is no statutory definition of the term “moral turpitude”, interpretation is left to the school districts. Contractors have claimed that this results in inconsistency – based on different interpretations of the phrase, a contractor could be permitted to work in one school district and barred from working in another. Further, contractors have complained that they have been barred from working in a school district for what they consider minor criminal offenses or offenses that were committed many years ago.
- Contractors who are required to undergo level 2 checks for their other employment have complained that school districts have required them to undergo an additional screening to be permitted on school grounds when students are present.

FDLE was asked by the Speaker of the House of Representatives and the President of the Senate to implement a system to allow for criminal history information provided to a school district to be shared with other school districts. FDLE developed the Florida Shared School Results (FSSR) system which became available to school districts on September 30, 2005. After a school district requests a criminal history check from FDLE, the department posts the results on a secure website that is accessible to the school districts. Other school districts can then access the results and view the same criminal history record that was received by the original school district. The information is searchable by name, social security number or submitting agency.

PCB CRJU 06-03 amends section 1012.465(1), F.S. to remove the language that was added as part of section 21 of the Jessica Lunsford Act. The bill also creates a new section of statute that requires that a fingerprint-based criminal history check be performed on the noninstructional personnel of any school district contractor who are permitted access on school grounds when students are present. The bill provides that contractors whose noninstructional personnel are subject to this requirement include any vendor, individual or entity under contract with the school board. These checks must be performed at least once every three years.

The bill requires that for the initial check, each individual subject to the criminal history check must file a set of fingerprints in a manner required by the Department of Education. Fingerprints will be submitted to FDLE for state processing and to the Federal Bureau of Investigation (FBI) for federal processing. The results of each fingerprint-based check must be reported to the requesting district. The cost of the check and any re-check may be borne by the district school board, the contractor or the person fingerprinted. Any fee for the initial check and each re-check charged by a district school board may not exceed the sum of the fee charged by FDLE plus the fee charged by the FBI plus 30 percent of the total of the two fees. Currently, the combined fee for the FDLE and FBI check is \$47 - \$23 for the FDLE check and \$24 for the FBI check.

The bill requires FDLE to implement a system that allows for criminal history record information provided to a school district to be shared with other school districts through a secure website or other electronic means. The bill authorizes FDLE to adopt rules to implement this provision. For any required checks during the 3 year period subsequent to the initial check or recheck, the individual must inform the district school board requiring the check that he or she has already completed a current records check and that district must, without charge to the individual, check the individual’s history using the shared system described below.

The bill provides that any person who has been convicted of any of the following offenses, any similar offense in another jurisdiction, or any similar offense committed in this state under a former statute number is disqualified from employment as a noninstructional personnel of a school district contractor who is permitted access on school grounds when students are present:

1. Any offense listed in s. 943.0435(1)(a)1, (sexual offender qualifying offenses), which includes the following:
  - a. Section 787.01, F.S., kidnapping where the victim is a minor and the defendant is not the victim's parent,
  - b. Section 787.02, false imprisonment where the victim is a minor and the defendant is not the victim's parent.
  - c. Section 787.025, F.S., luring or enticing a child where the victim is a minor and the defendant is not the victim's parent;
  - d. Chapter 794, sexual battery<sup>3</sup>
  - e. Section 796.03, procuring a person under the age of 18 for prostitution;
  - f. Chapter 800, lewd or lascivious offenses;
  - g. Section 825.1025, F.S., lewd or lascivious battery on an elderly person;
  - h. Section 827.071, F.S., promoting sexual performance by a child;;
  - i. Section 847.0133, F.S., selling or showing obscenity to a minor;
  - j. Section 847.0135, F.S., using a computer to solicit sexual conduct of or with a minor;
  - k. Section 847.0137, F.S., transmitting child pornography;
  - l. Section 847.0138, F.S., transmitting material harmful to minors;
  - m. Section 847.0145, F.S., selling or buying of minors
2. Section 393.135, F.S. relating to sexual misconduct with certain developmentally disabled clients and the reporting of such misconduct.
3. Section 394.4593, F.S. relating to sexual misconduct with certain mental health patients and the reporting of such sexual misconduct.
4. Section 775.30, F.S. relating to terrorism.
5. Section 782.04, F.S., relating to murder
6. Section 787.01, F.S. relating to kidnapping.
7. Any offense under chapter 800, relating to lewdness and indecent exposure.
8. Section 826.04, F.S. relating to incest.
9. Section 827.03, F.S. relating to abuse, aggravated abuse and neglect of a child.

The bill requires each person who is employed or under contract as noninstructional personnel of a school district contractor who is permitted access on school grounds when students are present to agree to inform his or her employer or the party with whom he or she is under contract and the school district within 48 hours if charged with any disqualifying offense while he or she is employed or under contract in that capacity. A person who willfully fails to comply with this provision commits a third degree felony.

The bill provides that the section does not apply to law enforcement officers, as defined in s. 943.10, F.S. assigned by their employing agencies to work on school grounds as part of their official duties. The section also does not apply to contractors who due to the nature of their occupation or business are required by law to submit to a level 2 background screening under chapter 435, F.S. for licensing, employment, or other purposes when such criminal history records check was processed within 3 years prior to the date of contract and such license or other certificate is current and in good standing. Such contractual personnel must still undergo a check of the state sexual predator and sexual offender registries and the national registry of such offenders.

Contractual personnel employed by any public utility that files an affidavit with the school district that states that all field employees who have access to school grounds when students are present have been checked against the state sexual predator and sexual offender registries and the national registry are not required to undergo an additional screening. The term "public utility" is defined for this section as including any public or private utility, such as, but not limited to, those providing sanitary sewers,

<sup>3</sup> Excluded are offenses contained in ss. 794.011(10) and 794.0235, F.S.



water service, electricity, liquefied petroleum gas, natural gas, cable television or telecommunications services.

The bill has an effective date of July 1, 2006.

**C. SECTION DIRECTORY:**

Section 1. Amends s. 1012.465, F.S. revising provisions relating to criminal history screening for school district contractual personnel.

Section 2. Creating requirements for criminal history check for noninstructional school district contractual personnel.

Section 3. Provides effective date of July 1, 2006.

**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:

The bill limits the amount of fees that a school district is permitted to charge for a federal and state criminal history check of a contractor required by the bill. Currently, the combined fee for the FDLE and FBI check is \$47 - \$23 to FDLE and \$24 to FBI. The bill provides that any fee for a check of state and federal criminal history that is required by the bill may not exceed the fee charged by FDLE plus the fee charged by the FBI plus 30 percent of the total of the two fees.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

As discussed above, the bill limits fees that can be charged for a state or federal criminal background check for noninstructional school personnel. The bill also directs school districts to use the Florida Shared School Results System if another school district has already requested a criminal history check of an individual. Also, to the extent that the list of enumerated offenses set forth in the bill is more restricted than a school district's interpretation of the term "moral turpitude", the bill may limit the number of contractual personnel who are prohibited from working on school grounds while students are present.

**D. FISCAL COMMENTS:**

None.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

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

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

The bill authorizes FDLE to adopt rules to implement a system that allows for criminal history record information provided to a school district to be shared with other school districts.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**



1                   A bill to be entitled  
 2           An act relating to background screening for school  
 3           district contractors; amending s. 1012.465, F.S.; revising  
 4           provisions relating to criminal background screening for  
 5           certain school district contractual personnel; creating  
 6           requirements for fingerprint-based background screening  
 7           for certain noninstructional school district contractors;  
 8           providing for submission of fingerprints; providing for  
 9           fees; specifying disqualifying offenses; requiring  
 10          creation of an electronic system for sharing screening  
 11          results among school districts; providing for rulemaking;  
 12          requiring personnel to report disqualifying offenses;  
 13          providing penalties; providing an exemption for law  
 14          enforcement officers assigned by their employing agencies  
 15          to work on school grounds as part of their official  
 16          duties; providing exemptions for certain contractors  
 17          subject to background screening under other provisions;  
 18          providing an exemption for certain utility employees if  
 19          the utility provides an affidavit stating that employees  
 20          with access to school grounds when students are present  
 21          have been screened against certain registries; providing  
 22          an effective date.

23  
 24   Be It Enacted by the Legislature of the State of Florida:

25  
 26           Section 1. Subsection (1) of section 1012.465, Florida  
 27   Statutes, is amended to read:

28           1012.465 Background screening requirements for certain  
 29   noninstructional school district employees and contractors.--

30 (1) Noninstructional school district employees or  
 31 contractual personnel ~~who are permitted access on school grounds~~  
 32 ~~when students are present,~~ who have direct contact with students  
 33 or who have access to or control of school funds must meet level  
 34 2 screening requirements as described in s. 1012.32. ~~Contractual~~  
 35 ~~personnel shall include any vendor, individual, or entity under~~  
 36 ~~contract with the school board.~~

37 Section 2. Background screening requirements for certain  
 38 noninstructional school district contractors.--

39 (1)(a) A fingerprint-based criminal history check shall be  
 40 performed on the noninstructional personnel of any school  
 41 district contractor who are permitted access on school grounds  
 42 when students are present. Contractors whose noninstructional  
 43 personnel are subject to this requirement include any vendor,  
 44 individual, or entity under contract with the school board. Such  
 45 checks shall be performed at least once every 3 years. For the  
 46 initial check of each individual subject to the background  
 47 criminal history check requirement, the individual shall file a  
 48 complete set of fingerprints taken in a manner required by the  
 49 Department of Education. Fingerprints shall be submitted to the  
 50 Department of Law Enforcement for state processing and to the  
 51 Federal Bureau of Investigation for federal processing. The  
 52 results of each fingerprint-based check shall be reported to the  
 53 requesting district and the district shall promptly provide the  
 54 results to the shared system created in paragraph (d). The cost  
 55 of the initial check of state and federal criminal history and  
 56 the recheck every 3 years may be borne by the district school  
 57 board, the contractor, or the person fingerprinted. Any fee for  
 58 the initial check of state and federal criminal history and each

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59 recheck every 3 years per person fingerprinted charged by a  
 60 district school board may not exceed the sum of the fee charged  
 61 by the Department of Law Enforcement plus the fee charged by  
 62 Federal Bureau of Investigation plus 30 percent of the total of  
 63 those two fees. For any required checks during the 3-year period  
 64 subsequent to the initial check or a recheck, the individual  
 65 shall inform the district school board requiring the check that  
 66 he or she has already completed a current records check and that  
 67 district shall, without charge to the individual, check the  
 68 individual's history using the shared system provided in  
 69 paragraph (d).

70 (b) Any person who has been convicted of any offense listed  
 71 below, any similar offense in another jurisdiction, or any  
 72 similar offense committed in this state which has been  
 73 redesignated from a former statute number to one of those listed  
 74 in this paragraph is disqualified for employment in any position  
 75 described in paragraph (a). As used in this section, the term  
 76 "convicted" has the same meaning as in s. 943.0435, Florida  
 77 Statutes. The disqualifying offenses are:

78 1. Any offense listed in s. 943.0435(1)(a)1., Florida  
 79 Statutes, relating to registration of individuals as sexual  
 80 offenders.

81 2. Section 393.135, Florida Statutes, relating to sexual  
 82 misconduct with certain developmentally disabled clients and the  
 83 reporting of such sexual misconduct.

84 3. Section 394.4593, Florida Statutes, relating to sexual  
 85 misconduct with certain mental health patients and the reporting  
 86 of such sexual misconduct.

87 4. Section 775.30, Florida Statutes, relating to terrorism.

88 5. Section 782.04, Florida Statutes, relating to murder.

89 6. Section 787.01, Florida Statutes, relating to  
 90 kidnapping.

91 7. Any offense under chapter 800, Florida Statutes,  
 92 relating to lewdness and indecent exposure.

93 8. Section 826.04, Florida Statutes, relating to incest.

94 9. Section 827.03, Florida Statutes, relating to abuse,  
 95 aggravated abuse, and neglect of a child.

96 (c) Any person who has at any time been convicted for any  
 97 offense listed in paragraph (b) is disqualified for employment in  
 98 any position described in paragraph (a), unless the person has  
 99 received a full pardon or has had his or her civil rights  
 100 restored.

101 (d) The Department of Law Enforcement shall implement a  
 102 system that allows for criminal history record information  
 103 provided to a school district to be shared with other school  
 104 districts through a secure website or other electronic means. The  
 105 Department of Law Enforcement may adopt rules under ss.  
 106 120.536(1) and 120.54, Florida Statutes, to implement the  
 107 provisions of this paragraph.

108 (2) (a) Each person who is employed or under contract in a  
 109 capacity described in subsection (1) must agree to inform his or  
 110 her employer or the party with whom he or she is under contract  
 111 and the school district within 48 hours if charged with any  
 112 disqualifying offense while he or she is employed or under  
 113 contract in that capacity.

114 (b) A person who willfully fails to comply with paragraph  
 115 (a) commits a felony of the third degree, punishable as provided  
 116 in s. 775.082, s. 775.083, or s. 775.084, Florida Statutes.

117       (3) (a) This section does not apply to law enforcement  
 118 officers, as defined in s. 943.10, Florida Statutes, assigned by  
 119 their employing agencies to work on school grounds as part of  
 120 their official duties.

121       (b) This section does not apply to contractors who due to  
 122 the nature of their occupation or business are required by law to  
 123 submit to a level 2 background screening under chapter 435,  
 124 Florida Statutes, for licensing, employment, or other purposes  
 125 when such criminal history records check was processed within 3  
 126 years prior to the date of contract and such license or other  
 127 certificate is current and in good standing. Such contractual  
 128 personnel must still undergo a check of the state sexual predator  
 129 and sexual offender registries and the national registry of such  
 130 offenders.

131       (c) Contractual personnel employed by any public utility  
 132 that files an affidavit with the school district that states that  
 133 all field employees who have access to school grounds when  
 134 students are present have been checked against the state sexual  
 135 predator and sexual offender registries and the national registry  
 136 of such offenders are not required to undergo an additional  
 137 screening under this section. For purposes of this paragraph,  
 138 "public utility" includes any public or private utility, such as,  
 139 but not limited to, those providing sanitary sewers, water  
 140 service, electricity, liquefied petroleum gas, natural gas, cable  
 141 television, or telecommunications services.

142       Section 3. This act shall take effect July 1, 2006.  
 143       ll take effect July 1, 2006.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 61 CS Postsentencing DNA Testing
SPONSOR(S): Quinones and others
TIED BILLS: None IDEN./SIM. BILLS: SB 186

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: 1) Governmental Operations Committee, 6 Y, 0 N, w/CS, Williamson, Everhart. Row 2: 2) Criminal Justice Committee, Cunningham, Kramer. Row 3: 3) Justice Appropriations Committee. Row 4: 4) State Administration Council. Row 5: 5) (blank).

SUMMARY ANALYSIS

Current law provided a four-year window for a convicted person claiming innocence to file a postconviction motion seeking the testing of DNA evidence. The four-year window expired October 1, 2005.

The bill removes the four-year time limitation and expands those eligible to request DNA testing. Any person convicted of a felony and sentenced, including those who pled guilty, may petition the court for postconviction DNA testing. They may petition for the testing at any time following the date that the judgment and sentence is final. In addition, the bill requires the maintenance of physical evidence until the defendant's sentence is completed.

Application of the bill's provisions is retroactive to October 1, 2005.

The Florida Department of Law Enforcement estimates that the fiscal impact of the bill ranges between \$725,072.88 and \$2,088,000 for the first year.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government** – The bill requires governmental entities to maintain physical evidence for a longer period.

**Safeguard individual liberty** – The bill allows any person to file a petition for postconviction DNA testing without any deadline for filing the motion.

#### B. EFFECT OF PROPOSED CHANGES:

##### EFFECT OF BILL

The bill deletes the timeframe for filing petitions for postconviction DNA (deoxyribonucleic acid) testing. Current law provides a four-year window for a person maintaining his or her innocence to file a postconviction motion seeking the testing of DNA evidence. The four-year window expired October 1, 2005.

The bill provides that any person convicted<sup>1</sup> of a felony and sentenced may petition the court for postconviction DNA testing at any time following the date that the judgment and sentence is final. As such, a person who pleads guilty or nolo contendere is eligible to petition the court for DNA testing. Current law only allows a person who was found guilty after a trial to petition the court for postconviction DNA testing.

The bill requires the maintenance of physical evidence until the defendant's sentence is completed. Governmental entities cannot dispose of the evidence prior to the defendant's completion of his or her sentence.

Application of the bill's provisions is retroactive to October 1, 2005.

##### BACKGROUND

###### GENERAL BACKGROUND

The legislature first addressed the issue of postconviction DNA testing in 2001. It gave a person, convicted at trial and sentenced, a statutory right to petition for postconviction DNA testing of physical evidence collected at the time of the crime. This right is based on the assertion that the DNA test results could exonerate that person or alternatively reduce the sentence.<sup>2</sup> In order to petition the court, the person must:

- Be convicted at trial and sentenced;
- Show that his or her identity was a genuinely disputed issue in the case and why;
- Claim to be innocent; and
- Meet the reasonable probability standard.<sup>3</sup>

<sup>1</sup> The term "conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld. See, e.g. s. 960.0011, F.S.

<sup>2</sup> See ch. 2001-97, L.O.F.; ss. 925.11 and 943.3251, F.S.

<sup>3</sup> The reasonable probability standard provides that the person would have been acquitted or received a lesser sentence if DNA testing was performed at the time of trial or at the time of the petition under the evolving forensic DNA testing technologies.

If the trial court determines that the facts are sufficiently alleged, the state attorney must respond within 30 days pursuant to court order. The trial court must make a determination based on a finding of whether:

- The physical evidence that may contain DNA still exists;
- The results of DNA testing of that evidence would have been admissible at trial;
- There is reliable proof that the evidence has not been materially altered;
- There is reliable proof that the evidence would be admissible at a future hearing; and
- A reasonable probability exists that the defendant would have been acquitted of the crime or received a lesser sentence if DNA test results had been admitted at trial.

If the court denies the petition for DNA testing, there is a 15-day period to file a motion for rehearing. The 30-day period for filing an appeal is tolled until the court rules on the motion. Otherwise, either party has 30 days to file an appeal of the ruling. The order denying relief must include notice of these time limitations. If the court grants the petition for DNA testing, the defendant is assessed the cost of the DNA testing unless the court finds that the defendant is indigent. The Florida Department of Law Enforcement (FDLE) performs the DNA test pursuant to court order.<sup>4</sup> FDLE provides the test results to the court, the defendant, and the prosecuting authority.

#### **CURRENT TIME LIMITATIONS**

Current law imposes a four-year period for filing such petitions. The time limitation is measured from the later of the following dates based on the law's effective date of October 1, 2003:

- Four years from the date the judgment and sentence became final;
- Four years from the date the conviction was affirmed on direct appeal;
- Four years from the date collateral counsel was appointed;<sup>5</sup> or
- October 1, 2005.<sup>6</sup>

The law provides a catchall exception to the four-year time limitation. A person convicted at trial and sentenced can petition at any time for postconviction DNA testing if the facts upon which the petition is founded were unknown or could not have been known with the exercise of due diligence.

#### **PRESERVATION OF PHYSICAL EVIDENCE**

Current law requires preservation of physical evidence collected at the time of the crime if postconviction DNA testing is possible.<sup>7</sup> With the exception of death penalty cases, governmental entities maintain physical evidence for at least four years or until October 1, 2005.<sup>8</sup> Evidence in death penalty cases is preserved for 60 days after the execution of the sentence. Governmental entities can dispose of physical evidence earlier under certain conditions.<sup>9</sup>

Most recently, the governor issued Executive Order 05-160.<sup>10</sup> The order requires governmental entities in the possession of any physical evidence to preserve the evidence if DNA testing may be requested.

#### **RIGHTS TO APPEAL, GENERALLY**

Under current law, a convicted person has certain rights to appeal on direct appeal or on matters that are collateral to the conviction.<sup>11</sup>

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<sup>4</sup> See s. 943.3251, F.S.

<sup>5</sup> This is applicable solely in death penalty cases.

<sup>6</sup> Section 925.11(1)(b), F.S.

<sup>7</sup> Section 925.11(4), F.S.

<sup>8</sup> See s. 925.11(4), F.S.

<sup>9</sup> Section 925.11(4)(c), F.S., provides the conditions for early disposal of physical evidence. Any counsel of record, the prosecuting authority, and the Attorney General must receive notice prior to the disposition of evidence. Within 90 days after notification, if the notifying governmental entity does not receive either a copy of a petition for postconviction DNA testing or a request not to dispose of the evidence because of the filing of a petition, the evidence may be disposed of, unless some other provision of law or rule requires its preservation or retention.

<sup>10</sup> The order was issued August 5, 2005.

## DIRECT APPEALS AFTER TRIAL

Matters raised on direct appeal include evidentiary rulings made by the trial court during the course of the defendant's trial, and other matters objected to during the course of the trial such, as the jury instructions, prosecutorial misconduct, and procedural rulings made by the trial court. The legislature codified the "contemporaneous objection" rule. It is a procedural bar that prevents defendants from raising issues on appeal not objected to at the trial level. The rule allows trial court judges to consider rulings carefully, perhaps correcting potential mistakes at the trial level.

In *State v. Jefferson*,<sup>12</sup> the Florida Supreme Court found that the provision did not represent a jurisdictional bar to appellate review in criminal cases, but rather that the legislature acted within its power to "place reasonable conditions" upon this right to appeal.<sup>13</sup>

## APPEAL OR REVIEW AFTER A PLEA OF GUILTY OR NOLO CONTENDERE

Appeal rights are limited when a defendant pleads guilty or *nolo contendere* (no contest). Such a plea means a defendant chooses to waive the right to take his or her case to trial.<sup>14</sup>

In *Robinson v. State*,<sup>15</sup> the Florida Supreme Court reviewed the constitutionality of the statutory provision. The court upheld the statute making it clear that once a defendant pleads guilty the only issues for appeal are actions that took place contemporaneous with the plea. The court stated: "[t]here is an exclusive and limited class of issues which occur contemporaneously with the entry of the plea that may be the proper subject of an appeal. To our knowledge, they would include only the following: (1) subject matter jurisdiction, (2) the illegality of the sentence, (3) the failure of the government to abide by the plea agreement, and (4) the voluntary and intelligent character of the plea." These principles continue to control.

## COLLATERAL REVIEW

Postconviction proceedings, also known as collateral review,<sup>16</sup> usually involve claims that:

- The defendant's trial counsel was ineffective;
- There is newly discovered evidence; and
- The prosecution failed to disclose exculpatory evidence.

The defendant must file a motion in the trial court where he or she was tried and sentenced.<sup>17</sup> Unless the record in the case conclusively shows that the defendant is entitled to no relief, the trial court must order the state attorney to respond to the motion and may then hold an evidentiary hearing.<sup>18</sup> If the trial court denies the motion for postconviction relief, with or without holding an evidentiary hearing, the defendant is entitled to appeal this denial to the District Court of Appeal with jurisdiction over the circuit court where the motion was filed.<sup>19</sup>

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<sup>11</sup> Article V, section 4(b) of the Florida Constitution conveys a constitutional protection of this right. See *Amendments to the Florida Rules of Appellate Procedure*, 696 So.2d 1103 (Fla. 1996).

<sup>12</sup> 758 So.2d 661 (Fla. 2000).

<sup>13</sup> *Id.* at 664 (citing *Amendments to the Florida Rules of Appellate Procedure, supra*, at 1104-1105).

<sup>14</sup> Section 924.06(3), F.S.

<sup>15</sup> 373 So.2d 898 (Fla. 1979).

<sup>16</sup> Procedurally, collateral review is generally governed by FLA. R. CRIM. P. 3.850.

<sup>17</sup> The motion must be filed within two years of the finalization of the defendant's judgment and sentence unless the motion alleges that the facts on which the claim is based were unknown to the defendant and could not have been ascertained by the exercise of due diligence. See FLA. R. CRIM. P. 3.850(b).

<sup>18</sup> See FLA. R. CRIM. P. 3.850(d).

<sup>19</sup> In order to grant a new trial based on newly discovered evidence, the trial court must first find that the evidence was unknown and could not have been known at the time of trial through due diligence. In addition, the trial court must find that the evidence is of such a nature that it would probably produce an acquittal on retrial. See *Jones v. State*, 709 So.2d 512 (Fla. 1998); *Torres-Arboleda v. Dugger*, 636 So.2d 1321 (Fla. 1994).

Motions for postconviction relief based on newly discovered evidence must be raised within two years of the discovery of such evidence.<sup>20</sup> The Florida Supreme Court has held that the two-year time limit for filing a motion based on newly discovered evidence begins to run on a defendant's postconviction request for DNA testing when the testing method became available. For example, in *Sireci v. State*,<sup>21</sup> the Florida Supreme Court held that the defendant's postconviction claim filed on his 1976 conviction, which was filed in 1993, was time barred because "DNA typing was recognized in this state as a valid test as early as 1988."<sup>22</sup>

A defendant is entitled to challenge a conviction and death sentence in three stages. First, the public defender or private counsel must file a direct appeal to the Florida Supreme Court. An appeal of that decision is to the U.S. Supreme Court by petition for writ of *certiorari*. Second, if the U.S. Supreme Court rejects the appeal, the defendant's sentence becomes final and the state collateral postconviction proceeding or collateral review begins.<sup>23</sup> Third, the defendant seeks a federal writ of *habeas corpus*.<sup>24</sup> Appeals of federal *habeas* petitions from Florida are to the U.S. Court of Appeals for the Eleventh Circuit and then to the U.S. Supreme Court. Finally, once the governor signs a death warrant, a defendant typically files a second or successive collateral postconviction motions and a second federal *habeas* petition, along with motions to stay the execution.

#### C. SECTION DIRECTORY:

Section 1 amends s. 925.11, F.S., relating to postconviction DNA testing.

Section 2 provides an effective date of "upon becoming a law," applied retroactively to October 1, 2005.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill does not appear to have a fiscal impact on state revenues.

##### 2. Expenditures:

Petitions generated by the bill will have an indeterminate impact on trial courts, state attorneys, public defenders, the Department of Corrections, and FDLE. FDLE estimates that costs could range between \$725,073 and \$2,088,000 for the first year.<sup>25</sup> See FISCAL COMMENTS.

The bill may impose an indeterminate increase in costs incurred in storage and preservation of evidence in the custody of state governmental entities including, but not limited to, FDLE, the courts, state attorneys' offices, public and private labs, hospital facilities, public defenders' offices and capital collateral offices.

<sup>20</sup> See *Adams v. State*, 543 So.2d 1244 (Fla. 1989).

<sup>21</sup> 773 So.2d 34 (Fla. 2000).

<sup>22</sup> *Id.* at 43. See also *Ziegler v. State*, 654 So.2d 1162 (Fla. 1995).

<sup>23</sup> Rules 3.850, 3.851 and 3.852, FLA. R. CRIM. P., control state collateral postconviction proceedings. Unlike a direct appeal, a collateral postconviction proceeding raises claims that are "collateral" to what transpired in the trial court. Consequently, such postconviction proceedings usually involve three categories of claims: ineffective assistance of trial counsel; denial of due process by the prosecution's suppression of material, exculpatory evidence; and newly discovered evidence, for example, post-trial recantation by a principal witness. Since the consideration of these claims often require new fact-finding, collateral postconviction motions are filed in the trial court that sentenced the defendant to death. Appeals from the grant or denial of postconviction relief are to the Florida Supreme Court.

<sup>24</sup> This is a proceeding controlled by Title 28 U.S.C. § 2254(a). Federal *habeas* allows a defendant to petition a U.S. district court to review whether the conviction or sentence violates or was obtained in violation of federal law. Federal *habeas* is almost exclusively limited to consideration of claims previously asserted on direct appeal or in state postconviction proceedings.

<sup>25</sup> FDLE Fiscal Analysis of HB 61 by Representative Quinones, October 26, 2005.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

The bill does not appear to have a fiscal impact on local revenues.

**2. Expenditures:**

The bill may impose an indeterminate increase in costs incurred in storage and preservation of evidence in the custody of local governmental entities, including, but not limited to, police and sheriff's departments, clerks of the court,<sup>26</sup> and hospital facilities.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may impose an indeterminate increase in costs incurred in storage and preservation of evidence in the custody of nongovernmental entities, including, but not limited to, private labs, hospital facilities, and private counsels' offices.

**D. FISCAL COMMENTS:<sup>27</sup>**

FDLE calculates the fiscal impact of the bill based on two different scenarios:

- Scenario 1. FDLE performs the postconviction DNA testing analysis.
- Scenario 2. A private vendor performs the analysis because of outsourcing.

**BACKGROUND**

Currently there are 60,479 inmates in correctional facilities under the Department of Correction's jurisdiction for crimes including murder, sexual offenses, robbery, burglary and other crimes against people. Approximately four percent or 2,419 are eligible for postconviction DNA testing under the current statute. FDLE has received between 100 and 150 cases for testing. Six percent of the eligible inmates have sought postconviction DNA testing. If FDLE assumes that six percent of the newly eligible defendants will petition for postconviction DNA testing then the department can anticipate that it will receive approximately 3,483 cases. That is approximately 696 cases per year over a five-year period.

**SCENARIO 1**

**FTE**

Six hundred ninety six cases require approximately 4.8 FTEs. The analysts require one FTE for support. Cost for analysts is \$51,952.56 each (salary plus benefits). Cost for a Forensic Technologist is \$37,975.08 (salary plus benefits).

FTE (6)

5 Crime Laboratory Analysts	\$259,762.80
1 Forensic Technologist	<u>37,975.08</u>

FTE Total: \$297,737.88 (recurring)

<sup>26</sup> Per the Florida Association of Court Clerks and Comptrollers (FACC), the clerk is required to preserve evidence in a criminal case "virtually forever—law requires clerks to hold evidence in a criminal case in the event there could potentially be an appeal... there are appeals even on death row." The clerks are fine with the suggested extended timeframes in the bill. Email from the FACC, October 11, 2005.

<sup>27</sup> FDLE Fiscal Analysis of HB 61 by Representative Quinones, October 26, 2005.

**COST FOR KITS AND EXPENDABLES**

Assuming each case has five samples for DNA analysis, the number of samples is 3480, requiring 35 DNA kits at \$2,981 per kit. An additional \$50,000 is required for other expendables used in DNA analysis.

Expense Dollars Total: \$154,335 (recurring)

**REQUIRED EQUIPMENT**

The DNA analysis unit requires the following equipment:

2 Thermal Cyclers (\$8000 each)	\$ 16,000
1 Genetic Analyzer (\$157,000)	157,000
1 Real Time PCR Instrument (\$50,000)	50,000
5 Microscopes (\$3,000 each)	15,000
5 Centrifuges (\$2,000 each)	10,000
2 Biological Hoods (\$15,000 each)	30,000
2 Incubators (\$5,000 each)	<u>10,000</u>
Total:	\$273,000 (non-recurring)

**TOTAL FISCAL IMPACT**

First Year: \$725,072.88  
Each year thereafter: \$452,072.88

**SCENARIO 2**

The cost for outsourcing cases to a private vendor is between \$1,500 and \$3,000 per case depending on the type of analysis and the size of the case. Therefore, the total cost for outsourcing 686 cases is between \$1,044,000 and \$2,088,000 each year for at least five years.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution, because it is a criminal law.

**2. Other:**

**SEPARATION OF POWERS: SUBSTANCE VERSUS PROCEDURE**

The bill could raise concerns regarding separation of powers.

**CONSTITUTIONAL AUTHORITY**

Under Article V, Section 2 of the Florida Constitution, the Supreme Court “shall adopt rules of practice and procedure in all courts . . .” The section also authorizes the legislature to repeal court rules of procedure with a two-thirds vote of the membership of both houses.

**SEPARATION OF POWERS**

Article II, Section 3 of the Florida Constitution provides that “[t]he powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided



herein." The legislature has the exclusive power to enact substantive laws<sup>28</sup> while Article V, section 2 of the Florida Constitution grants the Florida Supreme Court the power to "adopt rules for the practice and procedure in all courts, including the time for seeking appellate review."

Changes to substantive law by court rules of procedure appear to violate the separation of powers provision of the Florida Constitution.<sup>29</sup>

### **DISTINGUISHING SUBSTANCE FROM PROCEDURE**

Generally speaking, "substantive law" involves matters of public policy affecting the authority of government and rights of citizens relating to life, liberty, and property. Court "rules of practice and procedure" govern the administration of courts and the behavior of litigants within a court proceeding. In practice, determining the difference is not simple or clear. In 1973, Justice Adkins described the difference between substance and procedure:

The entire area of substance and procedure may be described as a "twilight zone" and a statute or rule will be characterized as substantive or procedural according to the nature of the problem for which a characterization must be made. From extensive research, I have gleaned the following general tests as to what may be encompassed by the term "practice and procedure." Practice and procedure encompass the course, form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights or obtains redress for their invasion. "Practice and procedure" may be described as the machinery of the judicial process as opposed to the product thereof. Examination of many authorities leads me to conclude that substantive law includes those rules and principles which fix and declare the primary rights of individuals as respects their persons and their property. As to the term "procedure," I conceive it to include the administration of the remedies available in cases of invasion of primary rights of individuals. The term "rules of practice and procedure" includes all rules governing the parties, their counsel and the Court throughout the progress of the case from the time of its initiation until final judgment and its execution.<sup>30</sup>

This "twilight zone" remains to this day, and causes, in the analysis of many enactments, a difficult determination of whether a matter is procedural or substantive.

### **DNA TESTING**

In 2001, the legislature created a limited statutory right to give defendants in closed criminal cases an additional opportunity to prove their innocence using DNA evidence.<sup>31</sup> It provided a two-year period for pending and future cases that expired on October 1, 2003. Shortly after enactment, the court passed a rule to implement the statute reflecting the statutory deadlines.<sup>32</sup> Prior to the October 1 expiration, the court issued an order temporarily suspending the deadline. In addition, the court ordered government entities to store evidence in all closed criminal cases indefinitely.<sup>33</sup> The opinion of the court suspending the statutory deadline was a four to three decision. Justice Wells said in dissent, ". . . this Court does not have jurisdiction to 'suspend' a provision of a lawfully enacted

<sup>28</sup> See Art. III, s. 1, Fla. Const.; *Allen v. Butterworth*, 756 So.2d 52 (Fla. 2000); *Johnson v. State*, 336 So.2d 93 (Fla. 1976).

<sup>29</sup> *Id.*

<sup>30</sup> *In re Florida Rules of Criminal Procedure*, 272 So.2d 65, 66 (Fla. 1973).

<sup>31</sup> See s. 925.11, F.S.; ch. 2001-197, L.O.F.

<sup>32</sup> See *Amendment to Florida Rules of Criminal Procedure Creating Rule 3.853*, 807 So.2d 633 (Fla. 2001).

<sup>33</sup> See *Amendments to Florida Rule of Criminal Procedure 3.853(d)(1)(A) (Postconviction DNA Testing)*, 857 So.2d 190 (Fla. 2003).

statute or to mandate that evidence . . . be maintained beyond the period the statute specifically states that the evidence is to be maintained."<sup>34</sup>

In 2004, the legislature further amended the law to extend the period from two to four years and provided for expiration October 1, 2005.<sup>35</sup> In September 2004, the court amended its rule to reflect the statutory changes.<sup>36</sup> The court amended the rule, once again, to extend the deadline from October 1, 2005, to July 1, 2006.<sup>37</sup>

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The Florida Bar "adopted a legislative position calling for a permanent method for state inmates to seek DNA testing that could exonerate them."<sup>38</sup> The Bar took no position regarding the availability of postconviction DNA testing for those who plead guilty or no contest.<sup>39</sup>

The Florida Innocence Initiative contends that maintenance of evidence is the most critical aspect of preserving a defendant's right to DNA testing.<sup>40</sup>

FDLE recommends that the department receive notice at the time a motion for postconviction DNA testing is filed rather than when it is signed. FDLE staff could then assist the parties and expedite the testing process.<sup>41</sup>

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On October 19, 2005, the Governmental Operations Committee adopted a strike-all amendment and reported the bill favorably with Committee Substitute. The strike-all amendment authorizes postconviction DNA testing of any person convicted of a felony and sentenced, at any time, rather than limiting testing to those persons maintaining their innocence. The strike-all amendment removes the authorization for early disposal of physical evidence by governmental entities.

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<sup>34</sup> Justice Wells was joined by Justices Cantero and Bell. Comments of the Criminal Court Steering Committee, October 13, 2003, at 8 and 9 n.33, (citing Wells, J., dissenting in *Amendments to Florida Rule of Criminal Procedure 3.853(d)(1)(A)*).

<sup>35</sup> See ch. 2004-67, L.O.F.

<sup>36</sup> See 884 So.2d 934.

<sup>37</sup> See *Amendments to Florida Rule of Criminal Procedure 3.853(D)*, SC05-1702 (September 29, 2005).

<sup>38</sup> Blankenship, G. "Bar supports permanent DNA reforms," *The Florida Bar News*, September 15, 2005.

<sup>39</sup> *Id.*

<sup>40</sup> Pudlow, J. "Momentum builds for extending DNA testing," *The Florida Bar News*, September 1, 2005.

<sup>41</sup> FDLE Analysis of HB 61, "Issues Related to FDLE," October 26, 2005.



HB 61

2006  
CS

CHAMBER ACTION

1 The Governmental Operations Committee recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to the postsentencing testing of DNA  
7 evidence; amending s. 925.11, F.S.; revising the  
8 circumstances under which a person who has been sentenced  
9 for committing a felony may petition the court for  
10 postsentencing testing of DNA evidence; abolishing certain  
11 time limitations imposed upon such testing; authorizing a  
12 governmental entity to dispose of physical evidence if the  
13 sentence imposed has expired and another law or rule does  
14 not require that the evidence be retained; providing for  
15 retroactive application; providing an effective date.

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

18  
19 Section 1. Section 925.11, Florida Statutes, is amended to  
20 read:

21 925.11 Postsentencing DNA testing.--

22 (1) PETITION FOR EXAMINATION.--

HB61

2006  
CS

23 (a) A person who has been convicted of a felony and  
 24 sentenced for committing that offense ~~tried and found guilty of~~  
 25 ~~committing a crime and has been sentenced~~ by a court established  
 26 by the laws of this state may petition that court to order the  
 27 examination of physical evidence collected at the time of the  
 28 investigation of the crime for which he or she has been  
 29 sentenced which may contain DNA (deoxyribonucleic acid) and  
 30 which would exonerate that person or mitigate the sentence that  
 31 person received.

32 (b) A petition for postsentencing DNA testing may be filed  
 33 or considered at any time following the date that the judgment  
 34 and sentence in the case becomes final. ~~Except as provided in~~  
 35 ~~subparagraph 2., a petition for postsentencing DNA testing may~~  
 36 ~~be filed or considered.~~

37 1. ~~Within 4 years following the date that the judgment and~~  
 38 ~~sentence in the case becomes final if no direct appeal is taken,~~  
 39 ~~within 4 years following the date that the conviction is~~  
 40 ~~affirmed on direct appeal if an appeal is taken, within 4 years~~  
 41 ~~following the date that collateral counsel is appointed or~~  
 42 ~~retained subsequent to the conviction being affirmed on direct~~  
 43 ~~appeal in a capital case, or by October 1, 2005, whichever~~  
 44 ~~occurs later; or~~

45 2. ~~At any time if the facts on which the petition is~~  
 46 ~~predicated were unknown to the petitioner or the petitioner's~~  
 47 ~~attorney and could not have been ascertained by the exercise of~~  
 48 ~~due diligence.~~

49 (2) METHOD FOR SEEKING POSTSENTENCING DNA TESTING.--

HB 61

2006  
CS

50 (a) The petition for postsentencing DNA testing must be  
51 made under oath by the sentenced defendant and must include the  
52 following:

53 1. A statement of the facts relied on in support of the  
54 petition, including a description of the physical evidence  
55 containing DNA to be tested and, if known, the present location  
56 or the last known location of the evidence and how it was  
57 originally obtained;

58 2. A statement that the evidence was not previously tested  
59 for DNA or a statement that the results of any previous DNA  
60 testing were inconclusive and that subsequent scientific  
61 developments in DNA testing techniques would likely produce a  
62 definitive result;

63 3. A statement that the sentenced defendant is innocent  
64 and how the DNA testing requested by the petition will exonerate  
65 the defendant of the crime for which the defendant was sentenced  
66 or will mitigate the sentence received by the defendant for that  
67 crime;

68 4. A statement that identification of the defendant is a  
69 genuinely disputed issue in the case, and why it is an issue;

70 5. Any other facts relevant to the petition; and

71 6. A certificate that a copy of the petition has been  
72 served on the prosecuting authority.

73 (b) Upon receiving the petition, the clerk of the court  
74 shall file it and deliver the court file to the assigned judge.

75 (c) The court shall review the petition and deny it if it  
76 is insufficient. If the petition is sufficient, the prosecuting

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77 authority shall be ordered to respond to the petition within 30  
78 days.

79 (d) Upon receiving the response of the prosecuting  
80 authority, the court shall review the response and enter an  
81 order on the merits of the petition or set the petition for  
82 hearing.

83 (e) Counsel may be appointed to assist the sentenced  
84 defendant if the petition proceeds to a hearing and if the court  
85 determines that the assistance of counsel is necessary and makes  
86 the requisite finding of indigency.

87 (f) The court shall make the following findings when  
88 ruling on the petition:

- 89 1. Whether the sentenced defendant has shown that the  
90 physical evidence that may contain DNA still exists;
- 91 2. Whether the results of DNA testing of that physical  
92 evidence would be admissible at trial and whether there exists  
93 reliable proof to establish that the evidence has not been  
94 materially altered and would be admissible at a future hearing;  
95 and
- 96 3. Whether there is a reasonable probability that the  
97 sentenced defendant would have been acquitted or would have  
98 received a lesser sentence if the DNA evidence had been admitted  
99 at trial.

100 (g) If the court orders DNA testing of the physical  
101 evidence, the cost of such testing may be assessed against the  
102 sentenced defendant unless he or she is indigent. If the  
103 sentenced defendant is indigent, the state shall bear the cost  
104 of the DNA testing ordered by the court.

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105 (h) Any DNA testing ordered by the court shall be carried  
106 out by the Department of Law Enforcement or its designee, as  
107 provided in s. 943.3251.

108 (i) The results of the DNA testing ordered by the court  
109 shall be provided to the court, the sentenced defendant, and the  
110 prosecuting authority.

111 (3) RIGHT TO APPEAL; REHEARING.--

112 (a) An appeal from the court's order on the petition for  
113 postsentencing DNA testing may be taken by any adversely  
114 affected party.

115 (b) An order denying relief shall include a statement that  
116 the sentenced defendant has the right to appeal within 30 days  
117 after the order denying relief is entered.

118 (c) The sentenced defendant may file a motion for  
119 rehearing of any order denying relief within 15 days after  
120 service of the order denying relief. The time for filing an  
121 appeal shall be tolled until an order on the motion for  
122 rehearing has been entered.

123 (d) The clerk of the court shall serve on all parties a  
124 copy of any order rendered with a certificate of service,  
125 including the date of service.

126 (4) PRESERVATION OF EVIDENCE.--

127 (a) Governmental entities that may be in possession of any  
128 physical evidence in the case, including, but not limited to,  
129 any investigating law enforcement agency, the clerk of the  
130 court, the prosecuting authority, or the Department of Law  
131 Enforcement shall maintain any physical evidence collected at



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132 | the time of the crime for which a postsentencing testing of DNA  
133 | may be requested.

134 |       ~~(b) Except for a case in which the death penalty is~~  
135 | ~~imposed, the evidence shall be maintained for at least the~~  
136 | ~~period of time set forth in subparagraph (1)(b)1. In a case in~~  
137 | ~~which the death penalty is imposed, the evidence shall be~~  
138 | ~~maintained for 60 days after execution of the sentence. In all~~  
139 | ~~other cases, a governmental entity may dispose of the physical~~  
140 | ~~evidence if the term of the sentence imposed in the case has~~  
141 | ~~expired and~~

142 |       ~~(c) A governmental entity may dispose of the physical~~  
143 | ~~evidence before the expiration of the period of time set forth~~  
144 | ~~in paragraph (1)(b) if all of the conditions set forth below are~~  
145 | ~~met.~~

146 |           ~~1. The governmental entity notifies all of the following~~  
147 | ~~individuals of its intent to dispose of the evidence: the~~  
148 | ~~sentenced defendant, any counsel of record, the prosecuting~~  
149 | ~~authority, and the Attorney General.~~

150 |           ~~2. The notifying entity does not receive, within 90 days~~  
151 | ~~after sending the notification, either a copy of a petition for~~  
152 | ~~postsentencing DNA testing filed pursuant to this section or a~~  
153 | ~~request that the evidence not be destroyed because the sentenced~~  
154 | ~~defendant will be filing the petition before the time for filing~~  
155 | ~~it has expired.~~

156 |           ~~3. no other provision of law or rule requires that the~~  
157 | ~~physical evidence be preserved or retained.~~

158 |       Section 2. This act shall take effect upon becoming a law  
159 | and shall apply retroactively to October 1, 2005.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 271                      Custody of Criminal Defendants  
**SPONSOR(S):** Kreegel and others  
**TIED BILLS:**                                  **IDEN./SIM. BILLS:** SB 688

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Cunningham <i>SC</i>	Kramer <i>JK</i>
2) Justice Appropriations Committee			
3) Justice Council			
4) _____			
5) _____			

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**SUMMARY ANALYSIS**

Currently, if a prisoner in a state institution is arrested, an outside law enforcement agency (usually the sheriff of the county where the alleged crime occurred) comes to the state institution, arrests the prisoner, and transports the prisoner to a county facility. Counties generally return such prisoners to the prisoner's state institution when the prisoner is no longer needed in court or when a prisoner does not have impending court dates. If the prisoner's presence is later required in court, the sheriff returns to the state institution, assumes temporary custody of the prisoner, and transports the prisoner to a county facility.

This bill gives courts the authority to order arrested persons who are in the custody of the Department at the time of arrest to remain in the Department's custody pending transportation and transfer to the custody of the sheriff of the county in which the indictment, information, or affidavit is filed. Because the bill appears to codify an act that, in large part, is currently being practiced, it would not appear to have a significant fiscal impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government** – The bill authorizes courts to order arrested persons who are in the custody of the Department of Corrections to remain in the department's custody pending transportation and transfer to the sheriff of the county in which the indictment, information, or affidavit is filed.

#### B. EFFECT OF PROPOSED CHANGES:

In 2003, three inmates of Charlotte Correctional Institution were arrested for the murder of Correctional Officer Darla Lathrem and a fellow inmate during an alleged escape attempt. All three inmates were serving life sentences at the time of the murder and have violent criminal histories. Subsequent to the attacks, the Department of Corrections (Department) transferred the three inmates to Florida State Prison (FSP), a maximum security institution. After the defendants were indicted<sup>1</sup>, counsel for one of the defendants moved the court to have the defendants transferred to the Charlotte County jail pending trial, pursuant to s. 907.04, F.S.<sup>2</sup> Over the objection of the Sheriff and the State, the trial court interpreted s. 907.04, F.S., as mandating that the defendants be held in the custody of the Charlotte County Sheriff in the county jail pending disposition of the charges. At this time, the defendants are still being housed at the Charlotte County jail.

Currently, if a state prisoner is arrested (either for a crime committed while incarcerated or for a crime committed prior to being incarcerated), an outside law enforcement agency<sup>3</sup> (usually the sheriff of the county where the alleged crime occurred) comes to the state institution, arrests the prisoner, assumes temporary custody of the prisoner, and transports the prisoner to a county facility.<sup>4</sup> Currently, counties generally return such prisoners to the prisoner's state institution when the prisoner is no longer needed in court or when a prisoner does not have impending court dates.<sup>5</sup> If the prisoner's presence is later required in court, the sheriff returns to the state institution, assumes temporary custody of the prisoner, and transports the prisoner to a county facility.<sup>6</sup>

This bill gives courts the authority to order arrested persons who are in the custody of the Department at the time of arrest to remain in the Department's custody pending transportation and transfer to the custody of the sheriff of the county in which the indictment, information, or affidavit is filed.

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<sup>1</sup> The defendants were indicted on charges of capital murder and escape.

<sup>2</sup> Section 907.04, F.S., states in part that if a person who is arrested does not have a right to bail for the offense charged, he or she shall be delivered immediately into the custody of the sheriff of the county in which the indictment, information, or affidavit is filed.

<sup>3</sup> Pursuant to s. 944.31, F.S., Department of Corrections' inspectors who have been designated by the Secretary as law enforcement officers have the authority to arrest state prisoners, but only in certain circumstances. Correctional officers do not have arrest powers. Thus, in most instances, it is not a Department of Corrections' employee who arrests inmates who have committed a crime, but rather an outside law enforcement agency.

<sup>4</sup> Representatives with the Department state that there are occasions where the Department transports a prisoner to a county facility.

<sup>5</sup> Prisoners must be returned to the state institution from which they came. Thus, if a prisoner has numerous court proceedings to attend in a short time-frame, a county that is geographically far away from a prisoner's institution (i.e. the prisoner is incarcerated in north Florida and the new arrest originates from Dade county) may elect to keep the prisoner in a county facility rather than transport the prisoner back and forth across the state numerous times. Counties can also request that DOC transfer a prisoner to a state institution that is closer to the arresting county, though this is not always possible due to lack of bed space, security concerns, etc...

<sup>6</sup> Section 944.17(8), F.S., states in part that if a state prisoner's presence is required in court for any reason after the sheriff has relinquished custody to the Department of Corrections, the court shall issue an order for the sheriff to assume temporary custody and transport the prisoner to the county jail pending the court appearance.

C. SECTION DIRECTORY:

**Section 1.** Amends s. 907.04, F.S.; providing that if a person is arrested, and at the time of the arrest is in the custody of the Department under sentence of imprisonment, the court may order that person to remain in the Department's custody pending transportation and transfer to the custody of the sheriff of the county in which the indictment, information, or affidavit is filed.

**Section 2.** This act takes effect on July 1, 2006.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

**State Government**

The Department states that data to determine the approximate number of inmates this bill would affect is unavailable. However, it appears that counties currently return many state prisoners who have been arrested to state institutions once the prisoner does not have any impending court dates. Thus, because the bill appears to codify an act that, in large part, is currently being practiced, it would not appear to have a significant fiscal impact.

**Local Government**

In some instances, a prisoner may be housed in a prison that is hundreds of miles from the county where the charging document was filed (i.e. the prisoner is incarcerated in north Florida and the new arrest originates from Dade county). If a court orders that the Department retain custody of such prisoner, and that prisoner later has a court appearance, the sheriff will be responsible for transporting the prisoner from the state institution to the county where the charging document is filed.<sup>7</sup>

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

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<sup>7</sup> s. 944.17(8), F.S.

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As drafted, the bill would allow a court to order a state prisoner who has been arrested to remain in the Department's custody *pending transportation and transfer to the custody of the sheriff in the county of the county in which the indictment, information, or affidavit is filed, as necessary for further proceedings*. However, in most cases where a state prisoner is arrested, the sheriff assumes temporary custody of the prisoner from the Department and transports the prisoner to a county facility within 24 hours.<sup>8</sup> Thus, the bill's language authorizing a court to order such an inmate to remain in the Department's custody *pending transportation and transfer to the custody of the sheriff* has little effect. This issue could be resolved by adding language authorizing a court to order the inmate to remain in the Department's custody *pending disposition of the inmate's new charge, or until the inmate's underlying sentence of imprisonment expires, whichever is earlier*.

As noted above, counties currently return arrested state prisoners to state institutions if the prisoner has no impending court dates. This current practice does not require a court order. However, the bill states that *the court may order* an arrested state prisoner to remain in the Department's custody pending transportation and transfer to the sheriff. As drafted, this language may be construed to *require* a court order in order to have an arrested inmate remain in the Department's custody. Amending the bill in the following manner would eliminate this concern: "If the person who is arrested is, at the time of arrest, in the custody of the Department of Corrections under sentence of imprisonment, unless otherwise ordered by the court, such person shall remain in the department's custody pending..."

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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<sup>8</sup> Fla. R. Crim. Proc. 3.130, states that every arrested person must be taken before a judicial officer within 24 hours of arrest. Section 944.17(8), F.S., requires the sheriff to assume temporary custody of state prisoners whose presence is required in court and transport them to a county facility.



1                   A bill to be entitled  
 2           An act relating to custody of criminal defendants;  
 3           amending s. 907.04, F.S.; providing for court orders  
 4           requiring that arrestees in the custody of the Department  
 5           of Corrections at the time of arrest be retained in the  
 6           department's custody pending transfer to the custody of a  
 7           sheriff; providing an effective date.

8  
 9   Be It Enacted by the Legislature of the State of Florida:

10  
 11           Section 1. Section 907.04, Florida Statutes, is amended to  
 12   read:

13           907.04 Disposition of defendant upon arrest.--

14           (1) Except as provided in subsection (2), if a person who  
 15   is arrested does not have a right to bail for the offense  
 16   charged, he or she shall be delivered immediately into the  
 17   custody of the sheriff of the county in which the indictment,  
 18   information, or affidavit is filed. If the person who is  
 19   arrested has a right to bail, he or she shall be released after  
 20   giving bond on the amount specified in the warrant.

21           (2) If the person who is arrested is, at the time of  
 22   arrest, in the custody of the Department of Corrections under  
 23   sentence of imprisonment, the court may order that person to  
 24   remain in the department's custody pending transportation and  
 25   transfer to the custody of the sheriff of the county in which  
 26   the indictment, information, or affidavit is filed, as necessary  
 27   for further proceedings.

28           Section 2. This act shall take effect July 1, 2006.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 297

Driving and Boating Under the Influence

SPONSOR(S): Harrell

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Kramer JK	Kramer JK
2) Transportation Committee			
3) Criminal Justice Appropriations Committee			
4) Justice Council			
5)			

SUMMARY ANALYSIS

Currently, a court must order imprisonment for not less than 30 days for a fourth or subsequent driving under the influence (DUI) or boating under the influence (BUI) offense that occurs within 10 years of a prior conviction. There is no minimum mandatory term of imprisonment required if the fourth or subsequent DUI or BUI does not occur within 10 years of a prior conviction. HB 297 will require the imposition of a two year minimum mandatory sentence for a fourth or subsequent DUI or BUI conviction, regardless of when the prior conviction occurred. The judge will not be permitted to order residential drug abuse or alcoholism treatment in lieu of incarceration.

Currently for a fourth or subsequent DUI committed within 10 years of a prior conviction, the judge must order, as a condition of probation, the impoundment or immobilization of all vehicles owned by the defendant for 90 days or for the unexpired term of any lease or rental agreement that expires within 90 days. The bill requires that for a fourth or subsequent DUI (regardless of when the prior conviction occurred), the judge must order the impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization for a period of 120 days or for the unexpired term of any lease or rental agreement that expires within 120 days.

The Criminal Justice Impact Conference met on January 9, 2006 to determine the prison bed impact of this bill on the Department of Corrections. See fiscal section of this analysis for details.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill will require the imposition of a two year minimum mandatory sentence for a fourth or subsequent DUI or BUI conviction and the impoundment of the offender's vehicle for a fourth or subsequent DUI.

Promote personal responsibility: The bill increases the sanctions for DUI and BUI.

#### B. EFFECT OF PROPOSED CHANGES:

##### DUI

The offense of driving under the influence<sup>1</sup> (DUI) is committed if a person is driving or in the actual physical control of a vehicle within the state and:

- The person is under the influence of alcoholic beverages, any chemical substance or any controlled substance when affected to the extent that the person's normal faculties are impaired;
- The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

The offense is punishable as follows<sup>2</sup>:

- For a first conviction, by a fine of not less than \$250 or more than \$500 and by imprisonment for not more than 6 months
- For a second conviction, by a fine of not less than \$500 or more than \$1000 and by imprisonment for not more than 9 months. If the second conviction was for an offense committed within 5 years of the date of a prior conviction, the court must order imprisonment for not less than 10 days.<sup>3</sup>
- For a third conviction that is not within 10 years of a prior conviction, by a fine of not less than \$1000 or more than \$2500 and by imprisonment for not more than 12 months.<sup>4</sup>

A third conviction for an offense that occurs within 10 years of a prior conviction is a third degree felony, punishable by no less than 30 days in jail<sup>5</sup> and up to five years in prison and a fine of up to \$1000.<sup>6</sup> A fourth conviction, regardless of when it occurs, is a third degree felony, punishable by up to five years in prison and a fine of not less than \$1000 or more than \$5000.<sup>7</sup> If the fourth or subsequent conviction was for an offense that occurred within 10 years after the date of a prior conviction, the court must order imprisonment for not less than 30 days.<sup>8</sup>

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<sup>1</sup> s. 316.193(1), F.S.

<sup>2</sup> s. 316.193(2), F.S.

<sup>3</sup> s. 316.193(6)(b), F.S.

<sup>4</sup> s. 316.193(2)(b)2, F.S.

<sup>5</sup> s. 316.193(6)(c), F.S.

<sup>6</sup> s. 316.193(2)(b)1, F.S.

<sup>7</sup> s. 316.193(2)(b)3, F.S. Additionally, a person who has been convicted of DUI may be required to place an ignition interlock device on his or her vehicle. Section 316.193 also increases sanctions for DUI which results in damage to the property or person of another, serious bodily injury or the death of another person. s. 316.193(3)(c), F.S.

<sup>8</sup> s. 316.193(6)(c), F.S.

At the judge's discretion, a defendant may be required to serve all or any portion of a term of imprisonment to which the defendant has been sentenced in a residential alcoholism treatment program or a residential drug abuse treatment program.<sup>9</sup>

Current law also requires a judge to order, as a condition of probation, the impoundment or immobilization of vehicles as follows:

- For a first DUI conviction, the court must order the impoundment or immobilization of the vehicle that was used in the DUI offense or any one vehicle registered in the defendant's name at the time of impoundment or immobilization for a period of 10 days or for the unexpired term of any lease or rental agreement that expires within 10 days. The impoundment or immobilization cannot occur concurrently with the incarceration of the defendant.
- For a second DUI conviction within 5 years of the date of a prior conviction, the court must order the impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization for a period of 30 days or for the unexpired term of any lease or rental agreement that expires within 30 days.
- For a third or subsequent DUI that occurs within 10 years of a prior conviction, the court must order the impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization for a period of 90 days or for the unexpired term of any lease or rental agreement that expires within 90 days.<sup>10</sup>

The court can dismiss the order of impoundment or immobilization in specified circumstances.<sup>11</sup> The impoundment or immobilization cannot occur concurrently with the incarceration of the defendant and must occur concurrently with the driver's license revocation imposed under s. 322.28(2)(a), F.S.. This section requires the revocation of a person's driver's license for not less than 180 days and no more than 1 year for a first DUI conviction<sup>12</sup>; for not less than 5 years for a second conviction for an offense that occurs within 5 years after the date of a prior conviction<sup>13</sup> and for not less than 10 years for a third conviction for an offense that occurs within 10 years of a prior conviction.<sup>14</sup> A fourth DUI conviction results in permanent revocation of a person's driving privilege.<sup>15</sup>

## **BUI**

Section 327.35, F.S. prohibits the offense of boating under the influence (BUI) which has the same elements (other than the substitution of the word "vessel" for "vehicle") as the offense of driving under the influence. The fine and imprisonment provisions in the BUI statute are identical to those in the DUI statute.

## **Effect of HB 297**

The bill amends the DUI and BUI statutes to provide that for a fourth or subsequent conviction, the court must order imprisonment for not less than 2 years, regardless of when a prior conviction occurred. Currently there is no mandatory minimum term of imprisonment for a fourth or subsequent DUI or BUI unless it occurs within 10 years of a prior DUI or BUI in which case, a 30 day minimum mandatory sentence must be imposed.

The bill further provides that there shall be no substitution of this minimum mandatory term of imprisonment with treatment alternatives.

---

<sup>9</sup> s. 316.193(6)(k), F.S.

<sup>10</sup> See s. 316.193(6)(a), (b) and (c), F.S.

<sup>11</sup> See s. 316.193(6)(e),(f),(g) and (h), F.S.

<sup>12</sup> s. 322.28(2)(a)1, F.S.

<sup>13</sup> s. 322.28(2)(a)2, F.S.

<sup>14</sup> s. 322.28(2)(a)3, F.S.

<sup>15</sup> s. 322.28(2)(e), F.S.

The bill also amends the DUI statute to provide that as a condition of probation, the court must order the impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization for a period of 120 days or for the unexpired term of any lease or rental agreement that expires within 120 days. In conformity with current law, the bill provides that the impoundment or immobilization must not occur concurrently with any incarceration and must occur concurrently with the revocation of the offender's driver's license. The judge will be permitted to dismiss the impoundment or immobilization in accordance with current law.

**C. SECTION DIRECTORY:**

Section 1. Amends s. 316.193, F.S. to provide for minimum mandatory term of imprisonment for fourth or subsequent DUI conviction.

Section 2. Amends s. 327.35, F.S. to provide for minimum mandatory term of imprisonment for fourth or subsequent BUI conviction.

Section 3. Provides effective date of October 1, 2006.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference met on January 9, 2006 to consider the prison bed impact of this bill on the Department of Corrections. The conference estimated that the impact would be as follows:

Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2006-2007	45	45	\$429,165	\$8,887,872	\$9,317,037	\$9,317,037
2007-2008	224	179	\$2,606,476	\$5,483,012	\$8,089,488	\$17,406,525
2008-2009	358	134	\$5,752,197	\$0	\$5,752,197	\$23,158,722
2009-2010	358	0	\$7,225,156	\$0	\$7,225,156	\$30,383,878
2010-2011	358	0	\$7,391,268	\$0	\$7,391,268	\$37,775,146
<b>Total</b>	<b>358</b>	<b>358</b>	<b>\$ 23,404,262</b>	<b>\$ 14,370,884</b>	<b>\$37,775,146</b>	<b>\$37,775,146</b>

Notes: Analysis assumes that there will be a 50% increase in the incarceration rate for felony DUI (4th or subsequent conviction), increasing from 41.4% to 62.1%. Additional offenders sentenced to prison were assumed to serve 24 months.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

### **III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**



HB 297

2006

1                   A bill to be entitled  
 2           An act relating to driving and boating under the  
 3           influence; amending s. 316.193, F.S.; requiring a  
 4           specified period of imprisonment for a fourth or  
 5           subsequent conviction of driving under the influence;  
 6           prohibiting substitution of treatment alternatives;  
 7           requiring impoundment or immobilization of all vehicles  
 8           owned by the defendant for a specified period; providing  
 9           for dismissal of an impoundment order; amending s. 327.35,  
 10          F.S.; requiring a specified period of imprisonment for a  
 11          fourth or subsequent conviction of boating under the  
 12          influence; prohibiting substitution of treatment  
 13          alternatives; requiring impoundment or immobilization of  
 14          the vessel operated by or in the actual control of the  
 15          defendant or any one vehicle registered in the defendant's  
 16          name at the time of impoundment or immobilization for a  
 17          specified period; providing for dismissal of an  
 18          impoundment order; providing applicability; providing an  
 19          effective date.

20  
 21   Be It Enacted by the Legislature of the State of Florida:

22  
 23           Section 1. Paragraph (c) of subsection (6) of section  
 24   316.193, Florida Statutes, is amended, and paragraph (1) is  
 25   added to that subsection, to read:

26           316.193   Driving under the influence; penalties.--



27 (6) With respect to any person convicted of a violation of  
 28 subsection (1), regardless of any penalty imposed pursuant to  
 29 subsection (2), subsection (3), or subsection (4):

30 (c) For the third ~~or subsequent~~ conviction for an offense  
 31 that occurs within a period of 10 years after the date of a  
 32 prior conviction for violation of this section, the court shall  
 33 order imprisonment for not less than 30 days. The court must  
 34 also, as a condition of probation, order the impoundment or  
 35 immobilization of all vehicles owned by the defendant at the  
 36 time of impoundment or immobilization, for a period of 90 days  
 37 or for the unexpired term of any lease or rental agreement that  
 38 expires within 90 days. The impoundment or immobilization shall  
 39 ~~must~~ not occur concurrently with the incarceration of the  
 40 defendant and shall ~~must~~ occur concurrently with the driver's  
 41 license revocation imposed under s. 322.28(2)(a)3. The  
 42 impoundment or immobilization order may be dismissed in  
 43 accordance with paragraph (e), paragraph (f), paragraph (g), or  
 44 paragraph (h). At least 48 hours of confinement must be  
 45 consecutive.

46 (1) For a fourth or subsequent conviction under  
 47 subparagraph (2)(b)3., the court shall order imprisonment for  
 48 not less than 2 years. There shall be no substitution of this  
 49 minimum mandatory term of imprisonment with treatment  
 50 alternatives, as allowed under paragraph (k). The court must  
 51 also, as a condition of probation, order the impoundment or  
 52 immobilization of all vehicles owned by the defendant at the  
 53 time of impoundment or immobilization for a period of 120 days  
 54 or for the unexpired term of any lease or rental agreement that

55 expires within 120 days. The impoundment or immobilization shall  
 56 not occur concurrently with the incarceration of the defendant  
 57 and shall occur concurrently with the driver's license  
 58 revocation imposed under s. 322.28. The impoundment or  
 59 immobilization order may be dismissed in accordance with  
 60 paragraph (e), paragraph (f), paragraph (g), or paragraph (h).  
 61 At least 48 hours of confinement must be consecutive.

62  
 63 For the purposes of this section, any conviction for a violation  
 64 of s. 327.35; a previous conviction for the violation of former  
 65 s. 316.1931, former s. 860.01, or former s. 316.028; or a  
 66 previous conviction outside this state for driving under the  
 67 influence, driving while intoxicated, driving with an unlawful  
 68 blood-alcohol level, driving with an unlawful breath-alcohol  
 69 level, or any other similar alcohol-related or drug-related  
 70 traffic offense, is also considered a previous conviction for  
 71 violation of this section. However, in satisfaction of the fine  
 72 imposed pursuant to this section, the court may, upon a finding  
 73 that the defendant is financially unable to pay either all or  
 74 part of the fine, order that the defendant participate for a  
 75 specified additional period of time in public service or a  
 76 community work project in lieu of payment of that portion of the  
 77 fine which the court determines the defendant is unable to pay.  
 78 In determining such additional sentence, the court shall  
 79 consider the amount of the unpaid portion of the fine and the  
 80 reasonable value of the services to be ordered; however, the  
 81 court may not compute the reasonable value of services at a rate  
 82 less than the federal minimum wage at the time of sentencing.

83 Section 2. Paragraph (c) of subsection (6) of section  
 84 327.35, Florida Statutes, is amended, and paragraph (j) is added  
 85 to that subsection, to read:

86 327.35 Boating under the influence; penalties; "designated  
 87 drivers".--

88 (6) With respect to any person convicted of a violation of  
 89 subsection (1), regardless of any other penalty imposed:

90 (c) For the third ~~or subsequent~~ conviction for an offense  
 91 that occurs within a period of 10 years after the date of a  
 92 prior conviction for violation of this section, the court shall  
 93 order imprisonment for not less than 30 days. The court must  
 94 also, as a condition of probation, order the impoundment or  
 95 immobilization of the vessel that was operated by or in the  
 96 actual control of the defendant or any one vehicle registered in  
 97 the defendant's name at the time of impoundment or  
 98 immobilization, for a period of 90 days or for the unexpired  
 99 term of any lease or rental agreement that expires within 90  
 100 days. The impoundment or immobilization shall ~~must~~ not occur  
 101 concurrently with the incarceration of the defendant. The  
 102 impoundment or immobilization order may be dismissed in  
 103 accordance with paragraph (e) or paragraph (f). At least 48  
 104 hours of confinement must be consecutive.

105 (j) For a fourth or subsequent conviction under  
 106 subparagraph (2)(b)3., the court shall order imprisonment for  
 107 not less than 2 years. There shall be no substitution of this  
 108 minimum mandatory term of imprisonment with treatment  
 109 alternatives, as allowed under paragraph (i). The court must  
 110 also, as a condition of probation, order the impoundment or

111 immobilization of the vessel that was operated by or in the  
 112 actual control of the defendant or any one vehicle registered in  
 113 the defendant's name at the time of impoundment or  
 114 immobilization for a period of 120 days or for the unexpired  
 115 term of any lease or rental agreement that expires within 120  
 116 days. The impoundment or immobilization shall not occur  
 117 concurrently with the incarceration of the defendant. The  
 118 impoundment or immobilization order may be dismissed in  
 119 accordance with paragraph (e) or paragraph (f). At least 48  
 120 hours of confinement must be consecutive.

121  
 122 For the purposes of this section, any conviction for a violation  
 123 of s. 316.193, a previous conviction for the violation of former  
 124 s. 316.1931, former s. 860.01, or former s. 316.028, or a  
 125 previous conviction outside this state for driving under the  
 126 influence, driving while intoxicated, driving with an unlawful  
 127 blood-alcohol level, driving with an unlawful breath-alcohol  
 128 level, or any other similar alcohol-related or drug-related  
 129 traffic offense, is also considered a previous conviction for  
 130 violation of this section.

131 Section 3. This act shall take effect October 1, 2006, and  
 132 shall apply to offenses committed on or after that date.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 339 Sexual Predators  
SPONSOR(S): Brandenburg  
TIED BILLS: IDEN./SIM. BILLS: SB 508

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Kramer <i>TK</i>	Kramer <i>TK</i>
2) Judiciary Committee			
3) Criminal Justice Appropriations Committee			
4) Justice Council			
5) _____			

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SUMMARY ANALYSIS

HB 349 amends the definition of the terms permanent residence and temporary residence which apply to the sexual predator and sexual offender statutes. A permanent residence will be defined as a place where a person abides, lodges, or resides for 5 or more consecutive days, rather than 14 or more consecutive days. A temporary residence will be defined as a place where a person abides, lodges, or resides for a period of 5 or more days, rather than 14, in the aggregate during any calendar year and which is not the person's permanent residence. This will have the affect of reducing the amount of time that a sexual predator or sexual offender is allowed to reside at a location before he or she must report the residence to law enforcement.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Promote limited government: The bill will require a sexual predator or sexual offender to report a new residence to law enforcement when he or she has been residing at a location for 5 days, rather than 14 days.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background:

Sexual Predator Definition: As of November 17, 2005, there were 5,492 sexual predators in the state registry. Section 775.21, F.S., provides that a person convicted of an enumerated sexual offense must be designated a "sexual predator." Specifically, a person must be designated a sexual predator if he or she has been convicted of:

1. A capital, life, or first-degree felony violation, or any attempt thereof, of one of the following offenses:
  - a. kidnapping or false imprisonment<sup>1</sup> where the victim is a minor and the defendant is not the victim's parent;
  - b. sexual battery;<sup>2</sup>
  - c. lewd or lascivious offenses;<sup>3</sup>
  - d. selling or buying a minors for child pornography;<sup>4</sup> or
  - e. a violation of a similar law of another jurisdiction.
2. Any felony violation of one of the following offenses where the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication one of the following offenses:
  - a. kidnapping, false imprisonment or luring or enticing a child<sup>5</sup> where the victim is a minor and the defendant is not the victim's parent,
  - b. sexual battery;<sup>6</sup>
  - c. procuring a person under the age of 18 for prostitution;<sup>7</sup>
  - d. lewd or lascivious offenses;
  - e. lewd or lascivious battery on an elderly person;<sup>8</sup>
  - f. promoting sexual performance by a child;<sup>9</sup>
  - g. selling or buying a minors for child pornography; or
  - h. a violation of a similar law of another jurisdiction.<sup>10</sup>

Registration of Residence: If the sexual predator is not in the custody or control of, or under the supervision of, the DOC, or is not in the custody of a private correctional facility, and the predator establishes or maintains a residence in this state, the predator must initially register in person at an Florida Department of Law Enforcement (FDLE) office, or at the sheriff's office in the county of residence within 48 hours after establishing permanent or temporary residence.

<sup>1</sup> s. 787.01, F.S. or s. 787.02, F.S.,

<sup>2</sup> See chapter 794, F.S.

<sup>3</sup> s. 800.04, F.S.

<sup>4</sup> s. 847.0145, F.S.

<sup>5</sup> s. 787.025, F.S.

<sup>6</sup> Excluded are offenses contained in ss. 794.011(10) and 794.0235, F.S.

<sup>7</sup> s. 796.03, F.S.

<sup>8</sup> s. 825.1025(2)(b), F.S.

<sup>9</sup> s. 827.071, F.S.

<sup>10</sup> Additionally, a person must be designated as a sexual predator if he or she committed one of the offenses listed in a. through h. above and has previously been convicted of the offense of selling or showing obscenity to a minor or using a computer to solicit sexual conduct of or with a minor [ss. 847.0133 or 847.0135, F.S.]

The term "permanent residence" is defined as a place where the person abides, lodges, or resides for 14 or more consecutive days. The term "temporary residence" is defined as a place where the person abides, lodges or resides for a period of 15 or more days in the aggregate during any calendar year and which is not the person's permanent residence. For a person whose permanent residence is not in the state, the term includes a place where the person is employed, practices a vocation or is enrolled as a student for any period of time. The term also includes a place where the person routinely abides, lodges, or resides for a period of 4 or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence, including any out-of-state address.

Within 48 hours of initial registration, a sexual predator who is not incarcerated and who resides in the community must register at a driver's license office of the Department of Highway Safety and Motor Vehicles (DHSMV) and present proof of registration, provide specified information, and secure a driver's license, if qualified, or an identification card. Each time a sexual predator's driver's license or identification card is subject to renewal, and within 48 hours after any change in the predator's residence or name, he or she must report in person to a driver's license facility of the DHSMV and is subject to specified registration requirements. This information is provided to FDLE which maintains the statewide registry of all sexual predators and sexual offenders (discussed further below). The department maintains a searchable web-site containing the names and addresses of all sexual predators and offenders as well as a toll-free telephone number.

A sexual predator must report in person every six months to the sheriff's office in the county in which he or she resides to reregister.<sup>11</sup> A sexual predator's failure to comply with registration requirements is a third degree felony.<sup>12</sup>

Sexual offender registration: As of November 17, 2005, there were 30,583 sexual offenders in the state registry. In very general terms, the distinction between a sexual predator and a sexual offender is based on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense and the date the offense occurred.<sup>13</sup>

A sexual offender is required to report and register in a manner similar to a sexual predator. The definition of the terms temporary residence and permanent residence are the same as those under the sexual predator statute.<sup>14</sup> Failure of a sexual offender to comply with the registration requirements is a third degree felony.

### **Effect of HB 349**

HB 349 amends the definition of the terms permanent residence and temporary residence which apply to the sexual predator and sexual offender statutes. A permanent residence will be defined as a place where a person abides, lodges, or resides for 5 or more consecutive days, rather than 14 or more consecutive days. A temporary residence will be defined as a place where a person abides, lodges, or resides for a period of 5 (rather than 14) or more days in the aggregate during any calendar year and which is not the person's permanent residence. This will reduce the amount of time that a sexual predator or sexual offender is allowed to reside at a location before he or she must report the residence to law enforcement. As a result, law enforcement will be able to more quickly identify where sexual predators and sexual offenders are living.

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<sup>11</sup> s. 775.21(8), F.S.

<sup>12</sup> s. 775.21(10), F.S.

<sup>13</sup> Specifically, a sexual offender is a person who has been convicted of one of the following offenses and has been released on or after October 1, 1997 from the sanction imposed for the offense: kidnapping, false imprisonment or luring or enticing a child where the victim is a minor and the defendant is not the victim's parent; sexual battery; procuring a person under the age of 18 for prostitution; lewd or lascivious offenses; lewd or lascivious battery on an elderly person; promoting sexual performance by a child; selling or buying a minors for child pornography; selling or showing obscenity to a minor; using a computer to solicit sexual conduct of or with a minor; transmitting child pornography; transmitting material harmful to minors; violating a similar law of another jurisdiction.

<sup>14</sup> s. 943.0435(1)(c), F.S.



C. SECTION DIRECTORY:

Section 1. Amends s. 775.21, F.S.; amending definitions.

Section 2. Provides effective date of July 1, 2006.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Florida Department of Law Enforcement estimates that the bill will have a non-recurring impact of \$70,600 on the department. According to the department's fiscal analysis:

Cost estimates reflect documented notification to all registrants within the Florida sexual offender database (currently over 35,000); reprinting and distribution of all related registration, notice of responsibility forms and related documents and system adaptations and reporting requirements.

Notification and documentation to registrants:	\$35,500
Update and distribute forms:	\$22,700
Criminal Justice Training	\$3,400
System Programming:	\$9,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that this bill requires a person to register address changes more frequently, it may have a fiscal impact on a sexual predator or sexual offender.

D. FISCAL COMMENTS:

See above.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill amends the definition of the term temporary residence to mean a place where a person abides, lodges, or resides for a period of 5 (rather than 14) or more days in the aggregate during any calendar year and which is not the person's permanent residence. The bill removes part of the current definition relating to a person whose permanent residence is not in the state but who works or is enrolled as a student in the state. While likely not intended, this appears to remove the requirement that some sexual predators and sexual offenders who live out of state but who work or are enrolled as a student in this state register their temporary address with law enforcement.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**



A bill to be entitled

An act relating to sexual predators; amending s. 775.21, F.S.; redefining the terms "permanent residence" and "temporary residence" in order to reduce the number of consecutive days and days in the aggregate which constitute the residence of a sexual predator for purposes of requirements that the predator register with the Department of Law Enforcement, the sheriff's office, or the Department of Corrections; providing an effective date.

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

Section 1. Paragraphs (f) and (g) of subsection (2) of section 775.21, Florida Statutes, are amended to read:

775.21 The Florida Sexual Predators Act.--

(2) DEFINITIONS.--As used in this section, the term:

(f) "Permanent residence" means a place where the person abides, lodges, or resides for 5 ~~14~~ or more consecutive days.

(g) "Temporary residence" means a place where the person abides, lodges, or resides for a period of 5 ~~14~~ or more days in the aggregate during any calendar year and which is not the person's permanent address; ~~for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state; or a place where the person routinely abides, lodges, or resides for a period of 4 or more consecutive or nonconsecutive days in any month and which is not~~

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29 | ~~the person's permanent residence, including any out of state~~  
30 | ~~address.~~

31 |       Section 2. This act shall take effect July 1, 2006.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 399 Criminal Offenses
SPONSOR(S): Davis
TIED BILLS: IDEN./SIM. BILLS: SB 140

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: 1) Criminal Justice Committee, [blank], Kramer [signature], Kramer [signature].

SUMMARY ANALYSIS

HB 399 provides for increased penalties for offenses committed against an elderly or disabled victim as follows:

- The bill provides for the reclassification of all felony offenses committed against an elderly person or disabled adult regardless of whether the offender was aware of the age or infirmity of the victim.
The bill also removes language that was adopted during the 2002 session which specifically applied to theft offenses committed against a victim age 65 or older.
The bill also amends the section of statute relating to exploitation of an elderly person or disabled adult to provide that if the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at \$10,000 or more, the court must sentence the offender to a mandatory minimum sentence of three years imprisonment.

The Criminal Justice Impact Conference met on January 9, 2006 to consider the prison bed impact of this bill on the Department of Corrections and determined that the bill could potentially have a significant impact on the prison bed population at the Department of Corrections. See fiscal comments section.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill increases the sanctions for offenses committed against elderly persons and disabled adults and will require the imposition of minimum mandatory sentences in certain circumstances.

Promote personal responsibility: The bill reclassifies the degree of felony offenses committed against elderly persons and disabled adults.

#### B. EFFECT OF PROPOSED CHANGES:

*Reclassification of all felony offenses committed against elderly or disabled:* Currently, section 775.085, F.S. provides that the penalty for any felony or misdemeanor must be reclassified<sup>1</sup> if the commission of the offense evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, mental or physical disability or *advanced age* of the victim. The term advanced age is defined to mean that the victim is older than 65 years of age.

HB 399 creates section 775.0847 which provides for the reclassification of felony offenses committed upon:

1. a person 65 years of age or older;
2. a person 60 years of age or older<sup>2</sup> who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental or emotional dysfunction, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired; or
3. a disabled adult<sup>3</sup> which is defined as a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living

HB 399 provides that a felony offense committed against a victim listed above will be reclassified *regardless of whether the offender knew or had reason to know the age, infirmity or disability of the victim* as follows:

- A third degree felony will be reclassified to a second degree felony.
- A second degree felony will be reclassified to a first degree felony.
- A first degree felony will be reclassified to a felony of the first degree, punishable by life imprisonment.

The reclassification of these offenses will have the effect of increasing the maximum sentence that a judge can impose for the offense. The maximum sentence for a third degree felony is five years imprisonment; for a second degree felony is fifteen years imprisonment and for a first degree felony is thirty years imprisonment.<sup>4</sup>

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<sup>1</sup> Under the section, a second degree misdemeanor is reclassified as a first degree misdemeanor; a first degree misdemeanor is reclassified as a third degree felony; a third degree felony will be reclassified to a second degree felony; a second degree felony will be reclassified to a first degree felony and a first degree felony will be reclassified to a felony of the first degree, punishable by life imprisonment.

<sup>2</sup> This definition is contained in s. 825.101(5), F.S.

<sup>3</sup> This definition is contained in s. 825.101(4), F.S.

<sup>4</sup> s. 775.082, F.S.



*Assault or Battery on Victim Age 65 or Older:* Currently, section 784.08 provides that when a person is charged with committing assault<sup>5</sup>, aggravated assault<sup>6</sup>, battery<sup>7</sup> or aggravated battery<sup>8</sup> against a victim age 65 or older, the assault or battery offense is reclassified as follows:

- In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.
- In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.
- In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.
- In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.

The section also applies a three year minimum mandatory sentence<sup>9</sup> against an offender who has been convicted of aggravated assault or aggravated battery against an elderly person.

HB 399 amends this section to remove the reclassification for aggravated assault and aggravated battery offenses committed against an elderly person, presumably because the newly created s. 775.0847, F.S. (discussed above) will cover those felony reclassifications.

*Theft:* The theft statute, section 812.014, F.S. provides the following:

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

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

Theft of property valued between \$100 and \$300 is considered "petit theft" and is a first degree misdemeanor. Theft of property worth between \$300 and \$20,000 is a third degree felony.<sup>10</sup> Theft of property worth more than \$20,000, but less than \$100,000, is a second degree felony. Theft of property worth more than \$100,000 is a first degree felony.

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<sup>5</sup> An assault 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. § 784.011, F.S.

<sup>6</sup> An aggravated assault is an assault with a deadly weapon without intent to kill or with an intent to commit a felony. § 784.021, F.S.

<sup>7</sup> A battery occurs when a person actually and intentionally touches or strikes another person against the will of the other or intentionally causes bodily harm to another person. § 784.03, F.S.

<sup>8</sup> An aggravated battery occurs when a person in committing battery intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or uses a deadly weapon. Aggravated battery also occurs if 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. § 784.045, F.S.

<sup>9</sup> This provision is contained in s. 784.08(1), F.S.

<sup>10</sup> Within the third degree felony theft category, the value of the stolen property is further divided and are assigned different rankings in the offense severity ranking chart of the Criminal Punishment Code. Theft of property valued at more than \$300 and less than \$5,000 is a Level 2 offense. Theft of property valued at \$5,000 but less than \$10,000 is a Level 3 offense. Theft of property worth more than \$10,000 but less than \$20,000 is a Level 4 offense. Thus, while the maximum penalty for a theft of any amount of property between \$300 and \$20,000 would have the same maximum sentence of five years in prison, the lowest permissible sentence would depend on the value of the property.

During the 2002 session, legislation passed<sup>11</sup> which specifically applied to theft offenses committed against a victim age 65 or older when the offender knows or has reason to believe that the victim is over the age of 65, as follows:

1. If the "funds, assets, or property involved in the theft" from a person over 65 are valued at \$50,000 or more, the offense is a first degree felony.
2. If the funds, assets or property involved in the theft from a person over 65 is valued at \$10,000 or more but less than \$50,000, the offense is a second degree felony.
3. If the funds, assets or property involved in the theft from a person over 65 is valued at \$300 or more but less than \$10,000, the offense is a third degree felony.

Section 812.0145 also ranked the newly created theft offenses in the offense severity ranking chart of the Criminal Punishment Code. Theft of between \$300 and \$10,000 was ranked in level 3, theft of between \$10,000 and \$50,000 was ranked in level 5 and theft of more than \$100,000 was ranked in level 7.<sup>12</sup>

HB 399 removes most of the language that was adopted during the 2002 session relating to theft from an elderly person. The bill replaces this language by providing that if the funds, assets, or property involved in a theft from a person 65 years of age or older is valued at \$10,000 or more, the court must impose a mandatory minimum sentence of three years imprisonment. The bill further provides that the minimum mandatory sentence does not apply to the theft of one or more motor vehicles, regardless of their value.

*Exploitation of Elderly or Disabled Adult:* Currently, section 825.103 provides penalties for the exploitation of an elderly person or disabled adult as follows:

(1) "Exploitation of an elderly person or disabled adult" means:

(a) Knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who:

1. Stands in a position of trust and confidence with the elderly person or disabled adult;  
or
2. Has a business relationship with the elderly person or disabled adult; or

(b) Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent.

(2)(a) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at \$100,000 or more, the offender commits a felony of the first degree.

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<sup>11</sup> Chapter 2002-162; Passed as HB 835 by Rep. Gardiner.

<sup>12</sup> s. 921.0022, F.S. The lowest permissible sentence for an offense ranked in level 3 or level five of the offense severity ranking chart is any non-state prison sanction. The lowest permissible sentence for an offense ranked in level 7 of the offense severity ranking chart is 21 months in state prison. The maximum sentence for a third degree felony is five years in prison, for a second degree felony is fifteen years in prison and for a first degree felony is thirty years in prison. s. 775.082, F.S.

(b) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at \$20,000 or more, but less than \$100,000, the offender commits a felony of the second degree.

(c) If the funds, assets, or property involved in the exploitation of an elderly person or disabled adult is valued at less than \$20,000, the offender commits a felony of the third degree.

The bill amends this section to provide that if the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at \$10,000 or more, the court must sentence the offender to a mandatory minimum sentence of three years imprisonment.

The bill also makes corresponding changes to section 775.0877, F.S. relating to mandatory orders for HIV testing in cases involving certain assault and battery offenses and to section 921.0022, F.S., relating to the offense severity ranking chart of the Criminal Punishment Code.

#### C. SECTION DIRECTORY:

Section 1. Provides that the act may be cited as "The Seniors' Safety Act".

Section 2. Creates s. 775.0847, F.S.; providing for reclassification of felony offenses committed against elderly or disabled person.

Section 3. Amends s. 784.08, F.S.; relating to assault or battery on persons 65 years of age or older.

Section 4. Amends s. 812.0145, F.S.; relating to theft from persons 65 years of age or older.

Section 5. Amends s. 825.103, F.S.; relating to exploitation of an elderly person or disabled adult.

Section 6. Amends s. 775.0877; relating to criminal transmission of HIV; changing cross-reference.

Section 7. Amends s. 921.0022, F.S.; making corresponding changes to offense severity ranking chart of Criminal Punishment Code.

Section 8. Provides effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The Criminal Justice Impact Conference met on January 9, 2006 to consider the prison bed impact of this bill on the Department of Corrections. The conference determined that the bill could potentially have a significant impact on the prison bed population at the Department of Corrections. The bill provides for the reclassification of all felony offenses committed against an elderly or disabled victim, regardless of whether the offender knew the age, infirmity or disability of the victim. It is not possible to determine how many felonies are committed against a victim age 65 or older in Florida each year. However, approximately 17.5 percent of the state population of 16.9 million is age 65 or older. The bill also requires the imposition of a mandatory minimum three year prison

sentence for the offense of theft against an elderly person and the offense of exploitation of an elderly person or disabled adult.

**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:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**



1 A bill to be entitled

2 An act relating to criminal offenses; providing a short  
3 title; creating s. 775.0847, F.S.; providing for the  
4 reclassification of felonies committed against the elderly  
5 or disabled; amending s. 784.08, F.S.; providing for the  
6 reclassification of misdemeanors committed against persons  
7 65 years of age or older; amending s. 812.0145, F.S.;  
8 providing for a mandatory term of imprisonment for certain  
9 thefts against persons 65 years of age or older; amending  
10 s. 825.103, F.S.; providing for a mandatory term of  
11 imprisonment for certain acts of exploitation against an  
12 elderly person or disabled adult; amending ss. 775.0877  
13 and 921.0022, F.S., relating to orders for HIV testing for  
14 certain offenses and the sentencing guidelines; revising  
15 an offense description and conforming cross-references to  
16 changes made by the act; providing an effective date.

17  
18 Be It Enacted by the Legislature of the State of Florida:

19  
20 Section 1. This act may be cited as "The Seniors' Safety  
21 Act."

22 Section 2. Section 775.0847, Florida Statutes, is created  
23 to read:

24 775.0847 Felonies committed against the elderly or  
25 disabled; reclassification of offenses.--Whenever a person is  
26 charged with committing a felony offense upon a person 65 years  
27 of age or older or an elderly person or disabled adult as  
28 defined in chapter 825, regardless of whether the person charged

29 | knew or had reason to know the age, infirmity, or disability of  
 30 | the victim, the offense for which the person is charged shall be  
 31 | reclassified as follows:

32 |       (1) In the case of a felony of the third degree, the  
 33 | offense is reclassified to a felony of the second degree.

34 |       (2) In the case of a felony of the second degree, the  
 35 | offense is reclassified to a felony of the first degree.

36 |       (3) In the case of a felony of the first degree, the  
 37 | offense is reclassified to a felony of the first degree,  
 38 | punishable by life imprisonment.

39 |       Section 3. Subsection (2) of section 784.08, Florida  
 40 | Statutes, is amended to read:

41 |       784.08 Assault or battery on persons 65 years of age or  
 42 | older; reclassification of offenses; minimum sentence.--

43 |       (2) Whenever a person is charged with committing an  
 44 | ~~assault or aggravated assault~~ or a battery ~~or aggravated battery~~  
 45 | upon a person 65 years of age or older, regardless of whether  
 46 | the person charged knew he or she knows or had ~~has~~ reason to  
 47 | know the age of the victim, the offense for which the person is  
 48 | charged shall be reclassified as follows:

49 |       ~~(a) In the case of aggravated battery, from a felony of~~  
 50 | ~~the second degree to a felony of the first degree.~~

51 |       ~~(b) In the case of aggravated assault, from a felony of~~  
 52 | ~~the third degree to a felony of the second degree.~~

53 |       (a)-(e) In the case of battery, from a misdemeanor of the  
 54 | first degree to a felony of the third degree.

55 |       (b)-(d) In the case of assault, from a misdemeanor of the  
 56 | second degree to a misdemeanor of the first degree.

57 Section 4. Section 812.0145, Florida Statutes, is amended  
58 to read:

59 812.0145 Theft from persons 65 years of age or older;  
60 penalties reclassification of offenses.--

61 (1) A person who is convicted of theft of more than \$1,000  
62 from a person 65 years of age or older shall be ordered by the  
63 sentencing judge to make restitution to the victim of such  
64 offense and to perform up to 500 hours of community service  
65 work. Restitution and community service work shall be in  
66 addition to any fine or sentence which may be imposed and shall  
67 not be in lieu thereof.

68 (2) Notwithstanding any other law, if the funds, assets,  
69 or property involved in a theft from a person 65 years of age or  
70 older is valued at \$10,000 or more, the court shall sentence the  
71 offender to a mandatory minimum term of imprisonment of 3 years.  
72 However, the mandatory term of imprisonment does not apply to  
73 the theft of one or more motor vehicles, regardless of  
74 associated value. Whenever a person is charged with committing  
75 theft from a person 65 years of age or older, when he or she  
76 knows or has reason to believe that the victim was 65 years of  
77 age or older, the offense for which the person is charged shall  
78 be reclassified as follows:

79 (a) This subsection does not prevent a court from imposing  
80 a greater sentence of incarceration as authorized by law. If the  
81 funds, assets, or property involved in the theft from a person  
82 65 years of age or older is valued at \$50,000 or more, the  
83 offender commits a felony of the first degree, punishable as  
84 provided in s. 775.082, s. 775.083, or s. 775.084.



85           (b) If the minimum mandatory term of imprisonment imposed  
 86 under this section exceeds the maximum sentence authorized by s.  
 87 775.082, s. 775.084, or the Criminal Punishment Code under  
 88 chapter 921, the mandatory minimum sentence must be imposed. If  
 89 the mandatory minimum term of imprisonment under this section is  
 90 less than the sentence authorized by s. 775.082, s. 775.084, or  
 91 the Criminal Punishment Code under chapter 921, the sentence  
 92 imposed by the court must include the mandatory minimum term of  
 93 imprisonment required in this subsection. ~~If the funds, assets,~~  
 94 ~~or property involved in the theft from a person 65 years of age~~  
 95 ~~or older is valued at \$10,000 or more, but less than \$50,000,~~  
 96 ~~the offender commits a felony of the second degree, punishable~~  
 97 ~~as provided in s. 775.082, s. 775.083, or s. 775.084.~~

98           ~~(c) If the funds, assets, or property involved in the~~  
 99 ~~theft from a person 65 years of age or older is valued at \$300~~  
 100 ~~or more, but less than \$10,000, the offender commits a felony of~~  
 101 ~~the third degree, punishable as provided in s. 775.082, s.~~  
 102 ~~775.083, or s. 775.084.~~

103           Section 5. Subsections (3) and (4) are added to section  
 104 825.103, Florida Statutes, to read:

105           825.103 Exploitation of an elderly person or disabled  
 106 adult; penalties.--

107           (3) Notwithstanding any other law, if the funds, assets,  
 108 or property involved in the exploitation of an elderly person or  
 109 a disabled adult is valued at \$10,000 or more, the court shall  
 110 sentence the offender to a mandatory minimum term of  
 111 imprisonment of 3 years.

112           (4) If the minimum mandatory term of imprisonment imposed

113 under subsection (3) exceeds the maximum sentence authorized by  
 114 s. 775.082, s. 775.084, or the Criminal Punishment Code under  
 115 chapter 921, the mandatory minimum sentence must be imposed. If  
 116 the mandatory minimum term of imprisonment under this section is  
 117 less than the sentence authorized by s. 775.082, s. 775.084, or  
 118 the Criminal Punishment Code under chapter 921, the sentence  
 119 imposed by the court must include the mandatory minimum term of  
 120 imprisonment required in subsection (3). This subsection does  
 121 not prevent a court from imposing a greater sentence of  
 122 incarceration as authorized by law.

123 Section 6. Subsection (1) of section 775.0877, Florida  
 124 Statutes, is amended to read:

125 775.0877 Criminal transmission of HIV; procedures;  
 126 penalties.--

127 (1) In any case in which a person has been convicted of or  
 128 has pled nolo contendere or guilty to, regardless of whether  
 129 adjudication is withheld, any of the following offenses, or the  
 130 attempt thereof, which offense or attempted offense involves the  
 131 transmission of body fluids from one person to another:

132 (a) Section 794.011, relating to sexual battery,

133 (b) Section 826.04, relating to incest,

134 (c) Section 800.04(1), (2), and (3), relating to lewd,  
 135 lascivious, or indecent assault or act upon any person less than  
 136 16 years of age,

137 (d) Sections 784.011, 784.07(2)(a), and 784.08(2)(b)  
 138 ~~784.08(2)(d)~~, relating to assault,

139 (e) Sections 784.021 ~~and~~ 784.07(2)(c), and ~~784.08(2)(b)~~,  
 140 relating to aggravated assault,

141 (f) Sections 784.03, 784.07(2)(b), and 784.08(2)(a)  
 142 ~~784.08(2)(e)~~, relating to battery,  
 143 (g) Sections 784.045 and, 784.07(2)(d), and ~~784.08(2)(a)~~,  
 144 relating to aggravated battery,  
 145 (h) Section 827.03(1), relating to child abuse,  
 146 (i) Section 827.03(2), relating to aggravated child abuse,  
 147 (j) Section 825.102(1), relating to abuse of an elderly  
 148 person or disabled adult,  
 149 (k) Section 825.102(2), relating to aggravated abuse of an  
 150 elderly person or disabled adult,  
 151 (l) Section 827.071, relating to sexual performance by  
 152 person less than 18 years of age,  
 153 (m) Sections 796.03, 796.07, and 796.08, relating to  
 154 prostitution, or  
 155 (n) Section 381.0041(11)(b), relating to donation of  
 156 blood, plasma, organs, skin, or other human tissue,  
 157  
 158 the court shall order the offender to undergo HIV testing, to be  
 159 performed under the direction of the Department of Health in  
 160 accordance with s. 381.004, unless the offender has undergone  
 161 HIV testing voluntarily or under ~~pursuant to~~ procedures  
 162 established in s. 381.004(3)(h)6. or s. 951.27, or any other  
 163 applicable law or rule providing for HIV testing of criminal  
 164 offenders or inmates, subsequent to her or his arrest for an  
 165 offense enumerated in paragraphs (a)-(n) for which she or he was  
 166 convicted or to which she or he pled nolo contendere or guilty.  
 167 The results of an HIV test performed on an offender under  
 168 ~~pursuant to~~ this subsection are not admissible in any criminal

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169 proceeding arising out of the alleged offense.

170 Section 7. Paragraphs (b), (c), (d), (e), (f), and (g) of  
 171 subsection (3) of section 921.0022, Florida Statutes, are  
 172 amended to read:

173 921.0022 Criminal Punishment Code; offense severity  
 174 ranking chart.--

175 (3) OFFENSE SEVERITY RANKING CHART

Florida	Felony	Description
Statute	Degree	Description
		(b) LEVEL 2
370.12(1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
370.12(1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
403.413(5)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
517.07	3rd	Registration of securities and furnishing of prospectus

182	590.28(1)	3rd	required. <u>Intentional or reckless burning of lands</u> <del>Willful, malicious, or intentional</del> burning.
183	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
184	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
185	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
186	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
187	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
188	812.014(2)(c)1	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
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	812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
190	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
191	817.234(1)(a)2	3rd	False statement in support of insurance claim.
192	817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
193	817.52(3)	3rd	Failure to redeliver hired vehicle.
194	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
195	817.60(5)	3rd	Dealing in credit cards of another.
196	817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.

197	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
198	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
199	831.01	3rd	Forgery.
200	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
201	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
202	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
203	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
204	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
205	832.05 (3) (a)	3rd	Cashing or depositing item with

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			intent to defraud.
206	843.08	3rd	Falsely impersonating an officer.
207	893.13 (2) (a) 2.	3rd	Purchase of any s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) drugs other than cannabis.
208	893.147 (2)	3rd	Manufacture or delivery of drug paraphernalia.
209			(c) LEVEL 3
210	119.10 (2) (b)	3rd	Unlawful use of confidential information from police reports.
211	316.066 (3) (d) - (f)	3rd	Unlawfully obtaining or using confidential crash reports.
212	316.193 (2) (b)	3rd	Felony DUI, 3rd conviction.
213	316.1935 (2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
214	319.30 (4)	3rd	Possession by junkyard of motor vehicle with identification



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			number plate removed.
215	319.33 (1) (a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
216	319.33 (1) (c)	3rd	Procure or pass title on stolen vehicle.
217	319.33 (4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
218	327.35 (2) (b)	3rd	Felony BUI.
219	328.05 (2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
220	328.07 (4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
221	370.12 (1) (e) 5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine

			turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
222	370.12(1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
223	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
224	400.903(3)	3rd	Operating a clinic without a license or filing false license application or other required information.
225	440.105(3)(b)	3rd	Receipt of fee or consideration without approval by judge of compensation claims.
226	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
227	501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
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229	624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
230	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
231	626.902(1) (a) & (b)	3rd	Representing an unauthorized insurer.
232	697.08	3rd	Equity skimming.
233	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
234	796.05(1)	3rd	Live on earnings of a prostitute.
235	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
236	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
237	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but

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			less than \$10,000.
238	<del>812.0145(2)(c)</del>	3rd	<del>Theft from person 65 years of age or older, \$300 or more but less than \$10,000.</del>
239	815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
240	817.034(4)(a)3	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
241	817.233	3rd	Burning to defraud insurer.
242	817.234(8) (b) - (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
243	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
244	817.236	3rd	Filing a false motor vehicle insurance application.
245	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
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247	817.413 (2)	3rd	Sale of used goods as new.
248	817.505 (4)	3rd	Patient brokering.
249	828.12 (2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
250	831.28 (2) (a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
251	831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
252	838.021 (3) (b)	3rd	Threatens unlawful harm to public servant.
253	843.19	3rd	Injure, disable, or kill police dog or horse.
254	860.15 (3)	3rd	Overcharging for repairs and parts.
255	870.01 (2)	3rd	Riot; inciting or encouraging.
	893.13 (1) (a) 2.	3rd	Sell, manufacture, or deliver cannabis (or other s.

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			893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
256	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
257	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
258	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
259	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
260	893.13(7)(a)9.	3rd	Obtain or attempt to obtain

261	893.13(7)(a)10.	3rd	controlled substance by fraud, forgery, misrepresentation, etc.
262	893.13(7)(a)11.	3rd	Affix false or forged label to package of controlled substance.
263	893.13(8)(a)1.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
264	893.13(8)(a)2.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
265	893.13(8)(a)3.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
266			Knowingly write a prescription for a controlled substance for a fictitious person.

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	893.13 (8) (a) 4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
267	918.13 (1) (a)	3rd	Alter, destroy, or conceal investigation evidence.
268	944.47 (1) (a) 1.-2.	3rd	Introduce contraband to correctional facility.
269	944.47 (1) (c)	2nd	Possess contraband while upon the grounds of a correctional institution.
270	985.3141	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
271			(d) LEVEL 4
272	316.1935 (3) (a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and



			lights activated.
273	499.0051(1)	3rd	Failure to maintain or deliver pedigree papers.
274	499.0051(2)	3rd	Failure to authenticate pedigree papers.
275	499.0051(6)	2nd	Sale or delivery, or possession with intent to sell, contraband legend drugs.
276	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, intake officer, etc.
277	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
278	784.075	3rd	Battery on detention or commitment facility staff.
279	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
280	784.08(2) <u>(a)</u> <del>(e)</del>	3rd	Battery on a person 65 years of age or older.
281	784.081(3)	3rd	Battery on specified official or

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			employee.
282	784.082 (3)	3rd	Battery by detained person on visitor or other detainee.
283	784.083 (3)	3rd	Battery on code inspector.
284	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
285	787.03 (1)	3rd	Interference with custody; wrongly takes child from appointed guardian.
286	787.04 (2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
287	787.04 (3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
288	790.115 (1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
289	790.115 (2) (b)	3rd	Possessing electric weapon or

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			device, destructive device, or other weapon on school property.
290	790.115(2)(c)	3rd	Possessing firearm on school property.
291	800.04(7)(d)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
292	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
293	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
294	810.06	3rd	Burglary; possession of tools.
295	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
296	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
297	812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
298	812.0195(2)	3rd	Dealing in stolen property by use

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			of the Internet; property stolen \$300 or more.
299	817.563 (1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
300	817.568 (2) (a)	3rd	Fraudulent use of personal identification information.
301	817.625 (2) (a)	3rd	Fraudulent use of scanning device or reencoder.
302	828.125 (1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
303	837.02 (1)	3rd	Perjury in official proceedings.
304	837.021 (1)	3rd	Make contradictory statements in official proceedings.
305	838.022	3rd	Official misconduct.
306	839.13 (2) (a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
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308	839.13 (2) (c)	3rd	Falsifying records of the Department of Children and Family Services.
309	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
310	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
311	843.15 (1) (a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
312	874.05 (1)	3rd	Encouraging or recruiting another to join a criminal street gang.
313	893.13 (2) (a) 1.	2nd	Purchase of cocaine (or other s. 893.03 (1) (a), (b), or (d), (2) (a), (2) (b), or (2) (c) 4. drugs).
314	914.14 (2)	3rd	Witnesses accepting bribes.
315	914.22 (1)	3rd	Force, threaten, etc., witness, victim, or informant.

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	914.23 (2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
316	918.12	3rd	Tampering with jurors.
317	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
318			(e) LEVEL 5
319	316.027 (1) (a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
320	316.1935 (4) (a)	2nd	Aggravated fleeing or eluding.
321	322.34 (6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
322	327.30 (5)	3rd	Vessel accidents involving personal injury; leaving scene.
323	381.0041 (11) (b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
324	440.10 (1) (g)	2nd	Failure to obtain workers'

			compensation coverage.
325	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
326	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
327	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
328	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
329	790.01(2)	3rd	Carrying a concealed firearm.
330	790.162	2nd	Threat to throw or discharge destructive device.
331	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
332	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.

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333	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
334	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
335	800.04 (7) (c)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
336	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
337	<del>812.0145 (2) (b)</del>	2nd	<del>Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.</del>
338	812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
339	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
340	812.131 (2) (b)	3rd	Robbery by sudden snatching.
341	812.16 (2)	3rd	Owning, operating, or conducting a chop shop.
342			



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343	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
344	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
345	817.2341(1), (2)(a)&(3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
346	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.
347	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
347	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person

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			or disabled adult.
348	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
349	827.071(5)	3rd	Possess any photographic material, motion picture, etc., which includes sexual conduct by a child.
350	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
351	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
352	847.0137(2)&(3)	3rd	Transmission of pornography by electronic device or equipment.
353	847.0138(2)&(3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
354	874.05(2)	2nd	Encouraging or recruiting another

355	893.13(1)(a)1. 2nd	<p>to join a criminal street gang; second or subsequent offense.</p> <p>Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).</p>
356	893.13(1)(c)2. 2nd	<p>Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.</p>
357	893.13(1)(d)1. 1st	<p>Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.</p>
358	893.13(1)(e)2. 2nd	<p>Sell, manufacture, or deliver</p>

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cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.

359

893.13(1)(f)1. 1st

Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.

360

893.13(4)(b) 2nd

Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).

361

(f) LEVEL 6

362

316.193(2)(b) 3rd

Felony DUI, 4th or subsequent conviction.

363

499.0051(3) 2nd

Forgery of pedigree papers.

364

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365	499.0051 (4)	2nd	Purchase or receipt of legend drug from unauthorized person.
366	499.0051 (5)	2nd	Sale of legend drug to unauthorized person.
367	775.0875 (1)	3rd	Taking firearm from law enforcement officer.
368	784.021 (1) (a)	3rd	Aggravated assault; deadly weapon without intent to kill.
369	784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.
370	784.041	3rd	Felony battery.
371	784.048 (3)	3rd	Aggravated stalking; credible threat.
372	784.048 (5)	3rd	Aggravated stalking of person under 16.
373	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
374	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
	<del>784.08 (2) (b)</del>	<del>2nd</del>	<del>Aggravated assault on a person 65 years of age or older.</del>

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375	784.081(2)	2nd	Aggravated assault on specified official or employee.
376	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
377	784.083(2)	2nd	Aggravated assault on code inspector.
378	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
379	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
380	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
381	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
382	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels,

			or vehicles.
383	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
384	794.05(1)	2nd	Unlawful sexual activity with specified minor.
385	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.
386	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
387	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
388	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
389	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
390	812.015(9)	2nd	Retail theft; property stolen

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			\$300 or more; second or subsequent conviction.
391	812.13 (2) (c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
392	817.034 (4) (a) 1.	1st	Communications fraud, value greater than \$50,000.
393	817.4821 (5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
394	825.102 (1)	3rd	Abuse of an elderly person or disabled adult.
395	825.102 (3) (c)	3rd	Neglect of an elderly person or disabled adult.
396	825.1025 (3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
397	825.103 (2) (c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.
398	827.03 (1)	3rd	Abuse of a child.
399	827.03 (3) (c)	3rd	Neglect of a child.
400			



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	827.071(2)&(3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
401	836.05	2nd	Threats; extortion.
402	836.10	2nd	Written threats to kill or do bodily injury.
403	843.12	3rd	Aids or assists person to escape.
404	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
405	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
406	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
407	944.40	2nd	Escapes.
408	944.46	3rd	Harboring, concealing, aiding escaped prisoners.

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409	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
410	951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.
411			(g) LEVEL 7
412	316.027(1)(b)	2nd	Accident involving death, failure to stop; leaving scene.
413	316.193(3)(c)2	3rd	DUI resulting in serious bodily injury.
414	316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
415	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
416	402.319(2)	2nd	Misrepresentation and negligence

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			or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
417	409.920 (2)	3rd	Medicaid provider fraud.
418	456.065 (2)	3rd	Practicing a health care profession without a license.
419	456.065 (2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
420	458.327 (1)	3rd	Practicing medicine without a license.
421	459.013 (1)	3rd	Practicing osteopathic medicine without a license.
422	460.411 (1)	3rd	Practicing chiropractic medicine without a license.
423	461.012 (1)	3rd	Practicing podiatric medicine without a license.
424	462.17	3rd	Practicing naturopathy without a license.
425			

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	463.015 (1)	3rd	Practicing optometry without a license.
426	464.016 (1)	3rd	Practicing nursing without a license.
427	465.015 (2)	3rd	Practicing pharmacy without a license.
428	466.026 (1)	3rd	Practicing dentistry or dental hygiene without a license.
429	467.201	3rd	Practicing midwifery without a license.
430	468.366	3rd	Delivering respiratory care services without a license.
431	483.828 (1)	3rd	Practicing as clinical laboratory personnel without a license.
432	483.901 (9)	3rd	Practicing medical physics without a license.
433	484.013 (1) (c)	3rd	Preparing or dispensing optical devices without a prescription.
434	484.053	3rd	Dispensing hearing aids without a license.
435	494.0018 (2)	1st	Conviction of any violation of

			ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
436	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by money transmitter.
437	560.125(5)(a)	3rd	Money transmitter business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
438	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
439	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
440	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.

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441	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
442	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
443	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
444	782.071	2nd	Killing of human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
445	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
446	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
447			

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	784.045 (1) (a) 2.	2nd	Aggravated battery; using deadly weapon.
448	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
449	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
450	784.048 (7)	3rd	Aggravated stalking; violation of court order.
451	784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.
452	784.074 (1) (a)	1st	Aggravated battery on sexually violent predators facility staff.
453	<del>784.08 (2) (a)</del>	<del>1st</del>	<del>Aggravated battery on a person 65 years of age or older.</del>
454	784.081 (1)	1st	Aggravated battery on specified official or employee.
455	784.082 (1)	1st	Aggravated battery by detained person on visitor or other detainee.
456	784.083 (1)	1st	Aggravated battery on code inspector.
457			

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

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	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
458	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
459	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
460	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
461	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
462	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
463	796.03	2nd	Procuring any person under 16 years for prostitution.
464	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age;



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			offender less than 18 years.
465	800.04 (5) (c) 2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
466	806.01 (2)	2nd	Maliciously damage structure by fire or explosive.
467	810.02 (3) (a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
468	810.02 (3) (b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
469	810.02 (3) (d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
470	812.014 (2) (a) 1.	1st	Property stolen, valued at \$100,000 or more; property stolen while causing other property damage; 1st degree grand theft.
471	812.014 (2) (b) 2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
472	812.014 (2) (b) 3.	2nd	Property stolen, emergency medical equipment; 2nd degree

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grand theft.

473	<del>812.0145(2)(a)</del>	1st	<del>Theft from person 65 years of age or older; \$50,000 or more.</del>
474	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
475	812.131(2)(a)	2nd	Robbery by sudden snatching.
476	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
477	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
478	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
479	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
480	817.2341(2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an

			insuring entity which are a significant cause of the insolvency of that entity.
481	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
482	825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
483	827.03(3)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
484	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
485	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
486	838.015	2nd	Bribery.
487	838.016	2nd	Unlawful compensation or reward for official behavior.

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488	838.021(3)(a)	2nd	Unlawful harm to a public servant.
489	838.22	2nd	Bid tampering.
490	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
491	872.06	2nd	Abuse of a dead human body.
492	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
493	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business

			site.
494	893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
495	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
496	893.135(1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
497	893.135(1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
498	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
499	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
500	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
501			

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502	893.135 (1) (g) 1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
503	893.135 (1) (h) 1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
504	893.135 (1) (j) 1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
505	893.135 (1) (k) 2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
506	896.101 (5) (a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
507	896.104 (4) (a) 1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
	943.0435 (4) (c)	2nd	Sexual offender vacating permanent residence; failure to

			comply with reporting requirements.
508	943.0435 (8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
509	943.0435 (9) (a)	3rd	Sexual offender; failure to comply with reporting requirements.
510	943.0435 (13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
511	943.0435 (14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
512	944.607 (9)	3rd	Sexual offender; failure to comply with reporting requirements.
513	944.607 (10) (a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
514	944.607 (12)	3rd	Failure to report or providing

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false information about a sexual  
offender; harbor or conceal a  
sexual offender.

515

944.607(13) 3rd

Sexual offender; failure to  
report and reregister; failure to  
respond to address verification.

516

517

Section 8. This act shall take effect July 1, 2006.