



Safety & Security Council

**Wednesday, March 19, 2008
1:00 p.m. – 2:45 p.m.
102 House Office Building, Reed Hall**

**Marco Rubio
Speaker**

**Dick Kravitz
Chair**

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

Safety & Security Council

Start Date and Time: Wednesday, March 19, 2008 01:00 pm

End Date and Time: Wednesday, March 19, 2008 02:45 pm

Location: Reed Hall (102 HOB)

Duration: 1.75 hrs

Consideration of the following bill(s):

HB 99 Food Donation by Public Food Service Establishments by Porth
HB 103 Criminal Conduct by Harrell
HB 267 False and Fraudulent Insurance Claims by Hays
HB 435 Trust Administration by Hukill
HB 453 Alimony by Gibbons
HB 513 Offenses Against Unborn Children by Poppell
HB 559 Distribution of Material Harmful to Minors by Schenck
HB 737 Informed Consent for Spaceflight by Simmons
HB 837 Unlawful Use of Utility Services by Grimsley
HB 857 Display of Flags by Nehr
HB 1151 Sex Trafficking by Hukill

NOTICE FINALIZED on 03/17/2008 16:24 by MCJ

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 99 Food Donation by Public Food Service Establishments

SPONSOR(S): Porth and others

TIED BILLS: IDEN./SIM. BILLS: SB 276

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Constitution & Civil Law	9 Y, 0 N	Thomas	Birtman
2) Safety & Security Council		Thomas <i>TT/AB</i>	Havlicak <i>RH</i>
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill creates the "Florida Restaurant Lending a Helping Hand Act."

The bill amends existing provisions regarding liability for canned or perishable food distributed free of charge by expanding the definition of "perishable food" to include foods that have been prepared at a licensed public food service establishment. The bill provides protection from criminal and civil liability to public food service establishments that donate perishable foods apparently fit for human consumption to a bona fide charitable or nonprofit organization for free. This immunity from criminal penalty or civil damages does not apply if an injury is caused by the gross negligence, recklessness, or intentional misconduct of the donor or gleaner.

This bill does not appear to have a fiscal impact on state or local government.

The bill takes effect on July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility - The bill provides protection from criminal and civil liability to public food service establishments that donate perishable foods apparently fit for human consumption to a bona fide charitable or nonprofit organization for free.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Food Insecurity

The following national statistics were provided by American Second Harvest¹ regarding food insecurity (food security is a situation in which people do not live in hunger or fear of starvation):

- In 2006, 3.3% of all U.S. households (3.8 million households) accessed emergency food from a food pantry one or more times, or 21% of all food-insecure households.
- In 2006, food insecure (low food security or very low food security) households were 19 times more likely than food-secure households to have obtained food from a food pantry, an increase in likelihood from 17 times in 2005.
- In 2006, food insecure (low food security or very low food security) households were 15 times more likely than food-secure households to have eaten a meal at an emergency kitchen, an decrease in likelihood from 19 times in 2005 .
- In 2006, 55.5% of food-insecure households participated in at least one of the three major Federal food assistance programs – Food Stamp Program, The National School Lunch Program, and the Special Supplemental Nutrition Program for Women, Infants, and Children, remaining unchanged from 55.6% in 2005.

Liability for Canned or Perishable Food Distributed Free of Charge

Florida's law regarding liability for canned or perishable food that is distributed free of charge provides protection from criminal and civil liability to a good faith donor or gleaner² of any canned or perishable food apparently fit for human consumption to a charitable or nonprofit organization for free distribution.³ This immunity does not apply if an injury is caused by the gross negligence, recklessness, or intentional misconduct of the donor or gleaner.⁴

The provisions of this section apply to the good faith donation of canned or perishable food regardless of whether such food is readily marketable due to appearance, freshness, grade, surplus, or other such considerations.⁵ These provisions are not to be construed to restrict the authority of any lawful agency to otherwise regulate or ban the use of food for human consumption and the immunity from liability does not relieve any donor of its duty to comply with any law regulating such donor with respect to

¹ America's Second Harvest states that they are the nation's largest charitable hunger-relief organization and they include a network of more than 200 member food banks and food-rescue organizations. See http://www.secondharvest.org/about_us/ (last visited on Jan. 15, 2008).

² Section 768.136(1)(b), F.S., defines "gleaner" as "a person who harvests for free distribution an agricultural crop that has been donated by the owner."

³ Section 768.136(2), F.S.

⁴ *Ibid.*

⁵ Section 768.136(4), F.S.

health or sanitation.⁶ This same criminal and civil liability protection is provided for bona fide charitable or nonprofit organizations, or any representatives or volunteers acting on behalf of such organizations or uncompensated persons acting in a philanthropic manner providing services similar to those of such an organization, which accept, collect, transport, or distribute any canned or perishable food, apparently fit for human consumption, from a good faith donor or gleaner for free distribution.⁷

The term "donor," which appears to include public food service establishments, is defined as:

[A] person, business, organization, or institution which owns, rents, leases, or operates:

1. Any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure, that is maintained and operated as a place where food is regularly prepared, served, or sold for immediate consumption on or in the vicinity of the premises; or to be called for or taken out by customers; or to be delivered to factories, construction camps, airlines, locations where catered events are being held, and other similar locations for consumption at any place;
2. Any public location with vending machines dispensing prepared meals; or
3. Any retail grocery store.⁸

The term "canned food" is defined as:

[A]ny food which has been commercially processed and prepared for human consumption and which has been commercially packaged in such a manner as to remain nonperishable without refrigeration for a reasonable length of time.⁹

The term "perishable food" is defined as:

[A]ny food that may spoil or otherwise become unfit for human consumption because of its nature, type, or physical condition. "Perishable food" includes, but is not limited to, fresh or processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, fresh fruits or vegetables, and foods that have been noncommercially packaged or that have been frozen or otherwise require refrigeration to remain nonperishable for a reasonable length of time.¹⁰

There have been no reported court cases under this section of law and no cases were found that involved the donation of food.

Regulation of Public Food Service Establishments

The Division of Hotels and Restaurant (Division) within the Department of Business and Professional Regulation (DBPR) is the state agency charged with enforcing the provisions of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. According to the DBPR, there are over 43,000 licensed public food service establishments in Florida.

A public food service establishment is defined in ch. 509, F.S., as follows:

- (a) "Public food service establishment" means any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold

⁶ Section 768.136(5), F.S.

⁷ Section 768.136(3), F.S.

⁸ Section 768.136(1)(a), F.S.

⁹ Section 768.136(1)(c), F.S.

¹⁰ Section 768.136(1)(d), F.S.

for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.

(b) The following are excluded from the definition in paragraph (a):

1. Any place maintained and operated by a public or private school, college, or university:
 - a. For the use of students and faculty; or
 - b. Temporarily to serve such events as fairs, carnivals, and athletic contests.
2. Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization:
 - a. For the use of members and associates; or
 - b. Temporarily to serve such events as fairs, carnivals, or athletic contests.
3. Any eating place located on an airplane, train, bus, or watercraft which is a common carrier.
4. Any eating place maintained by a hospital, nursing home, sanitarium, assisted living facility, adult day care center, or other similar place that is regulated under s. 381.0072.
5. Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12.
6. Any place of business where the food available for consumption is limited to ice, beverages with or without garnishment, popcorn, or prepackaged items sold without additions or preparation.
7. Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.
8. Any vending machine that dispenses any food or beverages other than potentially hazardous foods, as defined by division rule.
9. Any vending machine that dispenses potentially hazardous food and which is located in a facility regulated under s. 381.0072.
10. Any research and development test kitchen limited to the use of employees and which is not open to the general public.¹¹

Other States and Federal Law

Laws providing immunity from criminal and civil liability for the donation of food are referred to as "Good Samaritan" food donation laws. All fifty states prior to 1990 had adopted some form of these laws.¹²

The first attempt to legislate in this area by Congress resulted in the passage of the Good Samaritan Food Donation Model Act that became part of Title IV of the National and Community Service Act, which President Bush signed into law on November 16, 1990.¹³ This Act did not mandate that the states follow its provisions, but it was an effort to give the states an opportunity to take a uniform approach to this issue.

When only one state adopted the Model Act in the five ensuing years, Congress adopted the Bill Emerson Good Samaritan Food Donation Act of 1996 which President Clinton signed into law on October 1, 1996.¹⁴ The key provisions of the 1996 Act provide:

- Protection for donors from liability when donating to a non-profit organization.
- Protection for donors from civil and criminal liability should the product donated in good faith later cause harm to the needy recipient.
- Standardization across the states of donor liability exposure.

¹¹ Section 509.013(5), F.S.

¹² LOST FOOD AND LIABILITY: THE GOOD SAMARITAN FOOD DONATION LAW STORY, David L. Morenoff, Food and Drug Law Journal (2002). For a list of these statutes, see <http://www.usda.gov/news/pubs/gleaning/appd.htm> (last visited on Jan.15, 2008).

¹³ 42 U.S.C §§ 12671-12673.

¹⁴ 42 U.S.C § 1791.

- A liability floor of "gross negligence" or intentional misconduct for persons who donate grocery products.¹⁵

It is unclear if Congress intended to replace the various state measures with a uniform national law, in which case the state laws would have no further effect. Alternatively, Congress may have intended to establish greater, but not complete, consistency in this area of the law by making a liability floor of gross negligence a minimum national standard. If so, state laws that set a higher liability floor than that of the federal law, such as those holding food donors liable only for recklessness or intentional misconduct, would retain their force even after Congress acted.

Effect of Proposed Changes:

The bill creates the "Florida Restaurant Lending a Helping Hand Act."

The bill amends s. 768.136, F.S.; to expand the definition of "perishable food" to include foods that have been prepared at a public food service establishment licensed under ch. 509, F.S. While it appears that the current definition of "donor" includes public food service establishments, the bill clearly provides that the term "perishable food" includes foods that have been prepared at a public food service establishment licensed under ch. 509, F.S. This change ensures that the protection from criminal and civil liability to a good faith donor or gleaner of any canned or perishable food apparently fit for human consumption to a charitable or nonprofit organization for free distribution includes all foods that have been prepared at a public food service establishment licensed under ch. 509, F.S. Under the present law, it may include restaurant prepared meals only if the meals require refrigeration to remain nonperishable for a reasonable period of time.

Any donor operating under the provisions of this bill must comply with laws regulating health or sanitation.¹⁶

The bill has an effective date of July 1, 2008.

C. SECTION DIRECTORY:

Section 1: Provides that the Act may be cited as the "Florida Restaurant Lending a Helping Hand Act."

Section 2: Amends s. 768.136, F.S., relating to liability for canned or perishable food distributed free of charge.

Section 3: Provides that the bill becomes effective on July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

¹⁵ *Ibid.*

¹⁶ Section. 768.136(5), F.S. This would likely include food sanitation and safety laws under chapter 509, F.S., such as temperature, storage, cleanliness, and the like.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill is designed to encourage the donation of more food to charitable organizations. This should not have a direct impact on the private sector, however, the bill does provide limited immunity should a food service establishment choose to make donations as provided under the bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Access to Courts

Article I, section 21 of the Florida Constitution provides: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." The Florida Constitution protects "only rights that existed at common law or by statute prior to the enactment of the Declaration of Rights of the Florida Constitution."¹⁷ In order to make a colorable claim of denial of access to courts, an aggrieved party must demonstrate that the Legislature has abolished a common-law right previously enjoyed by the people of Florida and, if so, that it has not provided a reasonable alternative for redress and that there is not an "overpowering public necessity" for eliminating the right.¹⁸ This right could be implicated if a court were to find that the bill abolishes a right of access to the courts that existed at common law or by statute prior to the enactment of the Declaration of Rights of the Florida Constitution.¹⁹

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

¹⁷ Fla. Jur. 2d., s. 360.

¹⁸ Kluger v. White, 281 So.2d 1, 4 (Fla. 1973).

¹⁹ The enactment of the Declaration of Rights of the Florida Constitution was part of Florida's new constitution of 1968 and occurred when it was ratified by the electorate on November 5, 1968.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No Statement Submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to food donation by public food service
 3 establishments; providing a short title; amending s.
 4 768.136, F.S.; expanding the definition of "perishable
 5 food" to include foods prepared at a public food service
 6 establishment licensed under ch. 509, F.S.; providing an
 7 effective date.

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

10
 11 Section 1. This act may be cited as the "Florida
 12 Restaurant Lending a Helping Hand Act."

13 Section 2. Paragraph (d) of subsection (1) of section
 14 768.136, Florida Statutes, is amended to read:

15 768.136 Liability for canned or perishable food
 16 distributed free of charge.--

17 (1) As used in this section:

18 (d) "Perishable food" means any food that may spoil or
 19 otherwise become unfit for human consumption because of its
 20 nature, type, or physical condition. "Perishable food" includes,
 21 but is not limited to, fresh or processed meats, poultry,
 22 seafood, dairy products, bakery products, eggs in the shell,
 23 fresh fruits or vegetables, and foods that have been
 24 noncommercially packaged, ~~or~~ that have been frozen or otherwise
 25 require refrigeration to remain nonperishable for a reasonable
 26 length of time, or that have been prepared at a public food
 27 service establishment licensed under chapter 509.

28 Section 3. This act shall take effect July 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 103
SPONSOR(S): Harrell
TIED BILLS: None

Criminal Conduct

IDEN./SIM. BILLS: SB 1280

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Courts</u>	6 Y, 0 N	Webb	Bond
2) <u>Safety & Security Council</u>		Webb <i>mmw</i>	Havlicak <i>RH</i>
3) <u>Policy & Budget Council</u>			
4) _____			
5) _____			

SUMMARY ANALYSIS

The 1st and 4th District Courts of Appeal (DCA) issued conflicting opinions as to whether the criminal child abuse statute applies to speech. The 4th DCA ruled that the statute is unconstitutionally overbroad as applied to child abuse that is only speech. The 1st DCA, however, ruled that the statute is not overbroad because it can be narrowly construed to only apply to unprotected speech. This bill addresses the conflict by providing an exception to the criminal child abuse statute. The bill provides that an act does not violate the child abuse statute if it is protected by the First Amendment.

This bill also amends the definition of "crime" applicable to provisions on victim assistance to include felonies or misdemeanors committed by an adult or a juvenile which result in psychiatric or psychological injury to a person less than 18 years of age who was not physically injured by the criminal act.

This bill does not appear to have a fiscal impact on state or local government expenditures. It appears to have an unknown minimal negative fiscal impact on the Crime Compensation Trust Fund.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility -- This bill redefines criminal child abuse.

Provide Limited Government -- This bill expands the number of persons and types of injuries for which compensation under the Crimes Compensation Trust Fund are paid.

B. EFFECT OF PROPOSED CHANGES:

Whether Speech Can Amount to Child Abuse

Florida's criminal child abuse statute, s. 827.03, F.S., provides that child abuse is an intentional physical or mental injury to a child, an intentional act that could be expected to result in a physical or mental injury to a child, or encouragement of any person to act that results or could be expected to result in physical or mental injury to a child. It further provides that it is a third-degree felony for a person to knowingly or willfully abuse a child without causing great bodily harm, disability, or disfigurement. Aggravated child abuse, which is a first degree felony, occurs when a person commits aggravated battery on a child, willfully tortures, punishes or cages a child, or knowingly and willfully abuses a child and causes great bodily harm, permanent disability or permanent disfigurement to the child.

In *State v. DuFresne*, the state alleged that a teacher who screamed at an autistic student caused the student "mental injury" and charged the teacher with criminal child abuse.¹ The defendant asserted that the statute is overbroad because it applies to speech that is protected by the First Amendment.² The 4th District Court of Appeal (DCA) held that in order for the criminal child abuse statute to withstand an overbreadth challenge, it could not apply to speech. The overbreadth doctrine relates to the First Amendment freedom of speech and "prohibits the Government from banning unprotected speech if a substantial amount of protected speech is prohibited or chilled in the process."³ A statute can be considered overbroad if it is written so broadly that it deters free expression.⁴

The 4th DCA reiterated this decision in 2006 in *Munao v. State*. In *Munao*, the court held that the defendant, who repeatedly told his six year-old child to get a knife and stab his mother, could not be charged with child abuse because, under *DuFresne*, the child abuse statute does not apply to speech.⁵

Shortly after the *Munao* decision was issued, the 1st DCA decided *State v. Coleman*. In *Coleman*, the state charged the defendant with child abuse and prosecuted him for causing mental injury when he drove by young girls and asked them vulgar and offensive questions.⁶ In disagreeing with the 4th DCA opinion, the 1st DCA stated:

We do not agree with *DuFresne* and *Munao*, however, that, to withstand an overbreadth challenge to section 827.03(1), we must construe the statute to avoid its application to *all* speech. If section 827.03(1), can be construed to be applicable *only* to specifically described unprotected speech, it can

¹ 782 So.2d 888, 889 (Fla. 4th DCA 2001).

² The First Amendment of the United States Constitution grants the freedoms of speech, religion, press, assembly, and petition. The First Amendment applies to the states through the Fourteenth Amendment, which prohibits states from depriving any person of life, liberty, or property without due process.

³ *State v. Coleman*, 937 So.2d 1226, 1229 (Fla. 1st DCA 2006)

⁴ Bryan A. Garner, *Black's Law Dictionary*, Second Pocket Edition 507 (West Publishing Co. 2001).

⁵ 939 So.2d 125, 128 (Fla. 4th DCA 2006).

⁶ 937 So.2d 1226, 1227 (Fla. 1st DCA 2006).

withstand an overbreadth challenge...⁷ If in applying section 827.03(1) to speech, courts define the proscribed speech by construing the statute *in pari materia* with the definitions in chapter 39, constitutional speech will not be implicated.⁸

This bill addresses the conflict by providing an exception to the criminal child abuse statute. Specifically, the bill provides that an act does not violate the child abuse statute if it is protected by the First Amendment of the United States Constitution or Article 1, Section 4 of the Florida Constitution.⁹ In relation to the cases discussed above, this language may be interpreted to mean that the child abuse statute does apply to speech so long as it is not constitutionally protected speech.

Mental Injury

In recent years, the criminal child abuse statute has been challenged as unconstitutionally vague because it does not define the term "mental injury."¹⁰ In 2002, the Florida Supreme Court held that the statute was not unconstitutionally vague because "mental injury" was defined in ch. 39, F.S., a related child-protection statute.¹¹ Section 39.01, F.S., defines "mental injury" as "an injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability to function within the normal range of performance and behavior." The Supreme Court opinion recommended that the criminal child abuse statute be amended to include a definition of mental injury.

This bill amends s. 827.03, F.S., to reference the definition of "mental injury" in s. 39.01(41), F.S.

Victim Assistance Program

Injured crime victims may be eligible for financial assistance through the Florida Attorney General's Division of Victim Services for medical care, lost income, funeral expenses and other out-of-pocket expenses directly related to the injury.¹² Payment is made from the Crime Compensation Trust Fund to compensate victims who have suffered *physical* injuries and certain victims who suffer *mental* injuries.¹³

Section 960.03(3), F.S., defines the term "crime", which definition controls who is eligible for payment from the Division of Victim Services. Subsection (a) of that definition provides that "crime" means "a felony or misdemeanor offense committed by either an adult or a juvenile which results in physical injury or death. The term also includes any such criminal act which is committed within this state but which falls exclusively within federal jurisdiction."

This bill redefines the term "crime" for the purposes of payment from the Crime Compensation Trust Fund to include an additional form of injury to a victim or intervenor.¹⁴ Specifically, the bill adds the term "mental injury," as already defined by s. 39.01, F.S., to the definition of "crime." As a result, a felony or misdemeanor offense committed by an adult or juvenile that results in physical injury, mental injury, or death of the victim or intervenor is considered a crime for purposes of victim assistance.

⁷ *Id.* at 1230.

⁸ *Id.*

⁹ Which provides in part: "Every person may speak, write, and publish his sentiments on all subjects but shall be responsible for the abuse of that right."

¹⁰ See *State v. DuFresne*, 782 So.2d 888 (Fla. 4th DCA 2001).

¹¹ See *DuFresne v. State*, 826 So.2d 272, 274 (Fla. 2002).

¹² *Id.*

¹³ Section 960.21, F.S.

¹⁴ The Crimes Compensation Trust Fund receives offender generated federal and state dollars to provide services to crime victims. The trust fund is funded primarily by court-ordered assessments from offenders, including a mandatory court cost, a surcharge on fines, and restitution. Florida's share of federal Victims of Crime Act (VOCA) dollars during 2005-2006 totaled \$27,437,000. VOCA funds awarded to Florida consisted of \$20,439,000 for victim assistance programs throughout the state and \$6,998,000 for financial compensation to victims for losses incurred as a result of their victimization. See the Division of Victim Services and Criminal Justice Programs Annual Report, 2005-2006 at <http://myfloridalegal.com/victims>.

Clarification of Criminal Child Abuse Statute

This bill changes the structure of s. 827.03, F.S., creating a definition section, followed by an "offenses" section that describes the conduct proscribed by the statute and the applicable penalties. The bill adds the definition of "mental injury" in s. 39.01, F.S. to s. 827.03, F.S. The bill also makes conforming changes to various sections of the Florida Statutes.

C. SECTION DIRECTORY:

Section 1 amends s. 827.03, F.S., relating to criminal penalties for child abuse and neglect.

Section 2 amends s. 775.084, F.S., relating to imprisonment for crime.

Section 3 amends s. 775.0877, F.S., relating to criminal transmission of HIV.

Section 4 amends s. 782.07, F.S., relating to manslaughter.

Section 5 amends s. 921.0022, F.S., relating to the Criminal Punishment Code and the offense severity ranking chart.

Section 6 amends s. 943.325, F.S., relating to blood or other biological specimen testing for DNA analysis.

Section 7 amends s. 948.062, F.S., relating to reviewing and reporting serious offenses committed by offenders placed on probation or community control.

Section 8 amends s. 960.03, F.S., relating to definitions applicable to portions of chapter 960, F.S.

Section 9 provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The portion of this bill amending the definition of crime applicable to the crime compensation fund appears to have an unknown minimal negative fiscal impact on the Crime Compensation Trust Fund because the bill expands the definition of crime to include *all* offenses that result only in psychiatric or psychological injury. See *Fiscal Comments*.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill adds the term "mental injury" to the definition of "crime" and defines "mental injury" in accordance with s. 39.01, F.S. Children are currently eligible to receive compensation awards if they are under 16, present at the scene of a crime, saw or heard the crime, and suffered a psychiatric or psychological injury because of the crime as long as they were not physically injured. Children under 16 are also eligible to receive compensation if they suffer a psychiatric or psychological injury as a direct result of a forcible felony being committed upon them.

To the extent that this bill increases the number children eligible to receive a compensation award for mental injury, there could be a fiscal impact. However, many of the children eligible under the "mental injury" criterion contained in this bill may be eligible under existing law.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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:

The guilt of a person charged with a crime must be established beyond a reasonable doubt for every element of the offense charged.¹⁵ If there are multiple elements of an offense, then a prosecutor will have to establish that each element is present beyond a reasonable doubt. It is possible that this bill could be interpreted to require a prosecutor in a child abuse case prove that an act does *not* violate the First Amendment beyond a reasonable doubt. This bill could possibly make it more difficult for the state to prosecute child abuse offenses.

This bill provides that an act does not violate the section if it is protected by the First Amendment to the United States Constitution or s. 4, Art I of the State Constitution. It appears that the bill anticipates an effect on the freedom of *speech*. However, the bill could possibly be interpreted as giving more protections to the other freedoms addressed in the First Amendment, namely religion, press, assembly, and petition.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On February 20, 2008, the Committee on Courts adopted one amendment to this bill. The amendment made the following revisions to the bill:

¹⁵ State v. Sebastian, 171 So. 2d 893 (Fla. 1965).

- Added to the definition of child abuse in chapter 39 that there must be multiple instances of injury by the same abuser.
- Added the requirement that mental abuse must be supported by the expert testimony of a licensed health care provider licensed under ch. 458 or ch.459, F.S.¹⁶
- Provided an affirmative defense to prosecution, instead of an exception to prosecution, that the speech which is the sole basis of prosecution is protected by the first amendment.
- Provided an affirmative defense to prosecution for mental injury where the defendant is a victim of domestic violence as long as the defense was not used previously with respect to the same abuser.

The bill was then reported favorably with an amendment.

¹⁶ Chapter 458, F.S., regulates physicians, and ch. 459, F.S. regulates osteopathic physicians.

1 A bill to be entitled
 2 An act relating to criminal conduct; amending s. 827.03,
 3 F.S.; defining the term "mental injury"; exempting
 4 constitutionally protected acts from prohibitions on child
 5 abuse, aggravated child abuse, and neglect; amending ss.
 6 775.084, 775.0877, 782.07, 921.0022, 943.325, and 948.062,
 7 F.S.; conforming cross-references; amending s. 960.03,
 8 F.S.; redefining the term "crime" for purposes of crime
 9 victims compensation to include additional forms of
 10 injury; providing an effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Section 827.03, Florida Statutes, is amended to
 15 read:

16 827.03 Abuse, aggravated abuse, and neglect of a child;
 17 penalties.--

18 (1) DEFINITIONS.--For purposes of this section:

19 (a) "Aggravated child abuse" occurs when a person:

20 1. Commits aggravated battery on a child;

21 2. Willfully tortures, maliciously punishes, or willfully
 22 and unlawfully cages a child; or

23 3. Knowingly or willfully abuses a child and in so doing
 24 causes great bodily harm, permanent disability, or permanent
 25 disfigurement to the child.

26 (b) "Child abuse" means:

27 1. ~~(a)~~ Intentional infliction of physical or mental injury
 28 upon a child;

29 ~~2.(b)~~ An intentional act that could reasonably be expected
 30 to result in physical or mental injury to a child; or

31 ~~3.(e)~~ Active encouragement of any person to commit an act
 32 that results or could reasonably be expected to result in
 33 physical or mental injury to a child.

34

35 ~~A person who knowingly or willfully abuses a child without~~
 36 ~~causing great bodily harm, permanent disability, or permanent~~
 37 ~~disfigurement to the child commits a felony of the third degree,~~
 38 ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

39 ~~(2) "Aggravated child abuse" occurs when a person:~~

40 ~~(a) Commits aggravated battery on a child;~~

41 ~~(b) Willfully tortures, maliciously punishes, or willfully~~
 42 ~~and unlawfully cages a child; or~~

43 ~~(c) Knowingly or willfully abuses a child and in so doing~~
 44 ~~causes great bodily harm, permanent disability, or permanent~~
 45 ~~disfigurement to the child.~~

46

47 ~~A person who commits aggravated child abuse commits a felony of~~
 48 ~~the first degree, punishable as provided in s. 775.082, s.~~
 49 ~~775.083, or s. 775.084.~~

50 (c) "Maliciously" means wrongfully, intentionally, and
 51 without legal justification or excuse. Maliciousness may be
 52 established by circumstances from which one could conclude that
 53 a reasonable parent would not have engaged in the damaging acts
 54 toward the child for any valid reason and that the primary
 55 purpose of the acts was to cause the victim unjustifiable pain
 56 or injury.

57 (d) "Mental injury" shall have the same meaning as
 58 provided in s. 39.01.

59 (e) ~~(3)(a)~~ "Neglect of a child" means:

60 1. A caregiver's failure or omission to provide a child
 61 with the care, supervision, and services necessary to maintain
 62 the child's physical and mental health, including, but not
 63 limited to, food, nutrition, clothing, shelter, supervision,
 64 medicine, and medical services that a prudent person would
 65 consider essential for the well-being of the child; or

66 2. A caregiver's failure to make a reasonable effort to
 67 protect a child from abuse, neglect, or exploitation by another
 68 person.

69
 70 Neglect of a child may be based on repeated conduct or on a
 71 single incident or omission that results in, or could reasonably
 72 be expected to result in, serious physical or mental injury, or
 73 a substantial risk of death, to a child.

74 (2) OFFENSES.--

75 (a) A person who commits aggravated child abuse commits a
 76 felony of the first degree, punishable as provided in s.
 77 775.082, s. 775.083, or s. 775.084.

78 (b) A person who willfully or by culpable negligence
 79 neglects a child and in so doing causes great bodily harm,
 80 permanent disability, or permanent disfigurement to the child
 81 commits a felony of the second degree, punishable as provided in
 82 s. 775.082, s. 775.083, or s. 775.084.

83 (c) A person who knowingly or willfully abuses a child
 84 without causing great bodily harm, permanent disability, or

85 permanent disfigurement to the child commits a felony of the
 86 third degree, punishable as provided in s. 775.082, s. 775.083,
 87 or s. 775.084.

88 (d)(e) A person who willfully or by culpable negligence
 89 neglects a child without causing great bodily harm, permanent
 90 disability, or permanent disfigurement to the child commits a
 91 felony of the third degree, punishable as provided in s.
 92 775.082, s. 775.083, or s. 775.084.

93 (3) EXCEPTION.--An act does not violate this section if it
 94 is protected by the First Amendment to the United States
 95 Constitution or s. 4, Art. I of the State Constitution.

96 ~~(4) For purposes of this section, "maliciously" means~~
 97 ~~wrongfully, intentionally, and without legal justification or~~
 98 ~~excuse. Maliciousness may be established by circumstances from~~
 99 ~~which one could conclude that a reasonable parent would not have~~
 100 ~~engaged in the damaging acts toward the child for any valid~~
 101 ~~reason and that the primary purpose of the acts was to cause the~~
 102 ~~victim unjustifiable pain or injury.~~

103 Section 2. Paragraph (d) of subsection (1) of section
 104 775.084, Florida Statutes, is amended to read:

105 775.084 Violent career criminals; habitual felony
 106 offenders and habitual violent felony offenders; three-time
 107 violent felony offenders; definitions; procedure; enhanced
 108 penalties or mandatory minimum prison terms.--

109 (1) As used in this act:

110 (d) "Violent career criminal" means a defendant for whom
 111 the court must impose imprisonment pursuant to paragraph (4) (d),
 112 if it finds that:

113 1. The defendant has previously been convicted as an adult
 114 three or more times for an offense in this state or other
 115 qualified offense that is:

- 116 a. Any forcible felony, as described in s. 776.08;
- 117 b. Aggravated stalking, as described in s. 784.048(3) and
 118 (4);
- 119 c. Aggravated child abuse, as described in s.
 120 827.03(2) (a);
- 121 d. Aggravated abuse of an elderly person or disabled
 122 adult, as described in s. 825.102(2);
- 123 e. Lewd or lascivious battery, lewd or lascivious
 124 molestation, lewd or lascivious conduct, or lewd or lascivious
 125 exhibition, as described in s. 800.04;
- 126 f. Escape, as described in s. 944.40; or
- 127 g. A felony violation of chapter 790 involving the use or
 128 possession of a firearm.

129 2. The defendant has been incarcerated in a state prison
 130 or a federal prison.

131 3. The primary felony offense for which the defendant is
 132 to be sentenced is a felony enumerated in subparagraph 1. and
 133 was committed on or after October 1, 1995, and:

- 134 a. While the defendant was serving a prison sentence or
 135 other sentence, or court-ordered or lawfully imposed supervision
 136 that is imposed as a result of a prior conviction for an
 137 enumerated felony; or
- 138 b. Within 5 years after the conviction of the last prior
 139 enumerated felony, or within 5 years after the defendant's
 140 release from a prison sentence, probation, community control,

141 control release, conditional release, parole, or court-ordered
 142 or lawfully imposed supervision or other sentence that is
 143 imposed as a result of a prior conviction for an enumerated
 144 felony, whichever is later.

145 4. The defendant has not received a pardon for any felony
 146 or other qualified offense that is necessary for the operation
 147 of this paragraph.

148 5. A conviction of a felony or other qualified offense
 149 necessary to the operation of this paragraph has not been set
 150 aside in any postconviction proceeding.

151 Section 3. Paragraphs (h) and (i) of subsection (1) of
 152 section 775.0877, Florida Statutes, are amended to read:

153 775.0877 Criminal transmission of HIV; procedures;
 154 penalties.--

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

- 160 (h) Section 827.03(2)(c)~~(1)~~, relating to child abuse,
- 161 (i) Section 827.03(2)(a), relating to aggravated child
 162 abuse,

163
 164 the court shall order the offender to undergo HIV testing, to be
 165 performed under the direction of the Department of Health in
 166 accordance with s. 381.004, unless the offender has undergone
 167 HIV testing voluntarily or pursuant to procedures established in
 168 s. 381.004(3)(h)6. or s. 951.27, or any other applicable law or

169 rule providing for HIV testing of criminal offenders or inmates,
 170 subsequent to her or his arrest for an offense enumerated in
 171 paragraphs (a)-(n) for which she or he was convicted or to which
 172 she or he pled nolo contendere or guilty. The results of an HIV
 173 test performed on an offender pursuant to this subsection are
 174 not admissible in any criminal proceeding arising out of the
 175 alleged offense.

176 Section 4. Subsection (3) of section 782.07, Florida
 177 Statutes, is amended to read:

178 782.07 Manslaughter; aggravated manslaughter of an elderly
 179 person or disabled adult; aggravated manslaughter of a child;
 180 aggravated manslaughter of an officer, a firefighter, an
 181 emergency medical technician, or a paramedic.--

182 (3) A person who causes the death of any person under the
 183 age of 18 by culpable negligence under s. 827.03 (2) (b) ~~(3)~~
 184 commits aggravated manslaughter of a child, a felony of the
 185 first degree, punishable as provided in s. 775.082, s. 775.083,
 186 or s. 775.084.

187 Section 5. Paragraphs (f), (g), and (i) of subsection (3)
 188 of section 921.0022, Florida Statutes, are amended to read:

189 921.0022 Criminal Punishment Code; offense severity
 190 ranking chart.--

191 (3) OFFENSE SEVERITY RANKING CHART

192 (f) LEVEL 6

193

Florida	Felony	Description
Statute	Degree	

194

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

HB 103

2008

195	316.193 (2) (b)	3rd	Felony DUI, 4th or subsequent conviction.
196	499.0051 (3)	2nd	Forgery of pedigree papers.
197	499.0051 (4)	2nd	Purchase or receipt of legend drug from unauthorized person.
198	499.0051 (5)	2nd	Sale of legend drug to unauthorized person.
199	775.0875 (1)	3rd	Taking firearm from law enforcement officer.
200	784.021 (1) (a)	3rd	Aggravated assault; deadly weapon without intent to kill.
201	784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.
202	784.041	3rd	Felony battery; domestic battery by strangulation.
203	784.048 (3)	3rd	Aggravated stalking; credible threat.
204	784.048 (5)	3rd	Aggravated stalking of person under 16.
	784.07 (2) (c)	2nd	Aggravated assault on law enforcement

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

HB 103

2008

			officer.
205	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
206	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
207	784.081 (2)	2nd	Aggravated assault on specified official or employee.
208	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
209	784.083 (2)	2nd	Aggravated assault on code inspector.
210	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
211	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
212	790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
213	790.164 (1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of

HB 103

2008

214			arson or violence to state property.
	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
215			
	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
216			
	794.05(1)	2nd	Unlawful sexual activity with specified minor.
217			
	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.
218			
	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
219			
	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
220			
	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
221			
	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
222			

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

HB 103

2008

223	812.014 (6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
224	812.015 (9) (a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
225	812.015 (9) (b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
226	812.13 (2) (c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
227	817.034 (4) (a) 1.	1st	Communications fraud, value greater than \$50,000.
228	817.4821 (5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
229	825.102 (1)	3rd	Abuse of an elderly person or disabled adult.
230	825.102 (3) (c)	3rd	Neglect of an elderly person or disabled adult.
231	825.1025 (3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.

HB 103

2008

232	825.103 (2) (c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.
233	827.03 <u>(2) (c)</u> (1)	3rd	Abuse of a child.
234	827.03 <u>(2) (d)</u> (3) (e)	3rd	Neglect of a child.
235	827.071 (2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
236	836.05	2nd	Threats; extortion.
237	836.10	2nd	Written threats to kill or do bodily injury.
238	843.12	3rd	Aids or assists person to escape.
239	847.0135 (2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
240	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
	944.35 (3) (a) 2.	3rd	Committing malicious battery upon or

HB 103

2008

			inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
241	944.40	2nd	Escapes.
242	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
243	944.47 (1) (a) 5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
244	951.22 (1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.
245	(g)	LEVEL 7	
246			
247			
	Florida Statute	Felony Degree	Description
248	316.027 (1) (b)	1st	Accident involving death, failure to stop; leaving scene.
249	316.193 (3) (c) 2.	3rd	DUI resulting in serious bodily injury.
250	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.
251	327.35 (3) (c) 2.	3rd	Vessel BUI resulting in serious bodily injury.
252	402.319 (2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
253	409.920 (2)	.3rd	Medicaid provider fraud.
254	456.065 (2)	3rd	Practicing a health care profession without a license.
255	456.065 (2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
256	458.327 (1)	3rd	Practicing medicine without a license.
257	459.013 (1)	3rd	Practicing osteopathic medicine without a license.

HB 103

2008

258	460.411(1)	3rd	Practicing chiropractic medicine without a license.
259	461.012(1)	3rd	Practicing podiatric medicine without a license.
260	462.17	3rd	Practicing naturopathy without a license.
261	463.015(1)	3rd	Practicing optometry without a license.
262	464.016(1)	3rd	Practicing nursing without a license.
263	465.015(2)	3rd	Practicing pharmacy without a license.
264	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
265	467.201	3rd	Practicing midwifery without a license.
266	468.366	3rd	Delivering respiratory care services without a license.
267	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
268	483.901(9)	3rd	Practicing medical physics without a

HB 103

2008

			license.
269	484.013 (1) (c)	3rd	Preparing or dispensing optical devices without a prescription.
270	484.053	3rd	Dispensing hearing aids without a license.
271	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.
272	560.123 (8) (b) 1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by money transmitter.
273	560.125 (5) (a)	3rd	Money transmitter business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
274	655.50 (10) (b) 1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
275	775.21 (10) (a)	3rd	Sexual predator; failure to register;

HB 103

2008

			failure to renew driver's license or identification card; other registration violations.
276	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
277	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
278	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
279	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
280	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
281	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
282			

HB 103

2008

283	784.045 (1) (a) 1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
284	784.045 (1) (a) 2.	2nd	Aggravated battery; using deadly weapon.
285	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
286	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
287	784.048 (7)	3rd	Aggravated stalking; violation of court order..
288	784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.
289	784.074 (1) (a)	1st	Aggravated battery on sexually violent predators facility staff.
290	784.08 (2) (a)	1st	Aggravated battery on a person 65 years of age or older.
291	784.081 (1)	1st	Aggravated battery on specified official or employee.

HB 103

2008

292	784.082 (1)	1st	Aggravated battery by detained person on visitor or other detainee.
293	784.083 (1)	1st	Aggravated battery on code inspector.
294	790.07 (4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
295	790.16 (1)	1st	Discharge of a machine gun under specified circumstances.
296	790.165 (2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
297	790.165 (3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
298	790.166 (3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
299	790.166 (4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.

HB 103

2008

300	794.08 (4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
301	796.03	2nd	Procuring any person under 16 years for prostitution.
302	800.04 (5) (c) 1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
303	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.
304	806.01 (2)	2nd	Maliciously damage structure by fire or explosive.
305	810.02 (3) (a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
306	810.02 (3) (b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
307	810.02 (3) (d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.

HB 103

2008

308	810.02 (3) (e)	2nd	Burglary of authorized emergency vehicle.
309	812.014 (2) (a) 1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
310	812.014 (2) (b) 2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
311	812.014 (2) (b) 3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
312	812.014 (2) (b) 4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
313	812.0145 (2) (a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
314	812.019 (2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
	812.131 (2) (a)	2nd	Robbery by sudden snatching.

HB 103

2008

315	812.133 (2) (b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
316	817.234 (8) (a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
317	817.234 (9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
318	817.234 (11) (c)	1st	Insurance fraud; property value \$100,000 or more.
319	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.
320	825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
321	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.

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

HB 103

2008

322	827.03 <u>(2)</u> (3) (b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
323	827.04 (3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
324	837.05 (2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
325	838.015	2nd	Bribery.
326	838.016	2nd	Unlawful compensation or reward for official behavior.
327	838.021 (3) (a)	2nd	Unlawful harm to a public servant.
328	838.22	2nd	Bid tampering.
329	847.0135 (3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
330	847.0135 (4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
331	872.06	2nd	Abuse of a dead human body.

332

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.

333

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.

334

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).

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893.135(1)(a)1. 1st Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.

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893.135(1)(b)1. 1st Trafficking in cocaine, more than 28 a. grams, less than 200 grams.

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893.135(1)(c)1. 1st Trafficking in illegal drugs, more than

HB 103

2008

- 338 a. 4 grams, less than 14 grams.
- 893.135(1)(d)1. 1st Trafficking in phencyclidine, more than
28 grams, less than 200 grams.
- 339 893.135(1)(e)1. 1st Trafficking in methaqualone, more than
200 grams, less than 5 kilograms.
- 340 893.135(1)(f)1. 1st Trafficking in amphetamine, more than
14 grams, less than 28 grams.
- 341 893.135(1)(g)1. 1st Trafficking in flunitrazepam, 4 grams
a. or more, less than 14 grams.
- 342 893.135(1)(h)1. 1st Trafficking in gamma-hydroxybutyric
a. acid (GHB), 1 kilogram or more, less
than 5 kilograms.
- 343 893.135(1)(j)1. 1st Trafficking in 1,4-Butanediol, 1
a. kilogram or more, less than 5
kilograms.
- 344 893.135(1)(k)2. 1st Trafficking in Phenethylamines, 10
a. grams or more, less than 200 grams.
- 345 896.101(5)(a) 3rd Money laundering, financial
transactions exceeding \$300 but less
than \$20,000.

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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.

943.0435(8) 2nd Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.

943.0435(9)(a) 3rd Sexual offender; failure to comply with reporting requirements.

943.0435(13) 3rd Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

943.0435(14) 3rd Sexual offender; failure to report and reregister; failure to respond to address verification.

944.607(9) 3rd Sexual offender; failure to comply with reporting requirements.

HB 103

2008

354	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
355	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
356	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
357	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
358	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
359	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.

360 (i) LEVEL 9

361	Florida Statute	Felon Degree	Description
		y	
		e	

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

HB 103

2008

362

316.193 (3) (c) 3.b. 1st DUI manslaughter; failing to render aid or give information.

363

327.35 (3) (c) 3.b. 1st BUI manslaughter; failing to render aid or give information.

364

499.00535 1st Sale or purchase of contraband legend drugs resulting in great bodily harm.

365

560.123 (8) (b) 3. 1st Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.

366

560.125 (5) (c) 1st Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.

367

655.50 (10) (b) 3. 1st Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.

368

775.0844 1st Aggravated white collar crime.

369

782.04 (1) 1st Attempt, conspire, or solicit to commit premeditated murder.

370

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

HB 103

2008

- | | | | |
|-----|----------------|-------------|--|
| 371 | 782.04(3) | 1st,P
BL | Accomplice to murder in connection with arson, sexual battery, robbery, burglary, and other specified felonies. |
| 372 | 782.051(1) | 1st | Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3). |
| 373 | 782.07(2) | 1st | Aggravated manslaughter of an elderly person or disabled adult. |
| 374 | 787.01(1)(a)1. | 1st,P
BL | Kidnapping; hold for ransom or reward or as a shield or hostage. |
| 375 | 787.01(1)(a)2. | 1st,P
BL | Kidnapping with intent to commit or facilitate commission of any felony. |
| 376 | 787.01(1)(a)4. | 1st,P
BL | Kidnapping with intent to interfere with performance of any governmental or political function. |
| | 787.02(3)(a) | 1st | False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or |

			exhibition.
377	790.161	1st	Attempted capital destructive device offense.
378	790.166 (2)	1st,P BL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
379	794.011 (2)	1st	Attempted sexual battery; victim less than 12 years of age.
380	794.011 (2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
381	794.011 (4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
382	794.011 (8) (b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
383	794.08 (2)	1st	Female genital mutilation; victim younger than 18 years of age.
384	800.04 (5) (b)	Life	Lewd or lascivious molestation; victim

HB 103

2008

			less than 12 years; offender 18 years or older.
385	812.13 (2) (a)	1st, P BL	Robbery with firearm or other deadly weapon.
386	812.133 (2) (a)	1st, P BL	Carjacking; firearm or other deadly weapon.
387	812.135 (2) (b)	1st	Home-invasion robbery with weapon.
388	817.568 (7)	2nd, P BL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
389	827.03 (2) <u>(a)</u>	1st	Aggravated child abuse.
390	847.0145 (1)	1st	Selling, or otherwise transferring custody or control, of a minor.
391	847.0145 (2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
392	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink,

			medicine, or water with intent to kill or injure another person.
393			
	893.135	1st	Attempted capital trafficking offense.
394			
	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
395			
	893.135(1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
396			
	893.135(1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
397			
	893.135(1)(d)1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
398			
	893.135(1)(e)1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
399			
	893.135(1)(f)1.c.	1st	Trafficking in amphetamine, more than 200 grams.
400			
	893.135(1)(h)1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
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	893.135(1)(j)1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.

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893.135(1)(k)2.c. 1st Trafficking in Phenethylamines, 400 grams or more.

896.101(5)(c) 1st Money laundering, financial instruments totaling or exceeding \$100,000.

896.104(4)(a)3. 1st Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$100,000.

Section 6. Paragraph (b) of subsection (1) of section 943.325, Florida Statutes, is amended to read:

943.325 Blood or other biological specimen testing for DNA analysis.--

(1)

(b)1. Chapter 794, chapter 800, s. 782.04, s. 784.045, s. 810.02, s. 812.133, or s. 812.135.

2. Effective July 1, 2002, and contingent upon specific appropriation, s. 812.13 or s. 812.131.

3. Effective July 1, 2003, and contingent upon specific appropriation, chapter 787 or s. 782.07.

4. Effective July 1, 2004, and contingent upon specific appropriation, any forcible felony, as described in s. 776.08, aggravated child abuse, as described in s. 827.03(2) (a), aggravated abuse of an elderly person or a disabled adult, as

421 described in s. 825.102(2), or any felony violation of chapter
 422 790 involving the use or possession of a firearm.

423 5. Effective July 1, 2005, and contingent upon specific
 424 appropriation, any felony offense.

425 Section 7. Paragraph (f) of subsection (1) of section
 426 948.062, Florida Statutes, is amended to read:

427 948.062 Reviewing and reporting serious offenses committed
 428 by offenders placed on probation or community control.--

429 (1) The department shall review the circumstances related
 430 to an offender placed on probation or community control who has
 431 been arrested while on supervision for the following offenses:

432 (f) Any aggravated child abuse as provided in s.
 433 827.03(2)(a);

434 Section 8. Paragraph (a) of subsection (3) of section
 435 960.03, Florida Statutes, is amended to read:

436 960.03 Definitions; ss. 960.01-960.28.--As used in ss.
 437 960.01-960.28, unless the context otherwise requires, the term:

438 (3) "Crime" means:

439 (a) A felony or misdemeanor offense committed by either an
 440 adult or a juvenile which results in physical injury or death,
 441 including a felony or misdemeanor offense committed by either an
 442 adult or a juvenile which results in psychiatric or
 443 psychological injury to a person less than 18 years of age who
 444 was not physically injured by the criminal act. The term also
 445 includes any such criminal act which is committed within this
 446 state but which falls exclusively within federal jurisdiction.

447 Section 9. This act shall take effect July 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 4 (for drafter's use only)

Bill No. HB 103

COUNCIL/COMMITTEE ACTION

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

*Traveling Amendment
No Action Required*

1 Council/Committee hearing bill: Committee on Courts
 2 Representative(s) Harrell and Ambler offered the following:
 3

Amendment (with title amendment)

Remove line(s) 57-95 and insert:

6 (d) "Mental injury" shall mean multiple instances of
 7 injury caused by the same abuser to the intellectual or
 8 psychological capacity of a child as evidenced by a discernible
 9 and substantial impairment in the ability of the child to
 10 function within the normal range of performance and behavior as
 11 supported by expert testimony. A person may not give expert
 12 testimony regarding mental injury unless that person is a
 13 licensed health care provider under ch. 458 or ch. 459 and has
 14 devoted professional time during the three years immediately
 15 preceding the date of the occurrence to the active clinical
 16 practice of, or consulting with respect to, a specialty that
 17 includes the evaluation, diagnosis, or treatment of the
 18 condition that is the subject of the offense.

19 (e)-(3)-(a) "Neglect of a child" means:

20 1. A caregiver's failure or omission to provide a child
 21 with the care, supervision, and services necessary to maintain

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 4 (for drafter's use only)

22 the child's physical and mental health, including, but not
23 limited to, food, nutrition, clothing, shelter, supervision,
24 medicine, and medical services that a prudent person would
25 consider essential for the well-being of the child; or

26 2. A caregiver's failure to make a reasonable effort to
27 protect a child from abuse, neglect, or exploitation by another
28 person.

29
30 Except as otherwise provided in the section, neglect of a child
31 may be based on repeated conduct or on a single incident or
32 omission that results in, or could reasonably be expected to
33 result in, serious physical or mental injury, or a substantial
34 risk of death, to a child.

35 (2) OFFENSES.--

36 (a) A person who commits aggravated child abuse commits a
37 felony of the first degree, punishable as provided in s.
38 775.082, s. 775.083, or s. 775.084.

39 (b) A person who willfully or by culpable negligence
40 neglects a child and in so doing causes great bodily harm,
41 permanent disability, or permanent disfigurement to the child
42 commits a felony of the second degree, punishable as provided in
43 s. 775.082, s. 775.083, or s. 775.084.

44 (c) A person who knowingly or willfully abuses a child
45 without causing great bodily harm, permanent disability, or
46 permanent disfigurement to the child commits a felony of the
47 third degree, punishable as provided in s. 775.082, s. 775.083,
48 or s. 775.084.

49 (d) ~~(e)~~ A person who willfully or by culpable negligence
50 neglects a child without causing great bodily harm, permanent
51 disability, or permanent disfigurement to the child commits a

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 4 (for drafter's use only)

52 felony of the third degree, punishable as provided in s.
53 775.082, s. 775.083, or s. 775.084.

54 (3) Affirmative defenses. --

55 (a) If the offense is based solely on oral statements of
56 the defendant, it shall be an affirmative defense to a
57 prosecution under this section that the conduct giving rise to
58 the offense was solely speech protected by the First Amendment
59 to the United States Constitution. This affirmative defense
60 shall not apply to speech that was directed to inciting or
61 producing imminent lawless action and that was likely to incite
62 or produce such action.

63 (b) If the offense is based solely on a claim of mental
64 injury because of a caregiver's failure to make a reasonable
65 effort to protect a child from an abuser other than the
66 defendant, it shall be an affirmative defense to a prosecution
67 under this section that the defendant was a victim of an act of
68 domestic violence or had reasonable cause to believe that he or
69 she was about to become a victim of an act of domestic violence
70 as defined in s. 741.28, and the defendant had reasonable cause
71 to believe that the action or failure to act was necessary in
72 order for the defendant to escape from, or protect himself or
73 herself from, the domestic violence or to preserve the minor or
74 incompetent person from exposure to domestic violence. However,
75 this affirmative defense shall not be available to any person in
76 relation to instances of child abuse arising after the defense
77 has been previously asserted with respect to the same abuser.

78 -----
79
80 T I T L E A M E N D M E N T

81 Remove line(s) 3-5 and insert:

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 4 (for drafter's use only)

82 F.S.; defining the term "mental injury"; requiring an expert
83 witness; creating affirmative defenses to the offenses of child
84 abuse, aggravated child abuse, and neglect; amending ss.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 267 False and Fraudulent Insurance Claims

SPONSOR(S): Hays

TIED BILLS: **IDEN./SIM. BILLS:** SB 752

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security & Public Safety</u>	<u>8 Y, 0 N</u>	<u>Cunningham</u>	<u>Kramer</u>
2) <u>Safety & Security Council</u>		<u>Cunningham</u> <i>SAC</i>	<u>Havlicak</u> <i>RH</i>
3) <u>Policy & Budget Council</u>			
4) _____			
5) _____			

SUMMARY ANALYSIS

Under Florida's Motor Vehicle No-Fault Law, motor vehicle owners are required to maintain \$10,000 worth of first-party insurance known as Personal Injury Protection, commonly referred to as PIP. PIP coverage provides up to \$10,000 per person for loss sustained as a result of bodily injury, sickness, disease, or death that arises from owning, maintaining, or using an insured motor vehicle.

Over time, PIP has been subject to a variety of fraudulent activities. The penalties for insurance fraud are set forth in s. 817.234, F.S., which provides that if the value of the property involved in a violation:

- Is less than \$20,000, the offender commits a 3rd degree felony;
- Is \$20,000 or more, but less than \$100,000, the offender commits a 2nd degree felony;
- Is \$100,000 or more, the offender commits a 1st degree felony.

HB 267 provides minimum mandatory penalties for persons who commit insurance fraud that involves a PIP claim. First violations are punishable by a mandatory minimum term of imprisonment of 2 years and a mandatory minimum fine of \$200,000. Second and subsequent violations are punishable by a mandatory minimum term of imprisonment of 10 years and a mandatory minimum fine of \$500,000.

The bill also specifies that health care practitioners who are convicted of insurance fraud that involves a PIP claim must be punished by a minimum mandatory suspension of their professional license for 12 months.

The Criminal Justice Impact Conference met on February 26, 2008, and determined this bill would have an insignificant prison bed impact.

Additionally, this bill establishes mandatory fines and while indeterminate, any proceeds collected from these funds would increase clerks of court revenues.

This bill takes effect October 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility – This bill provides minimum mandatory penalties for persons who commit insurance fraud that involves a PIP claim.

B. EFFECT OF PROPOSED CHANGES:

Florida's Motor Vehicle No-Fault Law

Under Florida's Motor Vehicle No-Fault Law, motor vehicle owners are required to maintain \$10,000 worth of first-party insurance known as Personal Injury Protection, commonly referred to as PIP. PIP coverage provides up to \$10,000 per person for loss sustained as a result of bodily injury, sickness, disease, or death that arises from owning, maintaining, or using an insured motor vehicle. PIP benefits are available for certain express damages sustained in a motor vehicle accident regardless of fault.¹

Over time, PIP has been subject to a variety of fraudulent activities. Examples of PIP fraud include: solicitation of individuals to participate in fraud; staging motor vehicle accidents; billing for treatment that never occurred; and overbilling of legitimate claims. From 2002 to 2005, PIP fraud referrals to the Division of Insurance Fraud (DIF) increased 300%, from 615 referrals to 2,628 referrals. During fiscal year 2005-2006, there were 225 convictions for PIP fraud - this made up 36% of the 620 total insurance fraud convictions for that year.²

Insurance Fraud

A person commits insurance fraud if they, with the intent to injure, defraud, or deceive any insurer:

- Presents or causes to be presented any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy or a health maintenance organization subscriber or provider contract, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim;
- Prepares or makes any written or oral statement that is intended to be presented to any insurer in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy or a health maintenance organization subscriber or provider contract, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim; or
- Knowingly:
 - o Presents, causes to be presented, or prepares or makes with knowledge or belief that it will be presented to any insurer, purported insurer, servicing corporation, insurance broker, or insurance agent, or any employee or agent thereof, any false, incomplete, or misleading information or written or oral statement as part of, or in support of, an application for the issuance of, or the rating of, any insurance policy, or a health maintenance organization subscriber or provider contract; or
 - o Conceals information concerning any fact material to such application.³

¹ House of Representative Staff Analysis, House Bill 13C, October, 2007.

² *Id.*

³ s. 817.234, F.S.

Section 817.234, F.S., also specifies ways in which physicians, practitioners, attorneys, and certain governmental units may commit insurance fraud. Specifically, s. 817.234, F.S., provides:

- Any physician licensed under chapter 458, osteopathic physician licensed under chapter 459, chiropractic physician licensed under chapter 460, or other practitioner licensed under the laws of this state who knowingly and willfully assists, conspires with, or urges any insured party to fraudulently violate any of the provisions of this section or part XI of chapter 627, or any person who, due to such assistance, conspiracy, or urging by said physician, osteopathic physician, chiropractic physician, or practitioner, knowingly and willfully benefits from the proceeds derived from the use of such fraud, commits insurance fraud.
- Any attorney who knowingly and willfully assists, conspires with, or urges any claimant to fraudulently violate any of the provisions of this section or part XI of chapter 627, or any person who, due to such assistance, conspiracy, or urging on such attorney's part, knowingly and willfully benefits from the proceeds derived from the use of such fraud, commits insurance fraud.
- Any person or governmental unit licensed under chapter 395 to maintain or operate a hospital, and any administrator or employee of any such hospital, who knowingly and willfully allows the use of the facilities of said hospital by an insured party in a scheme or conspiracy to fraudulently violate any of the provisions of this section or part XI of chapter 627 commits insurance fraud

Penalties

The penalties for insurance fraud are set forth in s. 817.234, F.S., which provides that if the value of the property involved in a violation:

- Is less than \$20,000, the offender commits a 3rd degree felony⁴;
- Is \$20,000 or more, but less than \$100,000, the offender commits a 2nd degree felony⁵;
- Is \$100,000 or more, the offender commits a 1st degree felony⁶.

Section 817.234, F.S., also states that if a physician, osteopathic physician, chiropractic physician, or practitioner is adjudicated guilty of insurance fraud, the appropriate licensing authority must hold an administrative hearing to consider the imposition of administrative sanctions.

Minimum Penalties

The insurance fraud statute currently contains provisions that require minimum penalties. Specifically, s. 817.234(8)(a), F.S., makes it unlawful for a person intending to defraud another person to solicit or cause to be solicited any business from a person involved in a motor vehicle accident for the purpose of making, adjusting, or settling motor vehicle tort claims or claims for PIP benefits. The penalty for violating this provision is a minimum term of imprisonment of two years.

In addition, s. 817.234(9), F.S., provides that a person may not organize, plan, or knowingly participate in an intentional motor vehicle crash or a scheme to create documentation of a motor vehicle crash that did not occur for the purpose of making motor vehicle tort claims or claims for PIP benefits. The penalty for violating this provision is a minimum terms of imprisonment of two years.

Effect of the Bill

HB 267 provides minimum mandatory penalties for persons who, on or after October 1, 2008, commit insurance fraud that involves a PIP claim. First violations are punishable by a mandatory minimum term of imprisonment of 2 years and a mandatory minimum fine of \$200,000. Second and subsequent

⁴ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

⁵ A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

⁶ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

violations are punishable by a mandatory minimum term of imprisonment of 10 years and a mandatory minimum fine of \$500,000.

The bill also specifies that health care practitioners⁷ who are convicted of insurance fraud that involves a PIP claim must be punished by a minimum mandatory suspension of their professional license for 12 months. "Conviction" means "that there has been a determination of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication was withheld."

C. SECTION DIRECTORY:

Section 1. Amends s. 817.234, F.S., relating to false and fraudulent insurance claims.

Section 2. This bill takes effect October 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Health care practitioners may be affected in that they are subject to having their professional licenses suspended under the provisions of the bill.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of this bill. However, to the extent that this bill creates a new crime with minimum mandatory penalties, there may be an additional prison bed impact. Additionally, this bill establishes mandatory fines and while indeterminate, any proceeds collected from these funds would increase clerks of court revenues.

⁷ The term "health care practitioners" is defined by s. 456.001, F.S., as any person licensed under chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 462; chapter 463; chapter 464; chapter 465; chapter 466; chapter 467; part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468; chapter 478; chapter 480; part III or part IV of chapter 483; chapter 484; chapter 486; chapter 490; or chapter 491.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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:

The provisions that specify the minimum mandatory penalties may be better located in subsection (11) of s. 817.234, F.S., in that subsection (11) provides penalties for insurance fraud.

The provision relating to professional licenses may be located in subsection (2) of s. 817.234, F.S., in that subsection (2) currently contains provisions relating to the suspension of one's professional license due to insurance fraud.

D. STATEMENT OF THE SPONSOR

The sponsor submitted the following statement: Passage of HB 267 will discourage fraudulent abuse of insurance companies. This legislation will establish significant penalties on those found guilty of PIP Insurance fraud. Curbing the number of fraudulent claims and decreasing the amounts of those claims will help Floridians control insurance premium rates.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On February 6, 2008, the Homeland Security & Public Safety Committee adopted a strike-all amendment and reported the bill favorably as amended. The amendment address the issues raised in the bill analysis by reorganizing the bill's provisions into existing subsections of the insurance fraud statute. The amendment also adds technical language recommended by the Department of Health.

A bill to be entitled

An act relating to false and fraudulent insurance claims; amending s. 817.234, F.S.; requiring minimum mandatory punishments for specified insurance fraud violations involving personal injury protection insurance; providing for professional license suspensions for certain health care practitioners convicted of such violations; providing an effective date.

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

Section 1. Subsection (13) is added to section 817.234, Florida Statutes, to read:

817.234 False and fraudulent insurance claims.--

(13) (a) For offenses committed on or after October 1, 2008, and notwithstanding any other law, a person committing a violation of this section involving a claim under s. 627.736 shall be punished:

1. For a first violation, by a mandatory minimum term of imprisonment of 2 years and a mandatory minimum fine of \$200,000.

2. For a second or subsequent violation, by a mandatory minimum term of imprisonment of 10 years and a mandatory minimum fine of \$500,000.

(b)1. In addition to any other punishment, a health care practitioner, as defined in s. 456.001, who is convicted of a violation of this section involving a claim under s. 627.736 shall be punished by a minimum mandatory suspension of his or

29 her professional license for 12 months by the appropriate board
30 or department under s. 456.072.

31 2. For purposes of this paragraph, the term "convicted"
32 means that there has been a determination of guilt as a result
33 of a trial or the entry of a plea of guilty or nolo contendere,
34 regardless of whether adjudication is withheld.

35 Section 2. This act shall take effect October 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. 267

COUNCIL/COMMITTEE ACTION

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

*Traveling Amendment
No Action Required*

1 Council/Committee hearing bill: Committee on Homeland Security
2 & Public Safety

3 Representative Hays offered the following:

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Amendment

Remove everything after the enacting clause and insert:

Section 1. Subsections(2), (11) and (12) of section

817.234, Florida Statutes, are amended to read:

817.234 False and fraudulent insurance claims.--

(2) (a) Any physician licensed under chapter 458,
osteopathic physician licensed under chapter 459, chiropractic
physician licensed under chapter 460, or other practitioner
licensed under the laws of this state who knowingly and
willfully assists, conspires with, or urges any insured party to
fraudulently violate any of the provisions of this section or
part XI of chapter 627, or any person who, due to such
assistance, conspiracy, or urging by said physician, osteopathic
physician, chiropractic physician, or practitioner, knowingly
and willfully benefits from the proceeds derived from the use of
such fraud, commits insurance fraud, punishable as provided in
subsection (11). In the event that a physician, osteopathic

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

22 physician, chiropractic physician, or practitioner is
23 adjudicated guilty of a violation of this section, the Board of
24 Medicine as set forth in chapter 458, the Board of Osteopathic
25 Medicine as set forth in chapter 459, the Board of Chiropractic
26 Medicine as set forth in chapter 460, or other appropriate
27 licensing authority shall hold an administrative hearing to
28 consider the imposition of administrative sanctions as provided
29 by law against said physician, osteopathic physician,
30 chiropractic physician, or practitioner.

31 (b) In the event that a physician licensed under chapter
32 458, osteopathic physician licensed under chapter 459,
33 chiropractic physician licensed under chapter 460, or
34 practitioner licensed under the laws of this state is convicted
35 of insurance fraud that involves a claim for personal injury
36 protection benefits as required by s. 627.736, the Board of
37 Medicine as set forth in chapter 458, the Board of Osteopathic
38 Medicine as set forth in chapter 459, the Board of Chiropractic
39 Medicine as set forth in chapter 460, or other appropriate
40 licensing authority shall, in addition to any other punishment
41 less than revocation or relinquishment of the license, suspend
42 the license of said physician, osteopathic physician,
43 chiropractic physician, or practitioner for 12 months.

44 (cb) In addition to any other provision of law, systematic
45 upcoding by a provider, as defined in s. 641.19(14), with the
46 intent to obtain reimbursement otherwise not due from an insurer
47 is punishable as provided in s. 641.52(5).

48 (11) (a) If the value of any property involved in a
49 violation of this section:

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

50 1.(a) Is less than \$20,000, the offender commits a felony
51 of the third degree, punishable as provided in s. 775.082, s.
52 775.083, or s. 775.084.

53 2.(b) Is \$20,000 or more, but less than \$100,000, the
54 offender commits a felony of the second degree, punishable as
55 provided in s. 775.082, s. 775.083, or s. 775.084.

56 3.(e) Is \$100,000 or more, the offender commits a felony
57 of the first degree, punishable as provided in s. 775.082, s.
58 775.083, or s. 775.084.

59 (b) Notwithstanding any other provision of law, any person
60 who commits a violation of this section by making claims for
61 personal injury protection benefits as required by s. 627.736
62 shall be sentenced as follows:

63 1. For a first violation, by a minimum mandatory term of
64 imprisonment of 2 years and a minimum mandatory fine of
65 \$200,000.

66 2. For a second or subsequent violation, by a minimum
67 mandatory term of imprisonment of 10 years and a minimum
68 mandatory fine of \$500,000.

69 (12) As used in this section:

70 (a) "Property" means property as defined in s. 812.012.

71 (b) "Value" means value as defined in s. 812.012.

72 (c) "Conviction" has the same meaning as provided in s.
73 775.0837.

74 Section 2. This act shall take effect October 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 435 Trust Administration

SPONSOR(S): Hukill

TIED BILLS: IDEN./SIM. BILLS: SB 2164

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Constitution & Civil Law</u>	<u>7 Y, 0 N</u>	<u>Thomas</u>	<u>Birtman</u>
2) <u>Safety & Security Council</u>	<u></u>	<u>Thomas</u> <i>TT/AB</i>	<u>Havlicak</u> <i>RH</i>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The Trust Code is the portion of the Florida Statutes that pertains to the administration of trusts.

The bill provides that when a grantor appoints trustees for particular purposes, the trustees excluded from those purposes are not liable for any consequence that results from compliance with the exercise of those purposes, regardless of the information available to the excluded trustees. The trustees having the power for a particular purpose shall be liable to the beneficiaries with respect to the exercise of that purpose.

The bill permits a trustee to use trust assets, without prior court approval, to pay costs or attorney's fees in any trust proceeding, including to defend against an allegation of breach of trust. However, when a claim or defense is made against the trustee based upon a breach of trust, if the party making the allegation shows a reasonable basis for the court to conclude that a breach of trust has in fact occurred, the court may enter an order prohibiting the trustee from using trust assets to pay costs or attorney's fees, and may order a refund.

The bill revises time limitations for the bringing of legal claims by a beneficiary against a trustee for breach of trust. The bill provides that all claims by a beneficiary against a trustee are barred upon the later of:

- Ten years from the date that the trust terminates, the trustee resigns or the fiduciary relationship between the trustee and the beneficiary otherwise ends; or
- Twenty years after the date of the act or omission of the trustee that is complained of.

This bill does not appear to have a fiscal impact on state or local government.

The bill takes effect on July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families -- This bill may affect families who use trust instruments in dealing with personal property.

Safeguard individual liberty -- This bill affects the options of an individual, organization or association regarding the conduct of his/her own affairs using trust instruments.

B. EFFECT OF PROPOSED CHANGES:

Background

The Trust Code is the portion of the Florida Statutes that pertains to the administration of trusts. Florida's body of statutory law specific to trusts is found in ch. 736, F.S., and encompasses: trust registration; the jurisdiction of the courts; the duties and liabilities of trustees; the powers of the trustee; charitable trusts; and rules of construction for trusts. This chapter sets forth the default rules for trust administration which can be limited or altered by the grantor (creator of the trust) in the trust instrument. Trust provisions in statute are also supplemented by case law in areas such as requirements for trust creation, treatment of revocable trusts, and rights of creditors.

Florida's Trust Code is modeled on the Uniform Trust Code of 2000. The National Conference of Commissioners on Uniform State Laws adopted the Uniform Trust Code (UTC) in 2000 and it has been enacted in some form in 18 states and the District of Columbia. In Florida, the Ad Hoc Trust Code Revision Committee (the committee) of the Florida Bar reviewed and revised the UTC to account for distinctions found in Florida statutory and case law. The product of the committee's work was the basis for the new Florida Trust Code adopted in 2006.¹

A trust is generally defined as:

a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it. . . . [A] "beneficiary of a trust" [is] one who has an equitable interest in property subject to a trust and who enjoys the benefit of the administration of the trust by a trustee. The trustee is the person who holds the legal title to the property held in trust, for the benefit of the beneficiary. The settlor, or trustor, is the person who creates the trust.²

A "grantor" is "one who creates or adds to a trust and includes 'settlor' or 'trustor' and a testator who creates or adds to a trust."³ The term "trustee" as used in a technical or legal sense means the person who takes and holds the legal title to trust property for the benefit of another.⁴ "Trustee" includes "an original, additional, surviving, or successor trustee, whether or not appointed or confirmed by court."⁵

¹ Chapter 2006-217, L.O.F.

² 55A Fla. Jur. 2d Trusts s. 1.

³ Section 731.201(19), F.S.

⁴ 90 C.J.S. Trusts s. 2.

⁵ Section 731.201(38), F.S.

Cotrustees

A trust may comprise a variety of liquid and non-liquid assets. A trustee may be a natural person or may be a financial institution. A trustee may be selected for their expertise in fiduciary administration, family governance or management of a diversified portfolio of securities. The expertise of the trustee may be limited, however, when it comes to managing unique assets such as a family business, real estate or large blocks of stock that cannot be easily diversified. Management of these types of assets may require a different skill set.

Clients sometimes wish to appoint a particular trustee for a trust but also want to have a cotrustee, adviser, or committee (not the trustee) control certain trust decisions. For example, if a grantor funds a trust with stock in the family company, he or she might want to continue to make decisions regarding the purchase, sale, and voting of such stock. Similarly, a family that has a long-standing relationship with a successful money manager might want that manager (not the trustee) to make investment decisions for trust assets. In addition, a client might want someone other than the trustee to decide when to make income or principal distributions to beneficiaries. In these situations, the client wants to minimize the trustee's involvement in such decisions.

Even if a trust directs the trustee to make investments or distributions on the direction of someone else and relieves it from liability for following such directions, the trustee might have considerable monitoring or other responsibilities and may be subject to potential liability. Under present Florida law, the trustee still has the responsibility to oversee, monitor and intervene to avoid a serious breach of trust by the advisor. Florida law provides that when a grantor of a trust confers "on a person other than the settlor of a revocable trust the power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power *unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust* (emphasis added)."⁶

The bill amends s. 736.0703, F.S., to provide that when the grantor appoints trustees for particular purposes:

- an excluded trustee⁷ must act in accordance with the exercise of the power given to the included trustee;
- an excluded trustee is not liable, individually or as a fiduciary, for any consequence that results from compliance with the exercise of the power given to the included trustee, regardless of the information available to the excluded trustee;
- an excluded trustee is relieved from any obligation to review, inquire, investigate or make recommendations or evaluations with respect to the exercise of the power by the included trustee, regardless of any information available to the excluded trustee and regardless of any actual knowledge by the excluded trustee; and
- a trustee having the power to direct or prevent actions of the trustees shall be liable to the beneficiaries with respect to the exercise of the power as if the excluded trustees were not in office, and shall have the exclusive obligation to account to and to defend any action brought by the beneficiaries with respect to the exercise of the power.

⁶ Section 736.0808(2), F.S.

⁷ The "excluded trustee" is the trustee not assigned the specific power or purpose at issue.

Duty of Loyalty

A trustee has a duty to administer the trust solely in the interests of the beneficiaries.⁸ In the absence of a contrary provision in the trust instrument, a court order,⁹ or a specific statutory exception, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account, or which is otherwise affected by a conflict between the trustee's personal and fiduciary interests, is voidable by an affected beneficiary.¹⁰ A trustee may not usurp an opportunity properly belonging to the trust.¹¹ In voting shares of stock or in exercising powers of control over interests in other enterprises, the trustee must act in the best interest of the beneficiaries.¹²

To be contrasted with the transactions described above are those entered into between the trustee and persons who have close business¹³ or personal ties¹⁴ to the trustee. Such transactions are only presumed to be affected by a conflict between the personal and fiduciary interests of the trustee.¹⁵ Accordingly, the transactions are not voidable per se; they are voidable only if the presumption is not rebutted.

The Trust Code includes several exceptions to the basic duty of loyalty in the interest of fair, effective, and efficient trust administration. Notwithstanding the potential presence of a conflict between the personal and fiduciary interests of a trustee, the trustee's duty of loyalty does not preclude any of the following:

- Payment of reasonable compensation to the trustee or an agreement between a trustee and beneficiary relating to the appointment or compensation of the trustee;¹⁶
- Transactions between the trust and another trust, a decedent's estate, or a guardian of the property of which the trustee is a fiduciary or in which a beneficiary has an interest;¹⁷
- A deposit of trust money in a regulated financial-service institution operated by the trustee;¹⁸
- An advance by the trustee of money for the protection of the trust;¹⁹ or
- The employment of persons, including attorneys, accountants, investment advisers, or agents, even if they are the trustee or are associated with the trustee, to advise or assist the trustee in the performance of its administrative duties or the employment of agents to perform any act of administration, whether or not discretionary.²⁰

⁸ See generally, s. 736.0802(1), F.S.

⁹ A trustee who is faced with a transaction that might involve a breach of the duty of loyalty may petition the court for appointment of a special fiduciary to act with respect to the transaction. Section 736.0802(9), F.S.

¹⁰ Section 736.0802(2), F.S.

¹¹ Section 736.0802(4), F.S.

¹² Section 736.0802(6), F.S.

¹³ Section 736.0802(3)(c) and (d), F.S. This includes an officer, director, employee, agent, or attorney of the trustee or a corporation or other person or enterprise in which the trustee (or a person owning a significant interest in the trust) has an interest that might affect the trustee's best judgment.

¹⁴ Section 736.0802(3)(a) and (b), F.S. This includes the trustee's spouse and the trustee's descendants, siblings, parents, or the spouse of any of them.

¹⁵ Section 736.0802(3), F.S.

¹⁶ Section 736.0802(7)(a) and (b), F.S.

¹⁷ Section 736.0802(7)(c), F.S.

¹⁸ Section 736.0802(7)(d), F.S.

¹⁹ Section 736.0802(7)(e), F.S.

²⁰ Section 736.0802(8), F.S.

The Trust Code empowers a trustee to pay costs or attorney fees incurred in any trust proceeding from trust assets without the approval of any person or a court, except prior court approval is required if an action has been filed, or defense asserted, against the trustee based upon a breach of trust.²¹ Prior court approval is not required "if the action or defense is later withdrawn or dismissed by the party that is alleging a breach of trust or resolved without a determination by the court that the trustee has committed a breach of trust."²² The courts have held that when the personal interests of a trustee conflict with his or her position as trustee in the defense of an action, the trustee must obtain court approval before using trust funds to pay attorney's fees from trust assets.²³

The bill amends s. 736.0802(10), F.S., to remove the requirement on a trustee to seek prior court approval to pay costs or attorney's fees to defend against an allegation of breach of trust. The bill will permit the trustee to use trust assets, without prior court approval, to pay costs or attorney's fees in any trust proceeding, including to defend against an allegation of breach of trust. However, when a claim or defense is made against the trustee based upon a breach of trust, if the party making the allegation shows a reasonable basis for the court to conclude that a breach of trust has in fact occurred, the bill provides that the court may enter an order prohibiting the trustee from using trust assets to pay costs or attorney's fees. The party making the allegation of breach of trust may do so by evidence in the record or by proffering evidence to the court that a breach of trust has occurred. The trustee may proffer evidence that rebuts the allegation. The new language provides that it does not restrict the remedies a court may employ to remedy a breach of trust, including ordering appropriate refunds.

Limitations on Proceedings Against Trustees

The Trust Code specifies time limitations on bringing claims by a beneficiary against a trustee for breach of trust.²⁴ With respect to matters adequately disclosed on a trust accounting, the applicable limitation period depends on whether the trustee has sent the beneficiary a limitation notice that relates to that accounting. The shortest limitation period provided is six months. This period applies to actions on matters the trustee has adequately disclosed in a trust accounting or other trust disclosure document when the trustee has provided the beneficiary with a related limitation notice.²⁵ A limitation notice is a written statement informing the beneficiary that an action against the trustee for actions based on any matter adequately disclosed in the accounting may be barred unless the action is commenced within six months of receipt of the accounting or limitation notice, whichever is later.²⁶

A significantly longer limitation period applies to claims involving matters adequately disclosed on a trust accounting when no related limitation notice is sent to the beneficiary. The Trust Code provides that the claims are barred as provided in chapter 95, F.S.²⁷ Typically, this will result in a four-year limitation with the period beginning on the date of receipt of the adequate disclosure.²⁸ An exception applies to matters involving actual or constructive fraud by the trustee. In those cases, the action must be commenced within 12 years, however the limitation period does not begin until the later of the time the facts giving rise to the action are discovered or the time the facts should have been discovered by an exercise of due diligence.²⁹

The bill provides that when "a trustee has not issued a final trust accounting or has not given written notice to the beneficiary of the availability of the trust records for examination and that claims with

²¹ Section 736.0802(10) F.S.

²² *Ibid.*

²³ *Shriner v. Dyer*, 462 So.2d 1122 (Fla. 4th DCA 1984); *Brigham v. Brigham*, 934 So.2d 544 (Fla. 3d DCA 2006); and *J.P. Morgan Trust Co. v. Siegel*, 965 So.2d 1193 (Fla. 4th DCA 2007).

²⁴ Section 736.1008, F.S.

²⁵ Section 736.1008(2), F.S.

²⁶ Section 736.1008(4)(c), F.S.

²⁷ Section 736.1008(1)(a), F.S.

²⁸ See s. 95.11(3), F.S.

²⁹ Section 95.031(2)(a), F.S.

respect to matters not adequately disclosed may be barred, a claim against the trustee for breach of trust based on a matter not adequately disclosed in a trust disclosure document accrues when the beneficiary has actual knowledge of the facts upon which the claim is based and the trustee's repudiation of the trust, or adverse possession of trust assets, and is barred as provided in chapter 95." [The change to current law is underlined in the preceding sentence.]

The bill further provides that notwithstanding the present limitations in law as discussed above, all claims by a beneficiary against a trustee are barred upon the later of:

- Ten years from the date that the trust terminates, the trustee resigns or the fiduciary relationship between the trustee and the beneficiary otherwise ends; or
- Twenty years after the date of the act or omission of the trustee that is complained of.

Finally, the bill provides that the failure of the trustee to take corrective action shall not be construed as a separate act or omission and shall not be construed to extend the period of limitation.

Effective Date

The bill takes effect July 1, 2008.

C. SECTION DIRECTORY:

Section 1: Amends s. 736.0703, F.S., relating to cotrustees.

Section 2: Amends s. 736.0802, F.S., relating to the duty of loyalty by trustees.

Section 3: Amends s. 736.1008, F.S., relating to limitations on proceedings against trustees.

Section 4: Provides that the bill becomes effective on July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 5, 2008, the Committee on Constitution & Civil Law recommended a strike-all amendment that picks up the Senate version of the bill. The amendment provides:

Section 1: The amendment creates a new section of law to provide that communications between a fiduciary, who administers fiduciary property, and a lawyer are privileged (identical to the existing attorney/client privilege). The new privilege applies to a fiduciary when serving as:

- a personal representative (Probate) or a trustee (Trust Code) as defined in s. 731.201,
- an administrator ad litem (Probate) as described in s. 733.308,
- a curator (Probate) as described in s. 733.501,
- a guardian or guardian ad litem (Guardianship) as defined in s. 744.102,
- a conservator (Transfer of Property to Minors) as defined in s. 710.102, or
- an attorney in fact (Powers of Attorney) as described in chapter 709.

Section 2 and Section 3: - These two sections of the amendment are identical in substance to section 1 and section 2 of the bill as filed – with some slight change in wording made by Senate Bill Drafting.

Section 4: Revises time limitations for the bringing of legal claims by a beneficiary against a trustee for breach of trust.

The first change made by the amendment, made in subsection (3), provides that when a trustee has not issued a final trust accounting or has not given written notice to the beneficiary of the availability of the trust records for examination and that claims with respect to matters not adequately disclosed may be barred, a claim against the trustee for breach of trust based on a matter not adequately disclosed in a trust disclosure document is barred as provided in ch. 95, F.S., and accrues when the beneficiary has actual knowledge of:

1. The facts upon which the claim is based, provided that such actual knowledge is established by clear and convincing evidence; or
2. The trustee's repudiation of the trust or adverse possession of trust assets.

The next changes made by the amendment, made in subsection (6), provide that notwithstanding the limitations provided elsewhere in the section, all claims by a beneficiary against a trustee for breach of trust are barred:

1. Upon the later of:
 - a. Ten years after the date the trust terminates, the trustee resigns, or the fiduciary relationship between the trustee and the beneficiary otherwise ends, provided that the beneficiary had actual knowledge of the existence of the trust during the ten-year period; or
 - b. Twenty years after the date of the act or omission of the trustee that is complained of, provided that the beneficiary had actual knowledge of the existence of the trust during the twenty-year period; or
2. Forty years after the date the trust terminates, the trustee resigns, or the fiduciary relationship between the trustee and the beneficiary otherwise ends.

For the purposes of the changes made by the amendment to subsection (6), failure of the trustee to take corrective action is not a separate act or omission and does not extend the period of repose established in the subsection.

The provisions of this section of the amendment, made to both subsection (3) and subsection (6), will apply only to claims based upon acts or omissions occurring on or after July 1, 2008.

The amendment does not have a fiscal impact on state or local governments.

A bill to be entitled

An act relating to trust administration; amending s. 736.0703, F.S.; providing exceptions to duties and liabilities of cotrustees for excluded cotrustees under certain circumstances; providing for liabilities and obligations of included cotrustees; amending s. 736.0802, F.S.; providing an exception for trustee payments of costs and attorney's fees from trust assets except pursuant to court order under certain circumstances; providing requirements for obtaining such a court order; preserving certain court remedies; amending s. 736.1008, F.S.; specifying periods of repose barring claims by a beneficiary against a trustee; providing construction; providing an effective date.

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

Section 1. Subsection(7) of section 736.0703, Florida Statutes, is amended, and subsection (9) is added to that section, to read:

736.0703 Cotrustees.--

(7) Except as otherwise provided in subsection (9), each cotrustee shall exercise reasonable care to:

- (a) Prevent a cotrustee from committing a breach of trust.
- (b) Compel a cotrustee to redress a breach of trust.

(9) If the terms of a trust instrument provide for the appointment of more than one trustee but confer upon one or more of the trustees, to the exclusion of the others, the power to

29 direct or prevent specified actions of the trustees, the
 30 excluded trustees shall act in accordance with the exercise of
 31 the power. An excluded trustee is not liable, individually or as
 32 a fiduciary, for any consequence that results from compliance
 33 with the exercise of the power, regardless of the information
 34 available to the excluded trustees. The excluded trustees are
 35 relieved of any obligation to review, inquire, investigate, or
 36 make recommendations or evaluations with respect to the exercise
 37 of the power. The trustee or trustees having the power to direct
 38 or prevent actions of the trustees shall be liable to the
 39 beneficiaries with respect to the exercise of the power as if
 40 the excluded trustees were not in office and shall have the
 41 exclusive obligation to account to and to defend any action
 42 brought by the beneficiaries with respect to the exercise of the
 43 power.

44 Section 2. Subsection (10) of section 736.0802, Florida
 45 Statutes, is amended to read:

46 736.0802 Duty of loyalty.--

47 (10) Payment of costs or attorney's fees incurred in any
 48 trust proceeding from the assets of the trust may be made by the
 49 trustee without the approval of any person and without court
 50 authorization, unless the court orders otherwise as provided in
 51 paragraph (a). ~~except that court authorization shall be required~~
 52 ~~if an action has been filed~~

53 (a) If a claim or defense asserted against the trustee
 54 based upon a breach of trust is made against the trustee in a
 55 trust proceeding, a party must obtain a court order to prohibit
 56 the trustee from paying costs or attorney's fees from trust

57 assets. To obtain an order prohibiting payment of costs or
58 attorney's fees from trust assets, a party must make a
59 reasonable showing by evidence in the record or by proffering
60 evidence that provides a reasonable basis for a court to
61 conclude that there has been a breach of trust. The trustee may
62 proffer evidence to rebut the evidence submitted by a party.

63 (b) Nothing in this subsection is intended to restrict the
64 remedies a court may employ to remedy a breach of trust,
65 including, but not limited to, ordering appropriate refunds.
66 ~~Court authorization is not required if the action or defense is~~
67 ~~later withdrawn or dismissed by the party that is alleging a~~
68 ~~breach of trust or resolved without a determination by the court~~
69 ~~that the trustee has committed a breach of trust.~~

70 Section 3. Subsection (3) of section 736.1008, Florida
71 Statutes, is amended, subsection (6) of that section is
72 renumbered as subsection (7), and new subsection (6) is added to
73 that section, to read:

74 736.1008 Limitations on proceedings against trustees.--

75 (3) When a trustee has not issued a final trust accounting
76 or has not given written notice to the beneficiary of the
77 availability of the trust records for examination and that
78 claims with respect to matters not adequately disclosed may be
79 barred, a claim against the trustee for breach of trust based on
80 a matter not adequately disclosed in a trust disclosure document
81 accrues when the beneficiary has actual knowledge of the facts
82 upon which the claim is based and the trustee's repudiation of
83 the trust or adverse possession of trust assets, and is barred
84 as provided in chapter 95.

85 (6) (a) Notwithstanding subsections (1), (2), and (3), all
86 claims by a beneficiary against a trustee are barred upon the
87 later of:

88 1. Ten years after the date the trust terminates, the
89 trustee resigns, or the fiduciary relationship between the
90 trustee and the beneficiary otherwise ends; or

91 2. Twenty years after the date of the act or omission of
92 the trustee that is complained of.

93 (b) For purposes of this subsection, the failure of the
94 trustee to take corrective action shall not be construed as a
95 separate act or omission and shall not be construed to extend
96 the period of repose established by this subsection.

97 Section 4. This act shall take effect July 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. HB 435

COUNCIL/COMMITTEE ACTION

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

*Traveling Amendment
NO Action Required*

1 Council/Committee hearing bill: Committee on Constitution &
2 Civil Law

3 Representative Hukill offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7

8 Section 1. Section 90.5021, Florida Statutes, is created
9 to read:

10 90.5021 Fiduciary lawyer-client privilege.--

11 (1) For the purpose of this section, a client acts as a
12 fiduciary when serving as a personal representative or a trustee
13 as defined in s. 731.201, an administrator ad litem as described
14 in s. 733.308, a curator as described in s. 733.501, a guardian
15 or guardian ad litem as defined in s. 744.102, a conservator as
16 defined in s. 710.102, or an attorney in fact as described in
17 chapter 709.

18 (2) A communication between a lawyer and a client acting
19 as a fiduciary is privileged and protected from disclosure under
20 s. 90.502 to the same extent as if the client were not acting as
21 a fiduciary. In applying s. 90.502 to a communication under this

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

22 section, only the person or entity acting as a fiduciary is
23 considered a client of the lawyer.

24 Section 2. Subsection (7) of section 736.0703, Florida
25 Statutes, is amended, and subsection (9) is added to that
26 section, to read:

27 736.0703 Cotrustees.--

28 (7) Except as otherwise provided in subsection (9), each
29 cotrustee shall exercise reasonable care to:

30 (a) Prevent a cotrustee from committing a breach of trust.

31 (b) Compel a cotrustee to redress a breach of trust.

32 (9) If the terms of a trust instrument provide for the
33 appointment of more than one trustee but confer upon one or more
34 of the trustees, to the exclusion of the others, the power to
35 direct or prevent specified actions of the trustees, the
36 excluded trustees shall act in accordance with the exercise of
37 the power. An excluded trustee is not liable, individually or as
38 a fiduciary, for any consequence that results from compliance
39 with the exercise of the power, regardless of the information
40 available to the excluded trustees. The excluded trustees are
41 relieved of any obligation to review, inquire, investigate, or
42 make recommendations or evaluations with respect to the exercise
43 of the power. The trustee or trustees having the power to direct
44 or prevent actions of the trustees shall be liable to the
45 beneficiaries with respect to the exercise of the power as if
46 the excluded trustees were not in office and have the exclusive
47 obligation to account to and defend any action brought by the
48 beneficiaries with respect to the exercise of the power.

49 Section 3. Subsection (10) of section 736.0802, Florida
50 Statutes, is amended to read:

51 736.0802 Duty of loyalty.--

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

52 (10) Payment of costs or attorney's fees incurred in any
53 trust proceeding from the assets of the trust may be made by the
54 trustee without the approval of any person and without court
55 authorization, unless the court orders otherwise as provided in
56 paragraph (a). ~~except that court authorization shall be required~~
57 ~~if an action has been filed~~

58 (a) If a claim or defense asserted against the trustee
59 based upon a breach of trust is made against the trustee in a
60 trust proceeding, a party must obtain a court order to prohibit
61 the trustee from paying costs or attorney's fees from trust
62 assets. To obtain an order prohibiting payment of costs or
63 attorney's fees from trust assets, a party must make a
64 reasonable showing by evidence in the record or by proffering
65 evidence that provides a reasonable basis for a court to
66 conclude that there has been a breach of trust. The trustee may
67 proffer evidence to rebut the evidence submitted by a party.

68 (b) This subsection does not restrict the remedies a court
69 may employ to remedy a breach of trust, including, but not
70 limited to, ordering appropriate refunds. ~~Court authorization is~~
71 ~~not required if the action or defense is later withdrawn or~~
72 ~~dismissed by the party that is alleging a breach of trust or~~
73 ~~resolved without a determination by the court that the trustee~~
74 ~~has committed a breach of trust.~~

75 Section 4. Subsection (3) of section 736.1008, Florida
76 Statutes, is amended, present subsection (6) of that section is
77 renumbered as subsection (7), and new subsection (6) is added to
78 that section, to read:

79 736.1008 Limitations on proceedings against trustees.--

80 (3) When a trustee has not issued a final trust accounting
81 or has not given written notice to the beneficiary of the
82 availability of the trust records for examination and that

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

83 claims with respect to matters not adequately disclosed may be
84 barred, a claim against the trustee for breach of trust based on
85 a matter not adequately disclosed in a trust disclosure document
86 is barred as provided in chapter 95 and accrues when the
87 beneficiary has actual knowledge of:

88 (a) The facts upon which the claim is based if such actual
89 knowledge is established by clear and convincing evidence; or

90 (b) The trustee's repudiation of the trust or adverse
91 possession of trust assets, ~~and is barred as provided in chapter~~
92 95.

93
94 Paragraph (a) applies to claims based upon acts or omissions
95 occurring on or after July 1, 2008.

96 (6) (a) Notwithstanding subsections (1), (2), and (3), all
97 claims by a beneficiary against a trustee are barred:

98 1. Upon the later of:

99 a. Ten years after the date the trust terminates, the
100 trustee resigns, or the fiduciary relationship between the
101 trustee and the beneficiary otherwise ends if the beneficiary
102 had actual knowledge of the existence of the trust during the
103 10-year period; or

104 b. Twenty years after the date of the act or omission of
105 the trustee that is complained of if the beneficiary had actual
106 knowledge of the existence of the trust during the 20-year
107 period; or

108 2. Forty years after the date the trust terminates, the
109 trustee resigns, or the fiduciary relationship between the
110 trustee and the beneficiary otherwise ends.

111 (b) For purposes of this subsection, the failure of the
112 trustee to take corrective action is not a separate act or

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

113 omission and does not extend the period of repose established by
114 this subsection.

115 (c) This subsection applies to claims based upon acts or
116 omissions occurring on or after July 1, 2008.

117 Section 5. This act shall take effect July 1, 2008.

118

119

120

121

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

122

Remove the entire title and insert:

123

124

An act relating to fiduciaries; creating s. 90.5021, F.S.;
125 providing a fiduciary lawyer-client privilege for purposes of
126 the Florida Evidence Code; providing that a communication
127 between a lawyer and a client acting as a fiduciary is
128 privileged and protected from disclosure; amending s. 736.0703,
129 F.S.; providing exceptions to duties and liabilities of
130 cotrustees for excluded cotrustees under certain circumstances;
131 providing for liabilities and obligations of included
132 cotrustees; amending s. 736.0802, F.S.; providing an exception
133 for trustee payments of costs and attorney's fees from trust
134 assets except pursuant to court order under certain
135 circumstances; providing requirements for obtaining such a court
136 order; preserving certain court remedies; amending s. 736.1008,
137 F.S.; specifying when a claim accrues against a trustee for
138 breach of trust based on a matter not adequately disclosed;
139 providing for application; specifying periods of repose barring
140 claims by a beneficiary against a trustee; providing for
141 construction; providing for application; providing an effective
142 date.

143

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 453 Alimony

SPONSOR(S): Gibbons

TIED BILLS: IDEN./SIM. BILLS: SB 1416

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Constitution & Civil Law</u>	<u>6 Y, 2 N</u>	<u>Davis</u>	<u>Birtman</u>
2) <u>Safety & Security Council</u>	<u></u>	<u>Davis</u> <i>MD</i>	<u>Havlicak</u> <i>RH</i>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill allows the court to consider the existence of a supportive relationship between an obligee and a person who is not related by consanguinity or affinity and with whom the obligee resides when determining the initial award of alimony.

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

The bill provides an effective date of July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility: The bill may limit the ability of an ex-spouse to collect alimony when the ex-spouse is found to be living in a supportive relationship with a person the ex-spouse is not related to by consanguinity or affinity.

B. EFFECT OF PROPOSED CHANGES:

Alimony Law

Alimony is generally used to provide support to a financially dependent spouse.¹ The primary basis for alimony is whether there is need and ability to pay; alimony is not appropriate when the requesting spouse has no need for support or when the other spouse does not have the ability to pay.² Before a court can make an award of alimony, equitable distribution of the former spouse's assets must occur.³ The court then has several options with regard to awarding alimony, including permanent periodic alimony, lump-sum alimony, "bridge-the-gap" alimony, rehabilitative alimony, a combination of several different types of alimony, or no alimony at all.⁴

Permanent periodic alimony is usually awarded to meet the needs of a dependent spouse, although this form of alimony can also be used to balance any inequities that might result from the property division of the final judgment.⁵ Lump sum alimony can also be used to remedy any inequity that remains as a result of the final division of property.⁶ Lump sum alimony can also be accomplished through periodic payments.⁷

In a long-term marriage, there is a presumption in favor of permanent alimony, regardless of the spouse's age or ability to earn income, although the district courts of Florida do not agree as to what constitutes a long-term marriage.⁸ Generally, however, a marriage of seventeen years or longer is considered long-term.⁹

Lump sum alimony may also take the form of "bridge-the-gap" alimony, which is alimony intended only for short-term assistance with legitimate, identifiable short-term needs.¹⁰ This form of alimony typically lasts no longer than two years.¹¹ To receive an award of rehabilitative alimony, the party seeking support must provide the court with a rehabilitative plan including the purpose of the rehabilitation, the areas in which rehabilitation is needed, and the actual amount of money necessary for rehabilitation.¹²

Section 61.08(1), F.S., provides that:

¹ Victoria Ho & Jennifer Johnson, *Overview of Florida Alimony Law*, 78-OCT Fla. B. J. 71, 71 (2004).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 72.

⁸ *Young v. Young*, 677 So. 2d 1301 (Fla. 5th DCA 1996).

⁹ *Cruz v. Cruz*, 574 So. 2d 1117 (Fla. 3d DCA 1990).

¹⁰ *Borchard v. Borchard*, 730 So.2d 748, 753 (Fla. 2nd DCA 1999).

¹¹ *Borchard v. Borchard*, 730 So.2d 748 (Fla. 2nd DCA 1999).

¹² *Id.*

In a proceeding for dissolution of marriage, the court may grant alimony to either party, which alimony may be rehabilitative or permanent in nature. In any award of alimony, the court may order periodic payments or payments in lump sum or both. The court may consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded.

In awarding alimony, the trial court is given broad discretion to consider any factor "necessary to do equity and justice between the parties."¹³ The trial court is to consider "all relevant economic factors" when determining a proper award of maintenance or alimony.¹⁴ These factors include:

- The standard of living established during the marriage.
- The duration of the marriage.
- The age, physical, and emotional condition of each party.
- The financial resources of each party, both marital and nonmarital, and the liabilities of each of them.
- If applicable, the time necessary for either party to acquire the education or training necessary for the party to find employment.
- Each party's contribution to the marriage, including, but not limited to, homemaking services, child care, education, and career building of the other party.
- All sources of income available to either party.

In addition to the factors listed in s. 61.08(2), F.S., the court may consider any other factor necessary to do equity and justice between the parties.¹⁵

Reducing or Terminating Alimony

Current law in s. 61.14(1)(b), F.S., provides that the "court may reduce or terminate an award of alimony upon specific written findings by the court that since the granting of a divorce and the award of alimony a supportive relationship has existed between the obligee and a person with whom the obligee resides" and who is not related by consanguinity or affinity. The burden of proving, by a preponderance of the evidence, that a supportive relationship exists is placed upon the obligor.

In determining whether the alleged de facto marriage should result in the reduction or termination of an existing award of alimony, the court is directed to "elicit the nature and extent of the relationship in question."¹⁶

Section 61.14(1)(b)2., F.S., requires the court to consider the following non-exclusive list of circumstances, in determining the relationship of an obligee to another person in determining whether to modify an existing award of alimony:

- Whether the obligee and the other person hold themselves out as a married couple, engaging in conduct such as using the same last name and a common mailing address, referring to each other as "my husband" or "my wife," or "otherwise conducting themselves in a manner that evidences a permanent supportive relationship".
- The length of time that the obligee has resided in a permanent place of abode with another person who is not related by blood or affinity.
- The extent to which the obligee and other person have combined their assets or income or have otherwise demonstrated financial interdependence.

¹³ Section 61.08(2), F.S.

¹⁴ Id.

¹⁵ Section 61.08(2), F.S.

¹⁶ Section 61.14(1)(b)2., F.S.

- The extent to which either the obligee or the other person supports the other, either in whole or in part.
- “The extent to which the obligee or the other person has performed valuable services for the other’s company or employer”.
- “Whether the obligee and other person have worked together to create or enhance anything of value”.
- Whether the obligee and other person have made a joint purchase of real or personal property.
- Whether there is evidence to show that the obligee and the other person have an express or implied agreement regarding property sharing and support.
- Whether the obligee and the other person have supported the children of one another, regardless of any legal obligation to do so.

The statute provides that the statutory authorization of a reduction or termination of alimony due to the existence of a supportive relationship does not abrogate the requirements that every marriage in the state be solemnized under a license, does not recognize a common law marriage as valid, and does not recognize a de facto marriage.¹⁷

“De facto marriage” is defined as “[a] marriage in which the parties live together as husband and wife under color of validity but which is defective for reasons of form, etc.”¹⁸ Common-law marriage is “[a] marriage that takes legal effect, without license or ceremony, when a couple live together as husband and wife, intend to be married, and hold themselves out to others as a married couple.”¹⁹

The Bill

The bill requires the court to consider and make a finding of fact concerning the existence of a supportive relationship as defined in s. 61.14(1)(b)2., F.S., between an obligee and a person who is not related by consanguinity or affinity and with whom the obligee resides when determining a initial award of alimony or maintenance.

Essentially the bill is applying the current standard used in modifying alimony and applying it to the initial awarding of alimony.

C. SECTION DIRECTORY:

Section 1: Amends s. 61.08 F.S., relating to alimony.

Section 2: Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹⁷ Section 61.14(1)(b)3., F.S.

¹⁸ BLACK’S LAW DICTIONARY, 375 (5th ed. 1979).

¹⁹ BLACK’S LAW DICTIONARY, 251 (5th ed. 1979).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to alimony; amending s. 61.08, F.S.;
 3 permitting consideration of the existence of a supportive
 4 relationship meeting specified criteria as a factor in
 5 determining an award of alimony or maintenance; providing
 6 an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Paragraph (h) is added to subsection (2) of
 11 section 61.08, Florida Statutes, to read:

12 61.08 Alimony.--

13 (2) In determining a proper award of alimony or
 14 maintenance, the court shall consider all relevant economic
 15 factors, including but not limited to:

16 (h) Whether a supportive relationship as set forth in s.
 17 61.14(1)(b)2. has existed between the obligee and a person who
 18 is not related by consanguinity or affinity and with whom the
 19 obligee resides.

20
 21 The court may consider any other factor necessary to do equity
 22 and justice between the parties.

23 Section 2. This act shall take effect July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty – This bill defines the term “unborn child” as a “member of the species homo sapiens, at any stage of development, who is carried in the womb,” and revises terminology in various criminal statutes to refer to an “unborn child” rather than an “unborn quick child.”

B. EFFECT OF PROPOSED CHANGES:

Federal Law:

In 2004, the Unborn Victims of Violence Act (UVVA) was enacted. The UVVA amends title 18 of the U.S. Code and the Uniform Code of Military Justice¹ to add new sections for the “protection of unborn children.” Under the act, any person who injures or kills a “child in utero” during the commission of certain specified crimes is guilty of an offense separate from one involving the pregnant woman. Punishment for the separate offense is the same as if the offense had been committed against the pregnant woman. In addition, an offense does not require proof that the person engaging in the misconduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant, or that the defendant intended to cause the death of, or bodily injury to, the child in utero. The phrase “child in utero” is defined by the act to mean “a member of the species homo sapiens, at any stage of development, who is carried in the womb.”

State Law:

At least thirty-five states have statutes that criminalize the killing of a fetus or “unborn child.”² These statutes vary with respect to the point at which criminal liability will attach; that is, the states identify different gestational stages at which the killing of an embryo or fetus will result in criminal liability.³ Florida Statutes currently criminalize the killing of an “unborn quick child.” Specifically, s. 782.09, F.S., provides that the unlawful killing of an unborn quick child, by any injury to the mother of such child which would be murder if it resulted in the death of such mother, shall be deemed murder in the same degree as that which would have been committed against the mother. This section of statute does not authorize the prosecution of any person in connection with a termination of pregnancy pursuant to ch. 390, F.S.⁴ Currently, the term “unborn quick child” is defined in accordance with the definition of “viable fetus” set forth in s. 782.071, F.S., which provides that a “fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures.”

Florida defines vehicular homicide as “the killing of a human being, or the killing of a *viable fetus* by any injury to the mother, caused by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another.”⁵ The vehicular homicide statute specifies that a right of action for civil damages exists under s. 768.19, F.S., for all deaths described in the statute.

In order to prove a DUI manslaughter case, the state must establish the following elements:

- The defendant operated a vehicle.
- The defendant, by reason of such operation, caused or contributed to the cause of the death of any human being or unborn *quick child*.⁶

¹ The Uniform Code of Military Justice is codified in chapter 47 U.S.C. 10.

² http://www.nrlc.org/Unborn_Victims/Statehomicidelaws092302.html

³ *Id.*

⁴ s. 782.09(4), F.S.

⁵ s. 782.071, F.S.

⁶ The term “unborn quick child” is defined as a “viable fetus” which is defined as a “fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures.” See s. 782.071, F.S.

- At the time of such operation, the defendant was under the influence of alcoholic beverages or a controlled substance to the extent that the defendant's normal faculties were impaired or the defendant had a blood alcohol level of .08 or higher.⁷

Effect of the Bill:

HB 513 amends s. 782.09, F.S., by replacing the term "unborn quick child" with "unborn child." The bill mirrors federal law by defining the term "unborn child" as "a member of the species homo sapiens, at any stage of development, who is carried in the womb." HB 513 also amends this statute to specify that the offense does not require proof that the defendant knew or should have known that the victim of the underlying offense was pregnant, or that the defendant intended to cause the death of, or bodily injury to, the unborn child.

HB 513 amends the vehicular homicide statute by replacing the term "viable fetus" with "unborn child," and specifies that that statute should not be construed to create or expand any civil cause of action for negligence based on statute or common law. The bill amends the DUI manslaughter statutes by replacing the term "unborn quick child" with "unborn child."

HB 513 also amends ss. 435.03 and 435.04, F.S., relating to employment screening standards, and s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to conform terminology.

C. SECTION DIRECTORY:

Section 1. Cites the act as the "Florida Unborn Victims of Violence Act."

Section 2. Amends s. 782.071, F.S., relating to vehicular homicide.

Section 3. Amends s. 782.09, F.S., relating to killing an unborn quick child by injury to mother.

Section 4. Amends s. 316.193, F.S., relating to driving under the influence; penalties.

Section 5. Amends s. 435.03, F.S., relating to Level 1 screening standards.

Section 6. Amends s. 435.04, F.S., relating to Level 2 screening standards.

Section 7. Amends s. 921.0022, F.S., relating to the Criminal Punishment Code; offense severity ranking chart.

Section 8. This bill takes effect October 1, 2008.

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:

⁷ s. 316.193, F.S.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

On February 26, 2008, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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:

While there is little Florida caselaw on point, an examination of cases from other states reveals that courts have upheld fetal homicide statutes. See *e.g.*, *People v. Davis*, 872 P.2d 591 (Cal. 1994) (upholding the California legislature's addition of the phrase "or a fetus" to the state murder law); *Smith v. Newsome*, 815 F.2d 1386 (11th Cir. 1987) (holding that the argument that that an unborn child is not a "person" within the meaning of the Fourteenth Amendment is immaterial as to whether a state can prohibit the destruction of a fetus); *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989) (holding that a state is free to enact laws that recognize unborn children, so long as the state does not include restrictions on abortion); *Terence Chadwick Lawrence v. The State of Texas* (No. PD 0236-07), issued November 21, 2007, (holding that the abortion-related rulings of the United States Supreme Court have no application to a statute that prohibits a third party from causing the death of a woman's unborn child against her will); See also, *U.S. ex rel. Ford v. Ahitow*, 888 F.Supp. 909 (C.D. Ill. 1995) and *State v. Merrill*, 450 N.W. 2d 318 (Minn. 1990).

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to offenses against unborn children; providing a short title; amending s. 782.071, F.S.; defining the term "unborn child" for purposes of vehicular homicide; revising terminology to refer to "unborn child" rather than "viable fetus"; providing legislative intent; amending s. 782.09, F.S.; revising terminology; providing that certain offenses relating to the killing of an unborn child by injury to the mother do not require specified knowledge or intent; amending ss. 316.193, 435.03, 435.04, and 921.0022; F.S.; conforming terminology; providing an effective date.

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

Section 1. This act may be cited as the "Florida Unborn Victims of Violence Act."

Section 2. Section 782.071, Florida Statutes, is amended to read:

782.071 Vehicular homicide.--"Vehicular homicide" is the killing of a human being, or the killing of an unborn child a ~~viable fetus~~ by any injury to the mother, caused by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another.

(1) Vehicular homicide is:

(a) A felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

HB 513

2008

28 (b) A felony of the first degree, punishable as provided
 29 in s. 775.082, s. 775.083, or s. 775.084, if:

30 1. At the time of the accident, the person knew, or should
 31 have known, that the accident occurred; and

32 2. The person failed to give information and render aid as
 33 required by s. 316.062.

34

35 This paragraph does not require that the person knew that the
 36 accident resulted in injury or death.

37 (2) For purposes of this section, the term "unborn child"
 38 means a member of the species homo sapiens, at any stage of
 39 development, who is carried in the womb ~~a fetus is viable when~~
 40 ~~it becomes capable of meaningful life outside the womb through~~
 41 ~~standard medical measures.~~

42 (3) A right of action for civil damages shall exist under
 43 s. 768.19, under all circumstances, for all deaths described in
 44 this section. However, this section shall not be construed to
 45 create or expand any civil cause of action for negligence based
 46 on statute or common law.

47 (4) In addition to any other punishment, the court may
 48 order the person to serve 120 community service hours in a
 49 trauma center or hospital that regularly receives victims of
 50 vehicle accidents, under the supervision of a registered nurse,
 51 an emergency room physician, or an emergency medical technician
 52 pursuant to a voluntary community service program operated by
 53 the trauma center or hospital.

54 Section 3. Section 782.09, Florida Statutes, is amended to
 55 read:

HB 513

2008

56 782.09 Killing of unborn ~~quick~~ child by injury to
 57 mother.--

58 (1) The unlawful killing of an unborn ~~quick~~ child, by any
 59 injury to the mother of such child which would be murder if it
 60 resulted in the death of such mother, shall be deemed murder in
 61 the same degree as that which would have been committed against
 62 the mother. Any person, other than the mother, who unlawfully
 63 kills an unborn ~~quick~~ child by any injury to the mother:

64 (a) Which would be murder in the first degree constituting
 65 a capital felony if it resulted in the mother's death commits
 66 murder in the first degree constituting a capital felony,
 67 punishable as provided in s. 775.082.

68 (b) Which would be murder in the second degree if it
 69 resulted in the mother's death commits murder in the second
 70 degree, a felony of the first degree, punishable as provided in
 71 s. 775.082, s. 775.083, or s. 775.084.

72 (c) Which would be murder in the third degree if it
 73 resulted in the mother's death commits murder in the third
 74 degree, a felony of the second degree, punishable as provided in
 75 s. 775.082, s. 775.083, or s. 775.084.

76 (2) The unlawful killing of an unborn ~~quick~~ child by any
 77 injury to the mother of such child which would be manslaughter
 78 if it resulted in the death of such mother shall be deemed
 79 manslaughter. A person who unlawfully kills an unborn ~~quick~~
 80 child by any injury to the mother which would be manslaughter if
 81 it resulted in the mother's death commits manslaughter, a felony
 82 of the second degree, punishable as provided in s. 775.082, s.
 83 775.083, or s. 775.084.

HB 513

2008

84 (3) The death of the mother resulting from the same act or
 85 criminal episode that caused the death of the unborn ~~quick~~ child
 86 does not bar prosecution under this section.

87 (4) This section does not authorize the prosecution of any
 88 person in connection with a termination of pregnancy pursuant to
 89 chapter 390.

90 (5) For purposes of this section, the definition of the
 91 term "unborn ~~quick~~ child" shall be determined in accordance with
 92 the definition of an unborn child ~~viable fetus~~ as set forth in
 93 s. 782.071.

94 (6) An offense under this section does not require that
 95 the person engaging in the conduct:

96 (a) Had knowledge or should have had knowledge that the
 97 victim of the underlying offense was pregnant; or

98 (b) Intended to cause the death of, or bodily injury to,
 99 the unborn child.

100 Section 4. Subsection (3) of section 316.193, Florida
 101 Statutes, is amended to read:

102 316.193 Driving under the influence; penalties.--

103 (3) Any person:

104 (a) Who is in violation of subsection (1);

105 (b) Who operates a vehicle; and

106 (c) Who, by reason of such operation, causes or
 107 contributes to causing:

108 1. Damage to the property or person of another commits a
 109 misdemeanor of the first degree, punishable as provided in s.
 110 775.082 or s. 775.083.

111 2. Serious bodily injury to another, as defined in s.
 112 316.1933, commits a felony of the third degree, punishable as
 113 provided in s. 775.082, s. 775.083, or s. 775.084.

114 3. The death of any human being or unborn ~~quiek~~ child
 115 commits DUI manslaughter, and commits:

116 a. A felony of the second degree, punishable as provided
 117 in s. 775.082, s. 775.083, or s. 775.084.

118 b. A felony of the first degree, punishable as provided in
 119 s. 775.082, s. 775.083, or s. 775.084, if:

120 (I) At the time of the crash, the person knew, or should
 121 have known, that the crash occurred; and

122 (II) The person failed to give information and render aid
 123 as required by s. 316.062.

124

125 For purposes of this subsection, the definition of the term
 126 "unborn ~~quiek~~ child" shall be determined in accordance with the
 127 definition of an unborn child ~~viable fetus~~ as set forth in s.
 128 782.071. A person who is convicted of DUI manslaughter shall be
 129 sentenced to a mandatory minimum term of imprisonment of 4
 130 years.

131 Section 5. Paragraph (g) of subsection (2) of section
 132 435.03, Florida Statutes, is amended to read:

133 435.03 Level 1 screening standards.--

134 (2) Any person for whom employment screening is required
 135 by statute must not have been found guilty of, regardless of
 136 adjudication, or entered a plea of nolo contendere or guilty to,
 137 any offense prohibited under any of the following provisions of

HB 513

2008

138 the Florida Statutes or under any similar statute of another
 139 jurisdiction:

140 (g) Section 782.09, relating to killing of an unborn ~~quick~~
 141 child by injury to the mother.

142 Section 6. Paragraph (g) of subsection (2) of section
 143 435.04, Florida Statutes, is amended to read:

144 435.04 Level 2 screening standards.--

145 (2) The security background investigations under this
 146 section must ensure that no persons subject to the provisions of
 147 this section have been found guilty of, regardless of
 148 adjudication, or entered a plea of nolo contendere or guilty to,
 149 any offense prohibited under any of the following provisions of
 150 the Florida Statutes or under any similar statute of another
 151 jurisdiction:

152 (g) Section 782.09, relating to killing of an unborn ~~quick~~
 153 child by injury to the mother.

154 Section 7. Paragraph (g) of subsection (3) of section
 155 921.0022, Florida Statutes, is amended to read:

156 921.0022 Criminal Punishment Code; offense severity
 157 ranking chart.--

158 (3) OFFENSE SEVERITY RANKING CHART

159 (g) LEVEL 7

160

Florida	Felony	Description
Statute	Degree	
316.027(1)(b)	1st	Accident involving death, failure to

161

HB 513

2008

			stop; leaving scene.
162	316.193 (3) (c) 2.	3rd	DUI resulting in serious bodily injury.
163	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.
164	327.35 (3) (c) 2.	3rd	Vessel BUI resulting in serious bodily injury.
165	402.319 (2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
166	409.920 (2)	3rd	Medicaid provider fraud.
167	456.065 (2)	3rd	Practicing a health care profession without a license.
168	456.065 (2)	2nd	Practicing a health care profession

HB 513

2008

			without a license which results in serious bodily injury.
169	458.327 (1)	3rd	Practicing medicine without a license.
170	459.013 (1)	3rd	Practicing osteopathic medicine without a license.
171	460.411 (1)	3rd	Practicing chiropractic medicine without a license.
172	461.012 (1)	3rd	Practicing podiatric medicine without a license.
173	462.17	3rd	Practicing naturopathy without a license.
174	463.015 (1)	3rd	Practicing optometry without a license.
175	464.016 (1)	3rd	Practicing nursing without a license.
176	465.015 (2)	3rd	Practicing pharmacy without a license.
177	466.026 (1)	3rd	Practicing dentistry or dental

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

HB 513

2008

178			hygiene without a license.
	467.201	3rd	Practicing midwifery without a license.
179			
	468.366	3rd	Delivering respiratory care services without a license.
180			
	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
181			
	483.901(9)	3rd	Practicing medical physics without a license.
182			
	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
183			
	484.053	3rd	Dispensing hearing aids without a license.
184			
	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.
185			
	560.123(8)(b)1.	3rd	Failure to report currency or payment

HB 513

2008

			instruments exceeding \$300 but less than \$20,000 by money transmitter.
186	560.125 (5) (a)	3rd	Money transmitter business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
187	655.50 (10) (b) 1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
188	775.21 (10) (a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
189	775.21 (10) (b)	3rd	Sexual predator working where children regularly congregate.
190	775.21 (10) (g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
191	782.051 (3)	2nd	Attempted felony murder of a person by a person other than the

HB 513

2008

			perpetrator or the perpetrator of an attempted felony.
192	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
193	782.071	2nd	Killing of a human being or <u>unborn child</u> viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
194	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
195	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
196	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
197	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
198	784.048(4)	3rd	Aggravated stalking; violation of

HB 513

2008

			injunction or court order.
199	784.048 (7)	3rd	Aggravated stalking; violation of court order.
200	784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.
201	784.074 (1) (a)	1st	Aggravated battery on sexually violent predators facility staff.
202	784.08 (2) (a)	1st	Aggravated battery on a person 65 years of age or older.
203	784.081 (1)	1st	Aggravated battery on specified official or employee.
204	784.082 (1)	1st	Aggravated battery by detained person on visitor or other detainee.
205	784.083 (1)	1st	Aggravated battery on code inspector.
206	790.07 (4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
207	790.16 (1)	1st	Discharge of a machine gun under

HB 513

2008

specified circumstances.

208

790.165 (2) 2nd Manufacture, sell, possess, or deliver hoax bomb.

209

790.165 (3) 2nd Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.

210

790.166 (3) 2nd Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.

211

790.166 (4) 2nd Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.

212

794.08 (4) 3rd Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.

213

796.03 2nd Procuring any person under 16 years for prostitution.

214

HB 513

2008

215	800.04 (5) (c) 1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
216	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.
217	806.01 (2)	2nd	Maliciously damage structure by fire or explosive.
218	810.02 (3) (a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
219	810.02 (3) (b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
220	810.02 (3) (d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
221	810.02 (3) (e)	2nd	Burglary of authorized emergency vehicle.
	812.014 (2) (a) 1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property

HB 513

2008

			stolen while causing other property damage; 1st degree grand theft.
222	812.014 (2) (b) 2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
223	812.014 (2) (b) 3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
224	812.014 (2) (b) 4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
225	812.0145 (2) (a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
226	812.019 (2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
227	812.131 (2) (a)	2nd	Robbery by sudden snatching.
228	812.133 (2) (b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
229			

HB 513

2008

230	817.234 (8) (a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
231	817.234 (9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
232	817.234 (11) (c)	1st	Insurance fraud; property value \$100,000 or more.
233	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.
234	825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
235	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.

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

HB 513

2008

236	827.03 (3) (b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
237	827.04 (3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
238	837.05 (2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
239	838.015	2nd	Bribery.
240	838.016	2nd	Unlawful compensation or reward for official behavior.
241	838.021 (3) (a)	2nd	Unlawful harm to a public servant.
242	838.22	2nd	Bid tampering.
243	847.0135 (3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
244	847.0135 (4)	2nd	Traveling to meet a minor to commit an unlawful sex act.

HB 513

2008

245	872.06	2nd	Abuse of a dead human body.
246	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.
247	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.
248	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).
249	893.135 (1) (a) 1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.

HB 513

2008

250	893.135(1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
251	893.135(1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
252	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
253	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
254	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
255	893.135(1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
256	893.135(1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
257	893.135(1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.

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

HB 513

2008

258	893.135(1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
259	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
260	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
261	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
262	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
263	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
264	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

HB 513

2008

265	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
266	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
267	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
268	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
269	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
270	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
271	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to

HB 513

2008

address verification.

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273

Section 8. This act shall take effect October 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 559 Distribution of Material Harmful to Minors

SPONSOR(S): Schenck and others

TIED BILLS: IDEN./SIM. BILLS: SB 1128

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security & Public Safety</u>	<u>11 Y, 0 N</u>	<u>Cunningham</u>	<u>Kramer</u>
2) <u>Safety & Security Council</u>	<u></u>	<u>Cunningham <i>SKL</i></u>	<u>Havlicak <i>RN</i></u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

There is currently a three-pronged test to determine whether material is harmful to minors. Specifically, material is harmful to minors if it depicts nudity, sexual conduct, or sexual excitement that:

- (a) Predominantly appeals to the prurient, shameful, or morbid interest of minors;
- (b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
- (c) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

HB 559 expands what materials might be determined harmful to minors by amending paragraph (b) to read, "Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors."

The bill also provides that ignorance of a minor's age, a minor's misrepresentation of his or her age, a bona fide belief of a minor's age, or a minor's consent may not be raised as a defense in certain prosecutions relating to using minors in the production of certain materials and distributing obscene materials and materials that are harmful to minors.

HB 559 also increases the penalties related to the distribution of obscene materials when the materials depict a minor engaged in any act or conduct that is harmful to minors, and creates 3rd degree felony offenses that provide the following:

- A person may not knowingly use a minor in the production of certain materials that are harmful to minors.
- A person may not knowingly sell, rent, loan, give away, distribute, transmit, or show any material displaying erotic nudity to a minor.
- A person may not knowingly sell, rent, load, give away, distribute, transmit, or show any material displaying erotic fondling to a minor.

On March 14, 2008, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility – This bill increases penalties related to the distribution of obscene materials when the materials depict a minor engaged in any act or conduct that is harmful to minors.

Safeguard Individual Liberty - The bill makes it a crime to knowingly use a minor in the production of any material that is harmful to minors and to knowingly sell, rent, loan, give away, distribute, transmit, or show any material displaying erotic nudity or erotic fondling to a minor.

B. EFFECT OF PROPOSED CHANGES:

There are a variety of statutes relating to the sexual exploitation of children. Sections 847.012, 847.0125, and 847.013, F.S., criminalize selling, distributing, or exposing minors to materials that are "harmful to minors." Section 827.071(4) and (5), F.S., criminalize the possession of certain materials that depict a child engaging in sexual conduct¹. Section 827.071(2) and (3), F.S., make *using* a child in a sexual performance² a crime.

Definition – "Harmful to Minors"

Section 847.001, F.S., defines "harmful to minors" as:

Any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

- (a) Predominantly appeals to the prurient, shameful, or morbid interest of minors;
- (b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
- (c) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

Effect of the Bill

HB 559 expands what materials might be determined harmful to minors by amending paragraph (b) of the above definition as follows:

- (b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and

Obscene Materials

Section 847.001, F.S., defines "obscene" as:

¹ Section 827.071, F.S., defines "sexual conduct" as "actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed."

² Section 827.071, F.S., defines "sexual performance" as "any performance or part thereof which includes sexual conduct by a child of less than 18 years of age."

The status of material which:

- (a) The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
- (b) Depicts or describes, in a patently offensive way, sexual conduct; and
- (c) Taken as a whole, lacks serious literary, artistic, political, or scientific value.

Currently, it is a 1st degree misdemeanor³ for a person to distribute, sell, lend, give away, transmit, transmute, or show certain obscene materials.⁴ It is a 2nd degree misdemeanor⁵ for a person to knowingly have certain obscene material in one's possession, custody, or control.⁶

Effect of the Bill

HB 559 increases the above penalties to a 3rd degree felony⁷, ranked in level 6 of the Criminal Punishment Code, offense severity ranking chart, if the violation was based on materials that depict a minor engaged in any act or conduct that is harmful to minors. The bill also provides that ignorance of a minor's age, a minor's misrepresentation of his or her age, a bona fide belief of a minor's age, or a minor's consent may not be raised as a defense in a prosecution for the above-described crimes.

Selling / Distributing Harmful Materials to Minors

Section 847.012, F.S., makes it a 3rd degree felony for a person to knowingly to sell, rent, or loan for monetary consideration to a minor:

- Any picture, photograph, drawing, sculpture, motion picture film, videocassette, or similar visual representation or image of a person or portion of the human body which depicts nudity or sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors; or
- Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter defined in s. 847.001, explicit and detailed verbal descriptions or narrative accounts of sexual excitement, or sexual conduct and which is harmful to minors.

The term "knowingly" is defined as having the general knowledge of, reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

- The character and content of any material (described above) which is reasonably susceptible of examination by the defendant; and
- The age of the minor; however, an honest mistake shall constitute an excuse from liability if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.⁸

Effect of the Bill

HB 559 removes language from the definition of "knowingly" relating to the age of the minor. Specifically, the bill removes language providing that "an honest mistake shall constitute an excuse

³ A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a \$1,000 fine. See ss. 775.082 and 775.083.

⁴ See s. 847.011(1)(a), F.S.

⁵ A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and a \$500 fine. See ss. 775.082 and 775.083.

⁶ See s. 847.011(2), F.S.

⁷ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

⁸ s. 847.012, F.S.

from liability if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.” The bill adds a provision stating that “a person’s ignorance of a minor’s age, a minor’s misrepresentation of his or her age, a bona fide belief of a minor’s age, or a minor’s consent may not be raised as a defense in a prosecution” for the above-described crimes.

HB 559 also makes it a 3rd degree felony, ranked in level 6 of the Criminal Punishment Code, offense severity ranking chart, for a person to knowingly use a minor in the production of any of the above-described material regardless of whether the material is intended for distribution to minors or is actually distributed to them.

Exposing Minors to Harmful Materials

Section 847.013, F.S., makes it a 1st degree misdemeanor for a person to:

- Knowingly exhibit for a monetary consideration to a minor or knowingly to sell or rent a videotape of a motion picture to a minor or knowingly sell to a minor an admission ticket or pass or knowingly admit a minor for a monetary consideration to premises whereon there is exhibited a motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts nudity, sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors; or
- Knowingly rent or sell, or loan to a minor for monetary consideration, a videocassette or a videotape of a motion picture, or similar presentation, which, in whole or in part, depicts nudity, sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors.

The term “knowingly” is defined as having general knowledge of, reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

- The character and content of any motion picture (described above) which is reasonably susceptible of examination by the defendant, or the character of any exhibition, presentation, representation, or show (described above), other than a motion picture show, which is reasonably susceptible of being ascertained by the defendant; and
- The age of the minor; however, an honest mistake shall constitute an excuse from liability if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.⁹

Effect of the Bill

HB 559 removes language from the definition of “knowingly” relating to the age of the minor. Specifically, the bill removes language providing that “an honest mistake shall constitute an excuse from liability if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.” The bill then adds a provision stating that “a person’s ignorance of a minor’s age, a minor’s misrepresentation of his or her age, a bona fide belief of a minor’s age, or a minor’s consent may not be raised as a defense in a prosecution” for the above-described crimes.

HB 559 also makes it a 1st degree misdemeanor for a person to knowingly use a minor in the production of any motion picture, exhibition, show, representation, or other presentation that, in whole or in part, depicts nudity, sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and that is harmful to minors.

HB 559 also adds to the legislative intent language of s. 847.013, F.S., to specify that it is the intent of the Legislature to preempt the field, to the exclusion of counties and municipalities, insofar as it concerns exposing persons under 17 years of age to harmful motion pictures, exhibitions, shows, representations, presentations, and commercial or sexual exploitation.

⁹ s. 847.013, F.S.

Showing Obscene Materials to Minors

Section 847.0133, F.S., makes it a 3rd degree felony for a person to knowingly sell, rent, loan, give away, distribute, transmit, or show any obscene material¹⁰ to a minor.

HB 559 creates the following 3rd degree felony offenses:

- A person may not knowingly sell, rent, loan, give away, distribute, transmit, or show any material displaying erotic nudity to a minor.
- A person may not knowingly sell, rent, loan, give away, distribute, transmit, or show any material displaying erotic fondling to a minor.

The bill defines "erotic nudity" as, "the display of the genitals, pubic area, or breasts of a person, or the undeveloped or developing genitals, breasts, or pubic area of a minor for the purpose of real or simulated overt sexual gratification or stimulation of a minor." The bill specifies that "displaying erotic nudity" means "its inclusion in any book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing paper, card, picture, drawing, photograph, motion picture film, figure, image, videotape, videocassette, phonograph record, wire, tape, or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of erotic nudity."

The bill defines "erotic fondling" as "touching the clothed or unclothed genitals, pubic area, buttocks, or breasts of a person, or the developing or undeveloped genitals, pubic area, or breasts of a minor for the purpose of real or simulated overt sexual gratification or stimulation of a minor." The bill specifies that "displaying erotic fondling" means "its inclusion in any book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing paper, card, picture, drawing, photograph, motion picture film, figure, image, videotape, videocassette, phonograph record, wire, tape, or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of erotic fondling."

C. SECTION DIRECTORY:

Section 1. Amends s. 847.001, F.S., relating to definitions.

Section 2. Amends s. 847.011, F.S., relating to prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty.

Section 3. Amends s. 847.012, F.S., relating to prohibition of sale or other distribution of harmful materials to persons under 18 years of age; penalty.

Section 4. Amends s. 847.013, F.S., relating to exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations.

Section 5. Amends s. 847.0133, F.S., relating to protection of minors; prohibition of certain acts in connection with obscenity; penalty.

¹⁰ "Obscene material" is defined as, "any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing paper, card, picture, drawing, photograph, motion picture film, figure, image, videotape, videocassette, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose." See s. 847.0133, F.S.

Section 6. Amends s. 921.0022, F.S., relating to the Criminal Punishment Code; offense severity ranking chart.

Section 7. This bill takes effect July 1, 2008.

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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

On March 14, 2008, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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:

The First Amendment to the United States Constitution and article I, section 4 of the Florida Constitution protect the rights of individuals to express themselves in a variety of ways. The constitutions protect not only speech and the written word, but also conduct intended to communicate. When laws attempt to restrict or burden fundamental and basic rights such as these, they must not only be directed toward a legitimate public purpose, but they must be drawn as narrowly as possible.

When legislation is drafted so that it may be applied to conduct that is protected by the First Amendment, it is said to be unconstitutionally overbroad. This overbreadth doctrine permits an individual whose own speech or conduct may be prohibited to challenge an enactment facially "because it also threatens others not before the court-- those who desire to engage in legally protected expression but who may refrain from doing so rather than risk prosecution or undertake to have the law declared partially invalid." *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491 (1985).

Florida case law is replete with instances in which the Florida Supreme Court has stricken an obscenity statute because of its overbreadth after considering the hypothetical consequences. For example, in *Schmitt v. State*¹¹, the Florida Supreme Court reviewed the definition of "sexual conduct" in the statute as it existed at the time (defined to include "actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast;....") and stated the following:

[T]he statutory definition of sexual conduct as drafted would prohibit possession of a picture of a father bathing his son, two clothed children hugging each other in such a way that their clothed genitals made actual physical contact, or a photograph of a junior high school coach giving a congratulatory smack of the hand to the buttocks of one of his players fully dressed in football uniform.

The Court held that the definition was overbroad and declared that portion of the statute void.¹²

Section 5 of this bill creates the following 3rd degree felony offenses:

- A person may not knowingly sell, rent, loan, give away, distribute, transmit, or show any material displaying erotic nudity to a minor.
- A person may not knowingly sell, rent, load, give away, distribute, transmit, or show any material displaying erotic fondling to a minor.

The bill's definition of the terms "erotic nudity" and "erotic fondling" are broad and could be interpreted to include any movie that revealed a woman's (or girl's) breasts, any television commercial or program that showed one person touching the clothed buttocks of another person, a photograph of a mother holding her naked baby, etc... For the reasons outlined above, this language raises constitutional overbreadth concerns.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The following comments are applicable to the bill as filed. The strike-all amendment traveling with the bill addresses these issues.

Section 1

The definition of "harmful to minors" currently has as one of its requirements that the material "predominantly appeals to the prurient, shameful, or morbid interest of *minors*." If this portion of the definition was intended to require that the material "predominantly appeals to the prurient, shameful, or morbid interest" of the community as a whole, the words "of minors" should be removed.

¹¹ 590 So.2d 404 (Fla. 1991)

¹² *Id.*

Section 2

The bill provides increased penalties for persons who violate s. 847.011(1) or (2), F.S., based on materials that depict a minor engaged in any act or conduct that is harmful to minors. In order to ensure that the increased penalty applies, line 59 should be amended to read:

(1)(a) Except as provided for in paragraph (c), any person who knowingly sells, lends, gives away,

Similarly, line 106 should be amended to read:

(2) Except as provided for in subsection (1)(c), a person who knowingly has in his or her possession,

Section 3

The bill creates a new crime prohibiting *using* a minor in the production of any material which is harmful to a minor. However, the title of the statute only refers to prohibiting the sale or distribution of harmful materials to minors.

Section 4

It appears that the language in section 4 that makes it a crime to use a minor in the production of certain materials that are harmful to minors is duplicative of the language in section 3.

Section 6

The bill ranks the 3rd degree felony violation of s. 847.011, F.S., in level 6 of the Criminal Punishment Code, offense severity ranking chart. Line 452 describes the crime as, "distributing, offering to distribute, or possessing with intent to distribute obscene materials *to minors* or depicting minors." The bill increases the penalty for persons who violate s. 847.011(1) or (2), F.S., based on materials that *depict* a minor engaged in any act or conduct that is harmful to minors. The bill does not increase the penalty for distributing obscene materials *to minors*.

Similarly, in s. 847.012, F.S., the bill creates the crime of knowingly using a minor in the production of certain materials that are *harmful to minors*. In the Criminal Punishment Code, offense severity ranking chart, the bill (line 453) appears to inaccurately describe the crime as "knowingly using a minor in the production of *obscene or sexually explicit* materials."

D. STATEMENT OF THE SPONSOR

Representative Schenck submitted the following statement:

House Bill 559, relating to the distribution of material harmful to minors, has been introduced to help protect innocent minors from being exploited by questionable "teen modeling agencies". There have been cases where our State's Attorney's offices have tried to prosecute such agencies but have been shot down due to an unclear definition of obscene material. House Bill 559, will provide a tool for the State Attorney's offices to prosecute individuals who take provocative photographs of children under the age of 21. This bill will help cease the existence of these suspect modeling agencies. In turn, these provocative photos of our youth, which are sometimes displayed on the internet, will be destroyed. As a father of two, I am devoted to making Florida a better, safer environment for our children, which House Bill 559 does.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 12, 2008, the Homeland Security & Public Safety Committee adopted a strike-all amendment and reported the bill favorably as amended. The strike-all amendment:

- Amends the definition of the term "harmful to minors" to require that the material predominantly appeals to the *prurient, shameful, or morbid interest* rather than the prurient, shameful, or morbid interest of *minors*;
- Removes the provisions in section 5 of the bill that prohibit a person from showing any material displaying erotic nudity or erotic fondling to a minor; and
- Makes technical changes

A bill to be entitled

An act relating to the distribution of material harmful to minors; amending s. 847.001, F.S.; redefining the term "harmful to minors"; amending s. 847.011, F.S.; providing that it is a third-degree felony for any person to sell, distribute, transmit, advertise, or possess with the intent to sell, distribute, transmit, or advertise certain materials to minors; providing that ignorance of a minor's age or the minor's consent is not a defense in a prosecution for such a violation; amending s. 847.012, F.S.; prohibiting a person from knowingly using a minor in the production of certain materials, regardless of whether those materials are intended for distribution to minors or actually distributed to minors; providing a penalty; providing that ignorance of a minor's age or the minor's consent is not a defense in a prosecution for specified violations; amending s. 847.013, F.S.; providing that it is a first-degree misdemeanor for any person to knowingly use a minor in the production of certain materials depicting certain images, representations, or acts; providing that ignorance of a minor's age or the minor's consent is not a defense in a prosecution for specified violations; revising legislative intent concerning the enforcement of such laws with respect to minors; amending s. 847.0133, F.S.; providing that it is a felony of the third degree for any person to knowingly give away, distribute, transmit, or show any obscene material to a minor, display, distribute, transmit, or show erotic

29 | nudity to a minor, or distribute, display, transmit, or
 30 | show erotic fondling to a minor; amending s. 921.0022,
 31 | F.S., relating to the offense severity ranking chart of
 32 | the Criminal Punishment Code; establishing offense levels
 33 | to conform to changes made by the act; providing an
 34 | effective date.

35 |

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

37 |

38 | Section 1. Subsection (6) of section 847.001, Florida
 39 | Statutes, is amended to read:

40 | 847.001 Definitions.--As used in this chapter, the term:

41 | (6) "Harmful to minors" means any reproduction, imitation,
 42 | characterization, description, exhibition, presentation, or
 43 | representation, of whatever kind or form, depicting nudity,
 44 | sexual conduct, or sexual excitement when it:

45 | (a) Predominantly appeals to the prurient, shameful, or
 46 | morbid interest of minors;

47 | (b) Is patently offensive to prevailing standards in the
 48 | adult community as a whole with respect to what is suitable
 49 | material or conduct for minors; and

50 | (c) Taken as a whole, is without serious literary,
 51 | artistic, political, or scientific value for minors.

52 |

53 | A mother's breastfeeding of her baby is not under any
 54 | circumstance "harmful to minors."

55 | Section 2. Subsections (1) and (2) of section 847.011,
 56 | Florida Statutes, are amended to read:

57 847.011 Prohibition of certain acts in connection with
 58 obscene, lewd, etc., materials; penalty.--

59 (1)(a) Any person who knowingly sells, lends, gives away,
 60 distributes, transmits, shows, or transmutes, or offers to sell,
 61 lend, give away, distribute, transmit, show, or transmute, or
 62 has in his or her possession, custody, or control with intent to
 63 sell, lend, give away, distribute, transmit, show, transmute, or
 64 advertise in any manner, any obscene book, magazine, periodical,
 65 pamphlet, newspaper, comic book, story paper, written or printed
 66 story or article, writing, paper, card, picture, drawing,
 67 photograph, motion picture film, figure, image, phonograph
 68 record, or wire or tape or other recording, or any written,
 69 printed, or recorded matter of any such character which may or
 70 may not require mechanical or other means to be transmuted into
 71 auditory, visual, or sensory representations of such character,
 72 or any article or instrument for obscene use, or purporting to
 73 be for obscene use or purpose; or who knowingly designs, copies,
 74 draws, photographs, poses for, writes, prints, publishes, or in
 75 any manner whatsoever manufactures or prepares any such
 76 material, matter, article, or thing of any such character; or
 77 who knowingly writes, prints, publishes, or utters, or causes to
 78 be written, printed, published, or uttered, any advertisement or
 79 notice of any kind, giving information, directly or indirectly,
 80 stating, or purporting to state, where, how, of whom, or by what
 81 means any, or what purports to be any, such material, matter,
 82 article, or thing of any such character can be purchased,
 83 obtained, or had; or who in any manner knowingly hires, employs,
 84 uses, or permits any person knowingly to do or assist in doing

85 any act or thing mentioned above, commits ~~is guilty of~~ a
 86 misdemeanor of the first degree, punishable as provided in s.
 87 775.082 or s. 775.083. A person who, after having been convicted
 88 of a violation of this subsection, thereafter violates any of
 89 its provisions, commits ~~is guilty of~~ a felony of the third
 90 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 91 775.084.

92 (b) The knowing possession by any person of three or more
 93 identical or similar materials, matters, articles, or things
 94 coming within the provisions of paragraph (a) is prima facie
 95 evidence of the violation of the said paragraph.

96 (c) A person who commits a violation of paragraph (a) or
 97 subsection (2) which is based on materials that depict a minor
 98 engaged in any act or conduct that is harmful to minors commits
 99 a felony of the third degree, punishable as provided in s.
 100 775.082, s. 775.083, or s. 775.084.

101 (d) A person's ignorance of a minor's age, a minor's
 102 misrepresentation of his or her age, a bona fide belief of a
 103 minor's age, or a minor's consent may not be raised as a defense
 104 in a prosecution for one or more violations of paragraph (a) or
 105 subsection (2).

106 (2) A person who knowingly has in his or her possession,
 107 custody, or control any obscene book, magazine, periodical,
 108 pamphlet, newspaper, comic book, story paper, written or printed
 109 story or article, writing, paper, card, picture, drawing,
 110 photograph, motion picture film, film, any sticker, decal,
 111 emblem or other device attached to a motor vehicle containing
 112 obscene descriptions, photographs, or depictions, any figure,

113 image, phonograph record, or wire or tape or other recording, or
 114 any written, printed, or recorded matter of any such character
 115 which may or may not require mechanical or other means to be
 116 transmuted into auditory, visual, or sensory representations of
 117 such character, or any article or instrument for obscene use, or
 118 purporting to be for obscene use or purpose, without intent to
 119 sell, lend, give away, distribute, transmit, show, transmute, or
 120 advertise the same, commits ~~is guilty of~~ a misdemeanor of the
 121 second degree, punishable as provided in s. 775.082 or s.
 122 775.083. A person who, after having been convicted of violating
 123 this subsection, thereafter violates any of its provisions
 124 commits ~~is guilty of~~ a misdemeanor of the first degree,
 125 punishable as provided in s. 775.082 or s. 775.083. In any
 126 prosecution for such possession, it is ~~shall~~ not be necessary to
 127 allege or prove the absence of such intent.

128 Section 3. Section 847.012, Florida Statutes, is amended
 129 to read:

130 847.012 Prohibition of sale or other distribution of
 131 harmful materials to persons under 18 years of age; penalty.--

132 (1) As used in this section, "knowingly" means having the
 133 general knowledge of, reason to know, or a belief or ground for
 134 belief which warrants further inspection or inquiry of both:

135 (a) The character and content of any material described in
 136 this section ~~herein~~ which is reasonably susceptible of
 137 examination by the defendant; and

138 (b) The age of the minor, ~~however, an honest mistake shall~~
 139 ~~constitute an excuse from liability hereunder if the defendant~~
 140 ~~made a reasonable bona fide attempt to ascertain the true age of~~

141 ~~such minor.~~

142 (2) A person's ignorance of a minor's age, a minor's
 143 misrepresentation of his or her age, a bona fide belief of a
 144 minor's age, or a minor's consent may not be raised as a defense
 145 in a prosecution for a violation of this section.

146 ~~(3)-(2) A It is unlawful for any person may not knowingly~~
 147 ~~to sell, rent, or loan for monetary consideration to a minor:~~

148 (a) Any picture, photograph, drawing, sculpture, motion
 149 picture film, videocassette, or similar visual representation or
 150 image of a person or portion of the human body which depicts
 151 nudity or sexual conduct, sexual excitement, sexual battery,
 152 bestiality, or sadomasochistic abuse and which is harmful to
 153 minors; or

154 (b) Any book, pamphlet, magazine, printed matter however
 155 reproduced, or sound recording that ~~which~~ contains any matter
 156 defined in s. 847.001, explicit and detailed verbal descriptions
 157 or narrative accounts of sexual excitement, or sexual conduct
 158 and that ~~which~~ is harmful to minors.

159 (4) A person may not knowingly use a minor in the
 160 production of any material described in subsection (3),
 161 regardless of whether the material is intended for distribution
 162 to minors or is actually distributed to minors.

163 ~~(5)-(3) Any person violating any provision of this section~~
 164 ~~commits is guilty of~~ a felony of the third degree, punishable as
 165 provided in s. 775.082, s. 775.083, or s. 775.084.

166 ~~(6)-(4) Every act, thing, or transaction forbidden by this~~
 167 section constitutes a separate offense and is punishable as
 168 such.

169 ~~(7)(5)~~(a) The circuit court has jurisdiction to enjoin a
 170 violation of this section upon complaint filed by the state
 171 attorney in the name of the state upon the relation of such
 172 state attorney.

173 (b) After the filing of such a complaint, the judge to
 174 whom it is presented may grant an order restraining the person
 175 complained of until final hearing or further order of the court.
 176 Whenever the relator state attorney requests a judge of such
 177 court to set a hearing upon an application for ~~such~~ a
 178 restraining order, the such judge shall set the such hearing for
 179 a time within 3 days after the making of the such request. The
 180 ~~No such~~ order may not shall be made unless the such judge is
 181 satisfied that sufficient notice of the application therefor has
 182 been given to the party restrained of the time when and place
 183 where the application for the such restraining order is to be
 184 made.

185 (c) The person sought to be enjoined is shall be entitled
 186 to a trial of the issues within 1 day after joinder of issue,
 187 and a decision shall be rendered by the court within 2 days
 188 after of the conclusion of the trial.

189 (d) ~~If In the event that~~ a final decree of injunction is
 190 entered, it must shall contain a provision directing the
 191 defendant having the possession, custody, or control of the
 192 materials, matters, articles, or things affected by the
 193 injunction to surrender the same to the sheriff and requiring
 194 the sheriff to seize and destroy the same. The sheriff shall
 195 file a certificate of her or his compliance.

196 (e) In any action brought as provided in this section, a

197 ~~ne~~ bond or undertaking may not ~~shall~~ be required of the state or
 198 the state attorney before the issuance of a restraining order
 199 provided for by paragraph (b), and ~~there shall be no liability~~
 200 ~~on the part of~~ the state or the state attorney may not be held
 201 liable for costs or for damages sustained by reason of the such
 202 restraining order in any case where a final decree is rendered
 203 in favor of the person sought to be enjoined.

204 (f) Every person who has possession, custody, or control
 205 of, or otherwise deals with, any of the materials, matters,
 206 articles, or things described in this section, after the service
 207 upon her or him of a summons and complaint in an action for
 208 injunction brought under this section, is chargeable with
 209 knowledge of the contents and character thereof.

210 ~~(8)(6)~~ The several sheriffs and state attorneys shall
 211 vigorously enforce this section within their respective
 212 jurisdictions.

213 ~~(9)(7)~~ This section does not apply to the exhibition of
 214 motion pictures, shows, presentations, or other representations
 215 regulated under ~~the provisions of~~ s. 847.013.

216 Section 4. Section 847.013, Florida Statutes, is amended
 217 to read:

218 847.013 Exposing minors to or using minors in the
 219 production of harmful motion pictures, exhibitions, shows,
 220 presentations, or representations.--

221 (1) "KNOWINGLY" DEFINED.--As used in this section
 222 "knowingly" means having general knowledge of, reason to know,
 223 or a belief or ground for belief which warrants further
 224 inspection or inquiry of both:

225 (a) The character and content of any motion picture
 226 described herein which is reasonably susceptible of examination
 227 by the defendant, or the character of any exhibition,
 228 presentation, representation, or show described herein, other
 229 than a motion picture show, which is reasonably susceptible of
 230 being ascertained by the defendant;; and

231 (b) The age of the minor, ~~however, an honest mistake shall~~
 232 ~~constitute an excuse from liability hereunder if the defendant~~
 233 ~~made a reasonable bona fide attempt to ascertain the true age of~~
 234 ~~such minor.~~

235 (2) MINOR'S AGE.--A person's ignorance of a minor's age, a
 236 minor's misrepresentation of his or her age, a bona fide belief
 237 of a minor's age, or a minor's consent may not be raised as a
 238 defense in a prosecution for a violation of this section.

239 (3)(2) OFFENSES AND PENALTIES.--

240 (a) A ~~It is unlawful for any person may not~~ knowingly ~~to~~
 241 exhibit for a monetary consideration to a minor or knowingly ~~to~~
 242 sell or rent a videotape of a motion picture to a minor or
 243 knowingly sell to a minor an admission ticket or pass or
 244 knowingly admit a minor for a monetary consideration to premises
 245 whereon there is exhibited a motion picture, exhibition, show,
 246 representation, or other presentation which, in whole or in
 247 part, depicts nudity, sexual conduct, sexual excitement, sexual
 248 battery, bestiality, or sadomasochistic abuse and which is
 249 harmful to minors.

250 (b) A ~~It is unlawful for any person may not~~ knowingly ~~to~~
 251 rent or sell, or loan to a minor for monetary consideration, a
 252 videocassette or a videotape of a motion picture, or similar

253 presentation, which, in whole or in part, depicts nudity, sexual
 254 conduct, sexual excitement, sexual battery, bestiality, or
 255 sadomasochistic abuse and which is harmful to minors.

256 (c) The provisions of paragraph (a) do not apply to a
 257 minor when the minor is accompanied by his or her parents or
 258 either of them.

259 (d) A ~~It is unlawful for any~~ minor may not ~~to~~ falsely
 260 represent to the owner of any premises mentioned in paragraph
 261 (a), or to the owner's agent, or to any person mentioned in
 262 paragraph (b), that the ~~such~~ minor is 17 years of age or older,
 263 with the intent to procure the ~~such~~ minor's admission to such
 264 premises, or the ~~such~~ minor's purchase or rental of a videotape,
 265 for a monetary consideration.

266 (e) A ~~It is unlawful for any~~ person may not ~~to~~ knowingly
 267 make a false representation to the owner of any premises
 268 mentioned in paragraph (a), or to the owner's agent, or to any
 269 person mentioned in paragraph (b), that he or she is the parent
 270 of any minor or that any minor is 17 years of age or older, with
 271 intent to procure the ~~such~~ minor's admission to the ~~such~~
 272 premises or to aid the ~~such~~ minor in procuring admission
 273 thereto, or to aid or enable the ~~such~~ minor's purchase or rental
 274 of a videotape, for a monetary consideration.

275 (f) A person may not knowingly use a minor in the
 276 production of any motion picture, exhibition, show,
 277 representation, or other presentation that, in whole or in part,
 278 depicts nudity, sexual conduct, sexual excitement, sexual
 279 battery, bestiality, or sadomasochistic abuse and that is
 280 harmful to minors.

281 (g)~~(f)~~ A violation of any provision of this subsection
 282 constitutes a misdemeanor of the first degree, punishable as
 283 provided in s. 775.082 or s. 775.083.

284 (4)~~(3)~~ INJUNCTIVE PROCEEDINGS.--

285 (a) The circuit court has jurisdiction to enjoin a
 286 threatened violation of subsection (2) upon complaint filed by
 287 the state attorney in the name of the state upon the relation of
 288 such state attorney.

289 (b) After the filing of such a complaint, the judge to
 290 whom it is presented may grant an order restraining the person
 291 or persons complained of until final hearing or further order of
 292 the court. Whenever the relator requests a judge of the ~~such~~
 293 court to set a hearing upon an application for ~~such~~ a
 294 restraining order, the ~~such~~ judge shall set the ~~such~~ hearing for
 295 a time within 3 days after the making of the ~~such~~ request. An ~~No~~
 296 ~~such~~ order may not ~~shall~~ be made unless the ~~such~~ judge is
 297 satisfied that sufficient notice of the application therefor has
 298 been given to the person or persons restrained of the time when
 299 and place where the application for the ~~such~~ restraining order
 300 is to be heard. However, the ~~such~~ notice shall be dispensed with
 301 when it is manifest to the ~~such~~ judge, from the allegations of a
 302 sworn complaint or independent affidavit, sworn to by the
 303 relator or by some person associated with him or her in the
 304 field of law enforcement and filed by the relator, that the
 305 apprehended violation will be committed if an immediate remedy
 306 is not afforded.

307 (c) The person or persons sought to be enjoined are ~~shall~~
 308 ~~be~~ entitled to a trial of the issues within 1 day after joinder

309 of issue, and a decision shall be rendered by the court within 2
 310 days after the conclusion of the trial.

311 (d) In any action brought as provided in this section, a
 312 ~~ne~~ bond or undertaking is not ~~shall be~~ required of the state or
 313 the relator state attorney before the issuance of a restraining
 314 order provided for by this section, and there is ~~shall be~~ no
 315 liability on the part of the state or the relator state attorney
 316 for costs or damages sustained by reason of such restraining
 317 order in any case in which a final decree is rendered in favor
 318 of the person or persons sought to be enjoined.

319 (e) Every person who has possession, custody, or control
 320 of, or otherwise deals with, any motion picture, exhibition,
 321 show, representation, or presentation described in this section,
 322 after the service upon him or her of a summons and complaint in
 323 an action for injunction brought under this section, is
 324 chargeable with knowledge of the contents or character thereof.

325 (5)-(4) LEGISLATIVE INTENT.--In order to make the
 326 application and enforcement of this section uniform throughout
 327 the state, it is the intent of the Legislature to preempt the
 328 field, to the exclusion of counties and municipalities, insofar
 329 as it concerns exposing persons under 17 years of age to harmful
 330 motion pictures, exhibitions, shows, representations, ~~and~~
 331 presentations, and commercial or sexual exploitation. To that
 332 end, it is hereby declared that every county ordinance and every
 333 municipal ordinance adopted prior to July 1, 1969, and relating
 334 to such subject shall stand abrogated and unenforceable on and
 335 after such date and that no county, municipality, or
 336 consolidated county-municipal government shall have the power to

337 adopt any ordinance relating to that subject on or after such
 338 effective date.

339 Section 5. Section 847.0133, Florida Statutes, is amended
 340 to read:

341 847.0133 Protection of minors; prohibition of certain acts
 342 in connection with obscenity; prohibition of displaying erotic
 343 nudity or erotic fondling to minors; penalty.--

344 (1) A ~~It is unlawful for any person may not~~ knowingly ~~to~~
 345 sell, rent, loan, give away, distribute, transmit, or show any
 346 obscene material to a minor. For purposes of this section
 347 "obscene material" means any obscene book, magazine, periodical,
 348 pamphlet, newspaper, comic book, story paper, written or printed
 349 story or article, writing paper, card, picture, drawing,
 350 photograph, motion picture film, figure, image, videotape,
 351 videocassette, phonograph record, or wire or tape or other
 352 recording, or any written, printed, or recorded matter of any
 353 such character which may or may not require mechanical or other
 354 means to be transmuted into auditory, visual, or sensory
 355 representations of such character, or any article or instrument
 356 for obscene use, or purporting to be for obscene use or purpose.
 357 The term "obscene" has ~~shall have~~ the same meaning as set forth
 358 in s. 847.001.

359 (2) (a) A person may not knowingly sell, rent, loan, give
 360 away, distribute, transmit, or show any material displaying
 361 erotic nudity to a minor. As used in this subsection, the term
 362 "erotic nudity" means the display of the genitals, pubic area,
 363 or breasts of a person, or the undeveloped or developing
 364 genitals, breasts, or public area of a minor for the purpose of

365 real or simulated overt sexual gratification or stimulation of a
 366 minor. Displaying erotic nudity means its inclusion in any book,
 367 magazine, periodical, pamphlet, newspaper, comic book, story
 368 paper, written or printed story or article, writing paper, card,
 369 picture, drawing, photograph, motion picture film, figure,
 370 image, videotape, videocassette, phonograph record, wire, tape,
 371 or other recording, or any written, printed, or recorded matter
 372 of any such character which may or may not require mechanical or
 373 other means to be transmuted into auditory, visual, or sensory
 374 representations of erotic nudity.

375 (b) A person may not knowingly sell, rent, loan, give
 376 away, distribute, transmit, or show any material displaying
 377 erotic fondling to a minor. As used in this subsection, the term
 378 "erotic fondling" means touching the clothed or unclothed
 379 genitals, pubic area, buttocks, or breasts of a person, or the
 380 developing or undeveloped genitals, pubic area, or breasts of a
 381 minor for the purpose of real or simulated overt sexual
 382 gratification or stimulation of a minor. The term does not
 383 include physical contact that is not for the purpose of real or
 384 simulated overt sexual gratification or stimulation of a minor.
 385 Displaying erotic fondling means its inclusion in any book,
 386 magazine, periodical, pamphlet, newspaper, comic book, story
 387 paper, written or printed story or article, writing paper, card,
 388 picture, drawing, photograph, motion picture film, figure,
 389 image, videotape, videocassette, phonograph record, wire, tape,
 390 or other recording, or any written, printed, or recorded matter
 391 of any such character which may or may not require mechanical or
 392 other means to be transmuted into auditory, visual, or sensory

393 representations of erotic fondling.

394 ~~(3)~~~~(2)~~ As used in this section "knowingly" has the same
 395 meaning set forth in s. 847.012(1). A "minor" is any person
 396 under the age of 18 years.

397 (4)~~(3)~~ A person who violates subsection (1) or subsection
 398 (2) commits violation of the provisions of this section
 399 ~~constitutes~~ a felony of the third degree, punishable as provided
 400 in s. 775.082 or s. 775.083.

401 Section 6. Paragraph (f) of subsection (3) of section
 402 921.0022, Florida Statutes, is amended to read:

403 921.0022 Criminal Punishment Code; offense severity
 404 ranking chart.--

405 (3) OFFENSE SEVERITY RANKING CHART

406 (f) LEVEL 6

407

Florida Statute	Felony Degree	Description
316.193 (2) (b)	3rd	Felony DUI, 4th or subsequent conviction.
499.0051 (3)	2nd	Forgery of pedigree papers.
499.0051 (4)	2nd	Purchase or receipt of legend drug from unauthorized person.
499.0051 (5)	2nd	Sale of legend drug to unauthorized

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HB 559

2008

			person.
412	775.0875 (1)	3rd	Taking firearm from law enforcement officer.
413	784.021 (1) (a)	3rd	Aggravated assault; deadly weapon without intent to kill.
414	784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.
415	784.041	3rd	Felony battery; domestic battery by strangulation.
416	784.048 (3)	3rd	Aggravated stalking; credible threat.
417	784.048 (5)	3rd	Aggravated stalking of person under 16.
418	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
419	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
420	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
421			

HB 559

2008

422	784.081(2)	2nd	Aggravated assault on specified official or employee.
423	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
424	784.083(2)	2nd	Aggravated assault on code inspector.
425	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
426	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
427	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
428	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
429	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
430	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.

HB 559

2008

431	794.05 (1)	2nd	Unlawful sexual activity with specified minor.
432	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.
433	800.04 (6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
434	806.031 (2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
435	810.02 (3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
436	812.014 (2) (b) 1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
437	812.014 (6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
438	812.015 (9) (a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
	812.015 (9) (b)	2nd	Retail theft; property stolen \$3,000 or

			more; coordination of others.
439	812.13 (2) (c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
440	817.034 (4) (a) 1.	1st	Communications fraud, value greater than \$50,000.
441	817.4821 (5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
442	825.102 (1)	3rd	Abuse of an elderly person or disabled adult.
443	825.102 (3) (c)	3rd	Neglect of an elderly person or disabled adult.
444	825.1025 (3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
445	825.103 (2) (c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.
446	827.03 (1)	3rd	Abuse of a child.
447			

HB 559

2008

448	827.03 (3) (c)	3rd	Neglect of a child.
449	827.071 (2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
450	836.05	2nd	Threats; extortion.
451	836.10	2nd	Written threats to kill or do bodily injury.
452	843.12	3rd	Aids or assists person to escape.
453	<u>847.011</u>	<u>3rd</u>	<u>Distributing, offering to distribute, or possessing with intent to distribute obscene materials to minors or depicting minors.</u>
454	<u>847.012</u>	<u>3rd</u>	<u>Knowingly using a minor in the production of obscene or sexually explicit materials.</u>
455	847.0135 (2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
	914.23	2nd	Retaliation against a witness, victim,

or informant, with bodily injury.

456

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.

457

944.40 2nd Escapes.

458

944.46 3rd Harboring, concealing, aiding escaped prisoners.

459

944.47(1)(a)5. 2nd Introduction of contraband (firearm, weapon, or explosive) into correctional facility.

460

951.22(1) 3rd Intoxicating drug, firearm, or weapon introduced into county facility.

461

462 Section 7. This act shall take effect July 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. 559

COUNCIL/COMMITTEE ACTION

ADOPTED	—	(Y/N)
ADOPTED AS AMENDED	—	(Y/N)
ADOPTED W/O OBJECTION	—	(Y/N)
FAILED TO ADOPT	—	(Y/N)
WITHDRAWN	—	(Y/N)
OTHER	_____	

*Traveling Amendment
No Action Required*

1 Council/Committee hearing bill: Homeland Security & Public Safety
2 Representative Schenk offered the following:

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Amendment (with title amendments)

Remove everything after the enacting clause and insert:

Section 1. Subsection (6) of section 847.001, Florida Statutes, is amended to read:

847.001 Definitions.--As used in this chapter, the term:

(6) "Harmful to minors" means any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

(a) Predominantly appeals to the prurient, shameful, or morbid interest ~~of minors~~;

(b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and

(c) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

21 A mother's breastfeeding of her baby is not under any
22 circumstance "harmful to minors."

23 Section 2. Subsections (1) and (2) of section 847.011,
24 Florida Statutes, are amended to read:

25 847.011 Prohibition of certain acts in connection with
26 obscene, lewd, etc., materials; penalty.--

27 (1) (a) Except as provided in paragraph (c), any ~~Any~~ person
28 who knowingly sells, lends, gives away, distributes, transmits,
29 shows, or transmutes, or offers to sell, lend, give away,
30 distribute, transmit, show, or transmute, or has in his or her
31 possession, custody, or control with intent to sell, lend, give
32 away, distribute, transmit, show, transmute, or advertise in any
33 manner, any obscene book, magazine, periodical, pamphlet,
34 newspaper, comic book, story paper, written or printed story or
35 article, writing, paper, card, picture, drawing, photograph,
36 motion picture film, figure, image, phonograph record, or wire
37 or tape or other recording, or any written, printed, or recorded
38 matter of any such character which may or may not require
39 mechanical or other means to be transmuted into auditory,
40 visual, or sensory representations of such character, or any
41 article or instrument for obscene use, or purporting to be for
42 obscene use or purpose; or who knowingly designs, copies, draws,
43 photographs, poses for, writes, prints, publishes, or in any
44 manner whatsoever manufactures or prepares any such material,
45 matter, article, or thing of any such character; or who
46 knowingly writes, prints, publishes, or utters, or causes to be
47 written, printed, published, or uttered, any advertisement or
48 notice of any kind, giving information, directly or indirectly,
49 stating, or purporting to state, where, how, of whom, or by what
50 means any, or what purports to be any, such material, matter,

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

51 article, or thing of any such character can be purchased,
52 obtained, or had; or who in any manner knowingly hires, employs,
53 uses, or permits any person knowingly to do or assist in doing
54 any act or thing mentioned above, commits ~~is guilty of~~ a
55 misdemeanor of the first degree, punishable as provided in s.
56 775.082 or s. 775.083. A person who, after having been convicted
57 of a violation of this subsection, thereafter violates any of
58 its provisions, commits ~~is guilty of~~ a felony of the third
59 degree, punishable as provided in s. 775.082, s. 775.083, or s.
60 775.084.

61 (b) The knowing possession by any person of three or more
62 identical or similar materials, matters, articles, or things
63 coming within the provisions of paragraph (a) is prima facie
64 evidence of the violation of the said paragraph.

65 (c) A person who commits a violation of paragraph (a) or
66 subsection (2) which is based on materials that depict a minor
67 engaged in any act or conduct that is harmful to minors commits
68 a felony of the third degree, punishable as provided in s.
69 775.082, s. 775.083, or s. 775.084.

70 (d) A person's ignorance of a minor's age, a minor's
71 misrepresentation of his or her age, a bona fide belief of a
72 minor's age, or a minor's consent may not be raised as a defense
73 in a prosecution for one or more violations of paragraph (a) or
74 subsection (2).

75 (2) Except as provided in subsection (1)(c), a A person
76 who knowingly has in his or her possession, custody, or control
77 any obscene book, magazine, periodical, pamphlet, newspaper,
78 comic book, story paper, written or printed story or article,
79 writing, paper, card, picture, drawing, photograph, motion
80 picture film, film, any sticker, decal, emblem or other device

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

81 attached to a motor vehicle containing obscene descriptions,
82 photographs, or depictions, any figure, image, phonograph
83 record, or wire or tape or other recording, or any written,
84 printed, or recorded matter of any such character which may or
85 may not require mechanical or other means to be transmuted into
86 auditory, visual, or sensory representations of such character,
87 or any article or instrument for obscene use, or purporting to
88 be for obscene use or purpose, without intent to sell, lend,
89 give away, distribute, transmit, show, transmute, or advertise
90 the same, commits ~~is guilty of~~ a misdemeanor of the second
91 degree, punishable as provided in s. 775.082 or s. 775.083. A
92 person who, after having been convicted of violating this
93 subsection, thereafter violates any of its provisions commits ~~is~~
94 ~~guilty of~~ a misdemeanor of the first degree, punishable as
95 provided in s. 775.082 or s. 775.083. In any prosecution for
96 such possession, it is ~~shall~~ not be necessary to allege or prove
97 the absence of such intent.

98 Section 3. Section 847.012, Florida Statutes, is amended
99 to read:

100 847.012 Prohibition of sale or other distribution of
101 harmful materials to persons under 18 years of age; prohibition
102 on using minors in the production of harmful materials;
103 penalty.--

104 (1) As used in this section, "knowingly" means having the
105 general knowledge of, reason to know, or a belief or ground for
106 belief which warrants further inspection or inquiry of both:

107 (a) The character and content of any material described in
108 this section herein which is reasonably susceptible of
109 examination by the defendant;7 and

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

110 (b) The age of the minor; ~~however, an honest mistake shall~~
111 ~~constitute an excuse from liability hereunder if the defendant~~
112 ~~made a reasonable bona fide attempt to ascertain the true age of~~
113 ~~such minor.~~

114 (2) A person's ignorance of a minor's age, a minor's
115 misrepresentation of his or her age, a bona fide belief of a
116 minor's age, or a minor's consent may not be raised as a defense
117 in a prosecution for a violation of this section.

118 ~~(3)-(2) A~~ It is unlawful for any person may not knowingly
119 ~~to~~ sell, rent, or loan for monetary consideration to a minor:

120 (a) Any picture, photograph, drawing, sculpture, motion
121 picture film, videocassette, or similar visual representation or
122 image of a person or portion of the human body which depicts
123 nudity or sexual conduct, sexual excitement, sexual battery,
124 bestiality, or sadomasochistic abuse and which is harmful to
125 minors; ~~7~~ or

126 (b) Any book, pamphlet, magazine, printed matter however
127 reproduced, or sound recording that ~~which~~ contains any matter
128 defined in s. 847.001, explicit and detailed verbal descriptions
129 or narrative accounts of sexual excitement, or sexual conduct
130 and that ~~which~~ is harmful to minors.

131 (4) A person may not knowingly use a minor in the
132 production of any material described in subsection (3),
133 regardless of whether the material is intended for distribution
134 to minors or is actually distributed to minors.

135 ~~(5)-(3)~~ Any person violating any provision of this section
136 commits ~~is guilty of~~ a felony of the third degree, punishable as
137 provided in s. 775.082, s. 775.083, or s. 775.084.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

138 ~~(6)-(4)~~ Every act, thing, or transaction forbidden by this
139 section constitutes a separate offense and is punishable as
140 such.

141 ~~(7)-(5)~~(a) The circuit court has jurisdiction to enjoin a
142 violation of this section upon complaint filed by the state
143 attorney in the name of the state upon the relation of such
144 state attorney.

145 (b) After the filing of such a complaint, the judge to
146 whom it is presented may grant an order restraining the person
147 complained of until final hearing or further order of the court.
148 Whenever the relator state attorney requests a judge of such
149 court to set a hearing upon an application for ~~such~~ a
150 restraining order, ~~the such~~ judge shall set ~~the such~~ hearing for
151 a time within 3 days after the making of ~~the such~~ request. ~~The~~
152 ~~No such~~ order ~~may not shall~~ be made unless ~~the such~~ judge is
153 satisfied that sufficient notice of the application therefor has
154 been given to the party restrained of the time when and place
155 where the application for ~~the such~~ restraining order is to be
156 made.

157 (c) The person sought to be enjoined ~~is shall be~~ entitled
158 to a trial of the issues within 1 day after joinder of issue,
159 and a decision shall be rendered by the court within 2 days
160 ~~after of~~ the conclusion of the trial.

161 (d) ~~If In the event that~~ a final decree of injunction is
162 entered, it ~~must shall~~ contain a provision directing the
163 defendant having the possession, custody, or control of the
164 materials, matters, articles, or things affected by the
165 injunction to surrender the same to the sheriff and requiring
166 the sheriff to seize and destroy the same. The sheriff shall
167 file a certificate of her or his compliance.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

168 (e) In any action brought as provided in this section, a
169 ~~ne~~ bond or undertaking may not shall be required of the state or
170 the state attorney before the issuance of a restraining order
171 provided for by paragraph (b), and ~~there shall be no liability~~
172 ~~on the part of~~ the state or the state attorney may not be held
173 liable for costs or for damages sustained by reason of the such
174 restraining order in any case where a final decree is rendered
175 in favor of the person sought to be enjoined.

176 (f) Every person who has possession, custody, or control
177 of, or otherwise deals with, any of the materials, matters,
178 articles, or things described in this section, after the service
179 upon her or him of a summons and complaint in an action for
180 injunction brought under this section, is chargeable with
181 knowledge of the contents and character thereof.

182 ~~(8)-(6)~~ The several sheriffs and state attorneys shall
183 vigorously enforce this section within their respective
184 jurisdictions.

185 ~~(9)-(7)~~ This section does not apply to the exhibition of
186 motion pictures, shows, presentations, or other representations
187 regulated under ~~the provisions of~~ s. 847.013.

188 Section 4. Section 847.013, Florida Statutes, is amended
189 to read:

190 847.013 Exposing minors to harmful motion pictures,
191 exhibitions, shows, presentations, or representations.--

192 (1) "KNOWINGLY" DEFINED.--As used in this section
193 "knowingly" means having general knowledge of, reason to know,
194 or a belief or ground for belief which warrants further
195 inspection or inquiry of both:

196 (a) The character and content of any motion picture
197 described herein which is reasonably susceptible of examination

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

198 by the defendant, or the character of any exhibition,
199 presentation, representation, or show described herein, other
200 than a motion picture show, which is reasonably susceptible of
201 being ascertained by the defendant; and

202 (b) The age of the minor; ~~however, an honest mistake shall~~
203 ~~constitute an excuse from liability hereunder if the defendant~~
204 ~~made a reasonable bona fide attempt to ascertain the true age of~~
205 ~~such minor.~~

206 (2) MINOR'S AGE.--A person's ignorance of a minor's age, a
207 minor's misrepresentation of his or her age, a bona fide belief
208 of a minor's age, or a minor's consent may not be raised as a
209 defense in a prosecution for a violation of this section.

210 (3) ~~(2)~~ OFFENSES AND PENALTIES.--

211 (a) A ~~It is unlawful for any person may not~~ knowingly to
212 exhibit for a monetary consideration to a minor or knowingly to
213 sell or rent a videotape of a motion picture to a minor or
214 knowingly sell to a minor an admission ticket or pass or
215 knowingly admit a minor for a monetary consideration to premises
216 whereon there is exhibited a motion picture, exhibition, show,
217 representation, or other presentation which, in whole or in
218 part, depicts nudity, sexual conduct, sexual excitement, sexual
219 battery, bestiality, or sadomasochistic abuse and which is
220 harmful to minors.

221 (b) A ~~It is unlawful for any person may not~~ knowingly to
222 rent or sell, or loan to a minor for monetary consideration, a
223 videocassette or a videotape of a motion picture, or similar
224 presentation, which, in whole or in part, depicts nudity, sexual
225 conduct, sexual excitement, sexual battery, bestiality, or
226 sadomasochistic abuse and which is harmful to minors.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

227 (c) The provisions of paragraph (a) do not apply to a
228 minor when the minor is accompanied by his or her parents or
229 either of them.

230 (d) A ~~It is unlawful for any~~ minor may not ~~to~~ falsely
231 represent to the owner of any premises mentioned in paragraph
232 (a), or to the owner's agent, or to any person mentioned in
233 paragraph (b), that the ~~such~~ minor is 17 years of age or older,
234 with the intent to procure the ~~such~~ minor's admission to such
235 premises, or the ~~such~~ minor's purchase or rental of a videotape,
236 for a monetary consideration.

237 (e) A ~~It is unlawful for any~~ person may not ~~to~~ knowingly
238 make a false representation to the owner of any premises
239 mentioned in paragraph (a), or to the owner's agent, or to any
240 person mentioned in paragraph (b), that he or she is the parent
241 of any minor or that any minor is 17 years of age or older, with
242 intent to procure the ~~such~~ minor's admission to the ~~such~~
243 premises or to aid the ~~such~~ minor in procuring admission
244 thereto, or to aid or enable the ~~such~~ minor's purchase or rental
245 of a videotape, for a monetary consideration.

246 (f) A violation of any provision of this subsection
247 constitutes a misdemeanor of the first degree, punishable as
248 provided in s. 775.082 or s. 775.083.

249 (4) ~~(3)~~ INJUNCTIVE PROCEEDINGS.--

250 (a) The circuit court has jurisdiction to enjoin a
251 threatened violation of subsection (2) upon complaint filed by
252 the state attorney in the name of the state upon the relation of
253 such state attorney.

254 (b) After the filing of such a complaint, the judge to
255 whom it is presented may grant an order restraining the person
256 or persons complained of until final hearing or further order of

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

257 the court. Whenever the relator requests a judge of the such
258 court to set a hearing upon an application for ~~such~~ a
259 restraining order, the such judge shall set the such hearing for
260 a time within 3 days after the making of the such request. ~~An No~~
261 ~~such~~ order may not shall be made unless the such judge is
262 satisfied that sufficient notice of the application therefor has
263 been given to the person or persons restrained of the time when
264 and place where the application for the such restraining order
265 is to be heard. However, the such notice shall be dispensed with
266 when it is manifest to the such judge, from the allegations of a
267 sworn complaint or independent affidavit, sworn to by the
268 relator or by some person associated with him or her in the
269 field of law enforcement and filed by the relator, that the
270 apprehended violation will be committed if an immediate remedy
271 is not afforded.

272 (c) The person or persons sought to be enjoined are shall
273 ~~be~~ entitled to a trial of the issues within 1 day after joinder
274 of issue, and a decision shall be rendered by the court within 2
275 days after the conclusion of the trial.

276 (d) In any action brought as provided in this section, a
277 ~~ne~~ bond or undertaking is not shall be required of the state or
278 the relator state attorney before the issuance of a restraining
279 order provided for by this section, and there is shall be no
280 liability on the part of the state or the relator state attorney
281 for costs or damages sustained by reason of such restraining
282 order in any case in which a final decree is rendered in favor
283 of the person or persons sought to be enjoined.

284 (e) Every person who has possession, custody, or control
285 of, or otherwise deals with, any motion picture, exhibition,
286 show, representation, or presentation described in this section,

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

287 after the service upon him or her of a summons and complaint in
288 an action for injunction brought under this section, is
289 chargeable with knowledge of the contents or character thereof.

290 (5)~~(4)~~ LEGISLATIVE INTENT.--In order to make the
291 application and enforcement of this section uniform throughout
292 the state, it is the intent of the Legislature to preempt the
293 field, to the exclusion of counties and municipalities, insofar
294 as it concerns exposing persons under 17 years of age to harmful
295 motion pictures, exhibitions, shows, representations, and
296 presentations, and commercial or sexual exploitation. To that
297 end, it is hereby declared that every county ordinance and every
298 municipal ordinance adopted prior to July 1, 1969, and relating
299 to such subject shall stand abrogated and unenforceable on and
300 after such date and that no county, municipality, or
301 consolidated county-municipal government shall have the power to
302 adopt any ordinance relating to that subject on or after such
303 effective date.

304 Section 5. Section 847.0133, Florida Statutes, is amended
305 to read:

306 847.0133 Protection of minors; prohibition of certain acts
307 in connection with obscenity; penalty.--

308 (1) A ~~It is unlawful for any person may not~~ knowingly to
309 sell, rent, loan, give away, distribute, transmit, or show any
310 obscene material to a minor. For purposes of this section
311 "obscene material" means any obscene book, magazine, periodical,
312 pamphlet, newspaper, comic book, story paper, written or printed
313 story or article, writing paper, card, picture, drawing,
314 photograph, motion picture film, figure, image, videotape,
315 videocassette, phonograph record, or wire or tape or other
316 recording, or any written, printed, or recorded matter of any

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

317 such character which may or may not require mechanical or other
318 means to be transmuted into auditory, visual, or sensory
319 representations of such character, or any article or instrument
320 for obscene use, or purporting to be for obscene use or purpose.
321 The term "obscene" has ~~shall have~~ the same meaning as set forth
322 in s. 847.001.

323 (2) As used in this section "knowingly" has the same
324 meaning set forth in s. 847.012(1). A "minor" is any person
325 under the age of 18 years.

326 (3) A violation of the provisions of this section
327 constitutes a felony of the third degree, punishable as provided
328 in s. 775.082 or s. 775.083.

329 Section 6. Paragraph (f) of subsection (3) of section
330 921.0022, Florida Statutes, is amended to read:

331 921.0022 Criminal Punishment Code; offense severity
332 ranking chart.--

333 (3) OFFENSE SEVERITY RANKING CHART

334 (f) LEVEL 6

335

Florida Statute	Felony Degree	Description
336 316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
337 499.0051(3)	2nd	Forgery of pedigree papers.
338 499.0051(4)	2nd	Purchase or receipt of legend drug from unauthorized person.

339

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

340	499.0051(5)	2nd	Sale of legend drug to unauthorized person.
341	775.0875(1)	3rd	Taking firearm from law enforcement officer.
342	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
343	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
344	784.041	3rd	Felony battery; domestic battery by strangulation.
345	784.048(3)	3rd	Aggravated stalking; credible threat.
346	784.048(5)	3rd	Aggravated stalking of person under 16.
347	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
348	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
349	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
	784.081(2)	2nd	Aggravated assault on specified official or employee.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

350	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
351	784.083(2)	2nd	Aggravated assault on code inspector.
352	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
353	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
354	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
355	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
356	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
357	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
358	794.05(1)	2nd	Unlawful sexual activity with specified minor.
359	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

12 years of age or older but less than
16 years; offender less than 18 years.

360

800.04 (6) (b) 2nd Lewd or lascivious conduct; offender 18
years of age or older.

361

806.031 (2) 2nd Arson resulting in great bodily harm to
firefighter or any other person.

362

810.02 (3) (c) 2nd Burglary of occupied structure;
unarmed; no assault or battery.

363

812.014 (2) (b) 1. 2nd Property stolen \$20,000 or more, but
less than \$100,000, grand theft in 2nd
degree.

364

812.014 (6) 2nd Theft; property stolen \$3,000 or more;
coordination of others.

365

812.015 (9) (a) 2nd Retail theft; property stolen \$300 or
more; second or subsequent conviction.

366

812.015 (9) (b) 2nd Retail theft; property stolen \$3,000 or
more; coordination of others.

367

812.13 (2) (c) 2nd Robbery, no firearm or other weapon
(strong-arm robbery).

368

817.034 (4) (a) 1. 1st Communications fraud, value greater
than \$50,000.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

369	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
370	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
371	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
372	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
373	825.103(2)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.
374	827.03(1)	3rd	Abuse of a child.
375	827.03(3)(c)	3rd	Neglect of a child.
376	827.071(2)&(3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
377	836.05	2nd	Threats; extortion.
378	836.10	2nd	Written threats to kill or do bodily injury.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

379	843.12	3rd	Aids or assists person to escape.
380	<u>847.011</u>	<u>3rd</u>	<u>Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.</u>
381	<u>847.012</u>	<u>3rd</u>	<u>Knowingly using a minor in the production of materials that are harmful to minors.</u>
382	847.0135 (2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
383	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
384	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.
385	944.40	2nd	Escapes.
386	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
387	944.47 (1) (a) 5.	2nd	Introduction of contraband (firearm,

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

414 specified violations; revising legislative intent concerning the
415 enforcement of such laws with respect to minors; amending s.
416 847.0133, F.S.; providing that it is a felony of the third
417 degree for any person to knowingly give away, distribute,
418 transmit, or show any obscene material to a minor, display,
419 distribute, transmit, or show erotic nudity to a minor, or
420 distribute, display, transmit, or show erotic fondling to a
421 minor; amending s. 921.0022, F.S., relating to the offense
422 severity ranking chart of the Criminal Punishment Code;
423 establishing offense levels to conform to changes made by the
424 act; providing an effective date.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility - The bill provides protection from civil liability to a spaceflight entity for injury to or death of a participant resulting from the inherent risks of spaceflight launch activities.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida has an infrastructure of \$7 billion in aerospace assets and an additional \$2 billion in assets at the proposed Jacksonville Spaceport. Florida's aerospace industry is comprised of some 1000 companies and thousands of workers across the state. Human space flight operations are a critical part of Florida's economy – bringing \$1.68 billion into the State annually and employing 30,000 people. However, there is growing competition from 13 other states, including nine states with spaceports. Florida has aerospace-related industry in 47 of its 67 counties. The global space industry is expected to bring in \$220 billion in revenue in 2007, up from \$207 billion in 2006. A concern for Florida is what will happen to the state's 9,300 aerospace workers between the retirement of the space shuttle fleet in 2010 and launches of the next-generation shuttle in 2013 to 2015.¹

Space Florida is the principal organization charged by the Florida Legislature with promoting and developing Florida's aerospace industry.² As reported by Space Florida:

Florida is the premier launch site for the aerospace industry. With our current infrastructure, competitive edge, and talented workforce, Florida is the natural state to establish an international aerospace spaceport. As home to one of only five commercially licensed spaceports in the United States, Florida has the ability to host commercial, civil and military space operations.

Increasing interest in capturing the aerospace business has some states stepping up their recruiting efforts and incentive plans. These states include California, Virginia, Colorado, Texas and New Mexico. We must aggressively retain and grow our state's aerospace industry to compete in this race.

In order to preserve the vibrant commercial aerospace industry and Florida's workforce, we must firmly position operations in Florida to capture the market of commercial launch business, and more importantly, service the International Space Station (ISS) for NASA. The United States portion of ISS has been designated a National Lab and offers Florida not only space-related support opportunities but also research opportunities in the unique space environment for Florida universities and companies.

[Florida must] maintain our competitive edge by recruiting new space and aerospace businesses to Florida, retaining those businesses being lured by other states, and assisting existing businesses with incentives and other support to expand their presence in Florida; limit the liability of commercial launch firms and their subcontractors who provide human spaceflight services from Florida launch sites; and help Florida attract

¹ This information was gleaned from the website of Space Florida at <http://www.spaceflorida.gov> (last visited on March 10, 2008).

² Section 331.302, F.S.

commercial launch providers and their subcontractors by limiting liability for human Space flight services from Florida launch sites.³

Federal Law

President Bush signed the Commercial Space Launch Amendments Act of 2004 (Space Launch Act) into law on December 23, 2004.⁴ The Space Launch Act enacted protections for space tourism businesses such as the “fly at your own risk” clause that allows a licensed party to carry space flight participants only if they “inform the space flight participant in writing about the risks of the launch and reentry, including the safety record of the launch or reentry vehicle type...”⁵ After being fully informed, the participant must also give written consent.⁶ The Space Launch Act includes the commercial human space flight industry in a temporary indemnification and insurance scheme that requires businesses to purchase insurance, but provides government indemnification up to \$1.5 billion beyond the insurance cap⁷ shielding them from high insurance costs due to the risk of a catastrophic event.

Other States

In 2007, Virginia adopted legislation⁸ that is the model for HB 737. The Virginia law⁹, however, is not limited to suborbital space activity, but includes all space activity – suborbital or beyond (orbital). The Virginia law applies to launch services or reentry services as defined by the federal Space Launch Act.¹⁰ The Space Launch Act defines these services as:

“launch services” means—

- (A) activities involved in the preparation of a launch vehicle, payload, crew (including crew training), or space flight participant for launch; and
- (B) the conduct of a launch.

“reentry services” means—

- (A) activities involved in the preparation of a reentry vehicle and payload, crew (including crew training), or space flight participant, if any, for reentry; and
- (B) the conduct of a reentry.¹¹

Further, the Virginia law does not provide immunity from “the inherent risks of spaceflight”, but rather “for a participant injury resulting from the risks of space flight activities.”¹²

Exculpatory Clauses¹³

Exculpatory clauses extinguish or limit liability of a potentially culpable party through the use of disclaimer, assumption of risk and indemnification clauses as well as releases of liability. Exculpatory clauses will be enforced as long as the language is clear and unequivocal.¹⁴ These same concepts

³ From white paper submitted on March 7, 2008, by Space Florida and on file with the Committee on Constitution & Civil Law.

⁴ 49 U.S.C.A. §§ 70101-70305.

⁵ 49 U.S.C.A. § 70105(b)(5).

⁶ 49 U.S.C.A. § 70105(b)(5)(C).

⁷ 49 U.S.C.A. §§ 70112-13.

⁸ 2007 Va. Acts 893.

⁹ Va. Code § 8.01-227.8, § 8.01-227.9, and § 8.01-227.10.

¹⁰ Va. Code § 8.01-227.8.

¹¹ 49 U.S.C.A. § 70102(6) and (14).

¹² Va. Code § 8.01-227.9.

¹³ The information under this heading was gleaned from “The Great Escape - HOW TO DRAFT EXCULPATORY CLAUSES THAT LIMIT OR EXTINGUISH LIABILITY,” Steven B. Lesser, Fla. B. J., (Nov. 2001).

¹⁴ *University Plaza Shopping Center, Inc. v. Stewart*, 272 So. 2d 507 (Fla. 1973); *Theis v. J & J Racing Promotions*, 571 So.2d 92 (Fla. 2d D.C.A. 1990), *rev'd*, 581 So. 2d 168 (Fla. 1991); *Tout v. Hartford Accident and Indemnity Co.*, 390 So.

apply to indemnification agreements, which shift liability for damages to another party, and to releases of liability.¹⁵ On the other hand, exculpatory clauses that extinguish liability for intentional torts or reckless harm will generally be declared null and void.¹⁶

Effect of Proposed Changes

The bill provides that a spaceflight entity is not liable for injury to or death of a spaceflight participant resulting from the inherent risks of spaceflight launch activities, so long as the required warning is given to and signed by the participant. The bill provides that a participant or participant's representative may not recover from a spaceflight entity for the loss, damage, or death of the participant resulting exclusively from any of the inherent risks of spaceflight activities if the spaceflight entity pleads the affirmative defense¹⁷ of assumption of the risk of spaceflight activities by the participant. The immunity provided by the bill does not apply if the injury was proximately caused by the spaceflight entity and the spaceflight entity:

- Commits gross negligence or willful or wanton disregard for the safety of the participant;
- Has actual knowledge or reasonably should have known of a dangerous condition; or
- Intentionally injures the participant.

To receive the immunity provided by the bill, the spaceflight entity must have each participant sign the required warning statement. The warning statement must contain, at a minimum, the following statement:

"WARNING: Under Florida law, there is no liability for an injury to or death of a participant in a spaceflight activity provided by a spaceflight entity if such injury or death results from the inherent risks of the spaceflight activity. Inherent risks of spaceflight activities include, among others, risks of injury to land, equipment, persons, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this spaceflight activity."

The limitation on liability provided by the bill is in addition to any other limitation of legal liability that might otherwise be provided by law.

The bill defines the following terms:

"Participant" means any person, passenger, or crew member participating in spaceflight activities.

"Spaceflight activities" means any activities necessary or antecedent to preparing, launching, carrying, or landing a participant on a suborbital flight.

2d 155 (Fla. 3d D.C.A. 1980); *Ivey Plants, Inc. v. F.M.C. Corp.*, 282 So. 2d 205 (Fla. 4th D.C.A. 1973), *cert. denied*, 289 So. 2d 731 (Fla. 1974).

¹⁵ *Charles Poe Masonry, Inc. v. Spring Lock Scaffolding Rental Equipment Co.*, 374 So. 2d 487, 489 (Fla. 1979); *Middleton v. Lomaskin*, 266 So. 2d 678 (Fla. 3d D.C.A. 1972).

¹⁶ *Fuentes v. Owen*, 310 So. 2d 458 (Fla. 3d D.C.A. 1975); *Mankap Enterprises, Inc. v. Wells Fargo Alarm Services, Inc.*, 427 So. 2d 332 (Fla. 3d D.C.A. 1983).

¹⁷ An affirmative defense is "A defendant's assertion of facts and arguments that, if true, will defeat the plaintiff's or prosecution's claim, even if all the allegations in the complaint are true. The defendant bears the burden of proving an affirmative defense. Examples of affirmative defenses are duress (in a civil case) and insanity and self-defense (in a criminal case). Black's Law Dictionary (8th ed. 2004).

"Spaceflight entity" means any public or private entity holding a United States Federal Aviation Administration launch, reentry, operator, or launch site license for suborbital flight.

"Suborbital flight" means a flight that is not intended to complete an orbit around the earth and that has any portion of its intended flight path at altitude equal to or greater than 62.5 miles above the earth's mean sea level.

The bill has an effective date of October 1, 2008.

C. SECTION DIRECTORY:

Section 1: Creates Part III of Chapter 331, F.S., consisting of s. 331.501, F.S., relating to informed consent for suborbital spaceflight.

Section 2: Provides an effective date of October 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill is designed to encourage the expansion of the commercial space industry in Florida and therefore, serve as an economic stimulus to the private sector.

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 counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

Access to Courts

Article I, section 21 of the Florida Constitution provides: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." The Florida Constitution protects "only rights that existed at common law or by statute prior to the enactment of the Declaration of Rights of the Florida Constitution."¹⁸ In order to make a colorable claim of denial of access to courts, an aggrieved party must demonstrate that the Legislature has abolished a common-law right previously enjoyed by the people of Florida and, if so, that it has not provided a reasonable alternative for redress and that there is not an "overpowering public necessity" for eliminating the right.¹⁹ This right could be implicated if a court were to find that the bill abolishes a right of access to the courts that existed at common law or by statute prior to the enactment of the Declaration of Rights of the Florida Constitution.²⁰ However, it is unlikely that a cause of action exists presently for injury or death caused exclusively by the "inherent risks" of suborbital spaceflight.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Members may want to consider if the term "antecedent" on line 22 is too broad when applied to the definition of "spaceflight activities."

Members may want to consider removing the word "launch" on line 34. On lines 34 and 35, the bill uses the term "space launch activities" - but elsewhere in the bill the term "spaceflight activities" is used. This appears to be inconsistent.

It appears that the phrase on lines 74 and 75 – "Inherent risks of spaceflight activities include, among others, risks of injury to land, equipment, persons, ..." – may be a bit confusing. A better phrase may be – "Injuries caused by the inherent risks of spaceflight activities may include, among others, injury to land, equipment, persons, ..."

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 12, 2008, the Committee on Constitution & Civil Law recommended four amendments to the bill. The amendments provide as follows:

Amendment 1:

- Expands the application of the bill from just suborbital spaceflight activities to include all spaceflight activities.
- Amends the definition of "spaceflight activities" to include only those activities necessary to preparing, launching, carrying, or landing a vehicle and any payload, crew, or participant from Earth - rather than also including those activities merely "antecedent" to such.

¹⁸ Fla. Jur. 2d., s. 360.

¹⁹ *Kluger v. White*, 281 So.2d 1, 4 (Fla. 1973).

²⁰ The enactment of the Declaration of Rights of the Florida Constitution was part of Florida's new constitution of 1968 and occurred when it was ratified by the electorate on November 5, 1968.

- Corrects a reference on lines 34 and 35 of the bill referring to “spaceflight launch activities” to read “spaceflight activities.”

Amendment 2 removes the word “gross” from line 49 of the bill in order to specifically exclude all negligence from those risks that may be included within the phrase “inherent risks of spaceflight activities.”

Amendment 3 rephrases language in the mandatory warning statement for clarity.

Amendment 4 removes the requirement in the bill that the immunity must be pled as an affirmative defense.

A bill to be entitled

An act relating to informed consent for spaceflight;
 creating pt. III of ch. 331, F.S.; providing definitions;
 providing immunity from liability for injury to or death
 of certain suborbital flight participants if specified
 informed consent requirements are complied with; providing
 exceptions; requiring each participant to sign a warning
 statement; providing minimum requirements for a warning
 statement; providing an effective date.

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

Section 1. Part III of chapter 331, Florida Statutes,
 consisting of section 331.501, is created to read:

PART III

SPACEFLIGHT

331.501 Suborbital spaceflight; informed consent.--

(1) For purposes of this section, the term:

(a) "Participant" means any person, passenger, or crew
 member participating in spaceflight activities.

(b) "Spaceflight activities" means any activities
 necessary or antecedent to preparing, launching, carrying, or
 landing a participant on a suborbital flight.

(c) "Spaceflight entity" means any public or private
 entity holding a United States Federal Aviation Administration
 launch, reentry, operator, or launch site license for suborbital
 flight.

28 (d) "Suborbital flight" means a flight that is not
 29 intended to complete an orbit around the earth and that has any
 30 portion of its intended flight path at altitude equal to or
 31 greater than 62.5 miles above the earth's mean sea level.

32 (2)(a) Except as provided in paragraph (b), a spaceflight
 33 entity is not liable for injury to or death of a participant
 34 resulting from the inherent risks of spaceflight launch
 35 activities, so long as the warning contained in subsection (3)
 36 is distributed and signed as required. Except as provided in
 37 paragraph (b), no participant or participant's representative
 38 may maintain an action against or recover from a spaceflight
 39 entity for the loss, damage, or death of the participant
 40 resulting exclusively from any of the inherent risks of
 41 spaceflight activities; provided that, in any action for damages
 42 against a spaceflight entity for spaceflight activities, the
 43 spaceflight entity shall plead the affirmative defense of
 44 assumption of the risk of spaceflight activities by the
 45 participant.

46 (b) Nothing in paragraph (a) shall prevent or limit the
 47 liability of a spaceflight entity if the spaceflight entity does
 48 any one or more of the following:

49 1. Commits an act or omission that constitutes gross
 50 negligence or willful or wanton disregard for the safety of the
 51 participant and that act or omission proximately causes injury,
 52 damage, or death to the participant;

53 2. Has actual knowledge or reasonably should have known of
 54 a dangerous condition on the land or in the facilities or
 55 equipment used in the spaceflight activities and the danger

56 proximately causes injury, damage, or death to the participant;
 57 or

58 3. Intentionally injures the participant.

59 (c) Any limitation on legal liability afforded by this
 60 subsection to a spaceflight entity is in addition to any other
 61 limitation of legal liability otherwise provided by law.

62 (3) (a) Every spaceflight entity providing spaceflight
 63 activities to a participant, whether such activities occur on or
 64 off a facility capable of launching a suborbital flight, shall
 65 have each participant sign the warning statement specified in
 66 paragraph (b).

67 (b) The warning statement described in paragraph (a) shall
 68 contain, at a minimum, the following statement:

69
 70 "WARNING: Under Florida law, there is no liability for an
 71 injury to or death of a participant in a spaceflight
 72 activity provided by a spaceflight entity if such injury or
 73 death results from the inherent risks of the spaceflight
 74 activity. Inherent risks of spaceflight activities include,
 75 among others, risks of injury to land, equipment, persons,
 76 and animals, as well as the potential for you to act in a
 77 negligent manner that may contribute to your injury or
 78 death. You are assuming the risk of participating in this
 79 spaceflight activity."

80
 81 (c) Failure to comply with the warning statement
 82 requirements in this section shall prevent a spaceflight entity

HB 737

2008

83 | from invoking the privileges of immunity provided by this
84 | section.

85 | Section 2. This act shall take effect October 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. HB 737

COUNCIL/COMMITTEE ACTION

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

*Traveling Amendment
No Action Required*

1 Council/Committee hearing bill: Constitution & Civil Law
 2 Representative Simmons offered the following:

Amendment (with title amendment)

Remove line(s) 17-35 and insert:

331.501 Spaceflight; informed consent.

(1) For purposes of this section, the term:

(a) "Participant" means any person, passenger, or crew member participating in spaceflight activities.

(b) "Spaceflight activities" means any activities necessary to preparing, launching, carrying, or landing a vehicle and any payload, crew, or participant from Earth:

1. in a suborbital trajectory;

2. in Earth orbit in outer space; or

3. otherwise in outer space.

(c) "Spaceflight entity" means any public or private entity holding a United States Federal Aviation Administration launch, reentry, operator, or launch site license for spaceflight activities.

(2)(a) Except as provided in paragraph (b), a spaceflight entity is not liable for injury to or death of a participant

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

22 resulting from the inherent risks of spaceflight activities, so
23 long as the warning contained in subsection (3)

24

25

26

27

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

28

Remove line 5 and insert:

29

of certain participants of spaceflight activities if specified

30

31

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2

Bill No. HB 737

COUNCIL/COMMITTEE ACTION

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

*Traveling Amendment
No Action Required*

1 Council/Committee hearing bill: Constitution & Civil Law

2 Representative Simmons offered the following:

3

4 **Amendment**

5 Remove line 49 and insert:

6 1. Commits an act or omission that constitutes

7

8

9

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3

Bill No. HB 737

COUNCIL/COMMITTEE ACTION

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

*Traveling Amendment
No Action Required*

1 Council/Committee hearing bill: Constitution & Civil Law

2 Representative Simmons offered the following:

3

4 **Amendment**

5 Remove lines 74 - 75 and insert:

6 activity. Injuries caused by the inherent risks of spaceflight
7 activities may include, among others, injury to land, equipment,
8 persons,

9

10

11

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 4

Bill No. HB 737

COUNCIL/COMMITTEE ACTION

ADOPTED	—	(Y/N)
ADOPTED AS AMENDED	—	(Y/N)
ADOPTED W/O OBJECTION	—	(Y/N)
FAILED TO ADOPT	—	(Y/N)
WITHDRAWN	—	(Y/N)
OTHER	_____	

*Traveling Amendment
No Action Required*

1 Council/Committee hearing bill: Constitution & Civil Law

2 Representative Simmons offered the following:

3

4 **Amendment**

5 Remove lines 41-45 and insert:

6 spaceflight activities.

7

8

9

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 837 Unlawful Use of Utility Services

SPONSOR(S): Grimsley

TIED BILLS: **IDEN./SIM. BILLS:** SB 1438

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security & Public Safety</u>	10 Y, 0 N	Padgett	Kramer
2) <u>Safety & Security Council</u>		Padgett <i>JP</i>	Havlicak <i>RH</i>
3) <u>Policy & Budget Council</u>			
4) _____			
5) _____			

SUMMARY ANALYSIS

The bill amends s. 812.14, F.S. to provide that a person commits a third degree felony if the person obtains or uses unauthorized utility services, or alters or tampers with utility property in violation of the current provisions of s. 812.14(2), F.S. for the purpose of facilitating the manufacture, growth, or cultivation of a controlled substance.

The bill also amends s. 812.14, F.S. to provide that theft of utility services for the purpose of facilitating the manufacture, growth, or cultivation of a controlled substance is a third degree felony.

The bill provides it is prima facie evidence of a person's intent to commit each offense if:

- A person violates the current provisions of s. 812.14, F.S. or commits theft of utility services, resulting in a dwelling or structure receiving unauthorized utility services;
- A controlled substance and materials for manufacturing, growing, or cultivating the controlled substance were found in the structure or dwelling; and
- The person knew of the presence of the controlled substance and materials for manufacturing, growing, or cultivating the controlled substance in the structure or dwelling, regardless of whether the person was involved in the manufacture, growth, or cultivation of the controlled substance.

The bill has an effective date of July 1, 2008.

The Criminal Justice Impact Conference met on February 26, 2008 and determined this bill would have an insignificant prison bed impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility: The bill provides that either a violation of current s. 812.14(2), F.S., or the theft of utility services for the purpose of facilitating the manufacture, growth, or cultivation of a controlled substance is a third degree felony.

B. EFFECT OF PROPOSED CHANGES:

Background

Cultivation of marijuana in a "grow house" requires grow lamps, fans, air conditioning, and other equipment that uses a significant amount of electricity. The electricity use in such a grow house would be well above the normal electricity use of a similarly sized house. To prevent utilities and law enforcement from detecting abnormal electricity use and becoming suspicious about possible criminal activity, marijuana growers often tamper with utility meters so the meters register a lower amount of electricity consumption than what is actually used.¹ In some cases, the marijuana growers connect the grow houses directly to the power grid without the consent of the utility service.

Current Situation

The degrees of punishment under the current theft statute, s. 812.014, F.S., are primarily based upon the dollar value of the stolen property.² There are specific circumstances in which the dollar value threshold amounts which qualify for a higher level of punishment are altered or eliminated if a certain type of property³ is stolen or if certain conditions occur related to the theft⁴. Under current Florida law, there is no specific provision regarding theft of utility services in s. 812.014, F.S.⁵ As a result, absent one of the other exceptions, the criminal penalties for theft of utility services would be based on dollar value threshold amounts.

Section 812.14, F.S. defines a utility as "any person, firm, corporation, or association, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, telephone service, telegraph service, radio service or telecommunications service."

Currently, s. 812.14, F.S. provides a person commits a first degree misdemeanor⁶ if the person⁷:

¹ <http://www.tcpalm.com/news/2007/nov/29/3020-arrested-in-connection-with-pot-growing/>

² See generally, s. 821.012, F.S. If the stolen property is valued at \$100,000 or more, the offense is a first degree felony. If the stolen property is valued at between \$20,000 and \$100,00, the offense is a second degree felony. If the stolen property is valued at between \$300 and \$20,000, the offense is a third degree felony. If the stolen property is valued between \$100 and \$300, the offense is a first degree misdemeanor. If the stolen property is under \$100, the offense is a second degree misdemeanor.

³ E.g. firearms, a will, a fire extinguisher, citrus fruit, a stop sign, emergency medical equipment, law enforcement equipment, etc.

⁴ E.g. theft during a state of emergency, use of a motor vehicle, damage to property during the course of the theft, theft of cargo in interstate commerce, etc.

⁵ Section 812.014, F.S.

⁶ A first degree misdemeanor is punishable by up to 1 year in jail and a \$1,000 fine. Sections 775.082, 775.083, F.S.

- Willfully alters, tampers, or injures a meter, meter seal, pipe, conduit, wire, line, cable, transformer, amplifier or other device belonging to a utility as to cause loss or damage; to prevent the meter from registering the actual quantity of electricity, gas, or water used; or to knowingly use electricity, gas, or water which passed through an altered meter, wire, pipe, or fitting.
- Makes or causes to be made a connection with a wire, main, service pipe or other pipes, appliance, or appurtenance to use electricity, water, or gas without the consent of the utility.
- Uses or receives the direct benefit from a utility if the person, knows, or should have known, that the utility services were obtained by the direct result of tampering, altering, or injuring a wire, conductor, meter, pipe, conduit, line, cable, transformer, amplifier, or other apparatus.

Section 812.14(5), F.S. provides that a person who unlawfully obtains utility services is subject to civil liability for three times the amount of utility services unlawfully obtained or \$1,000, whichever is greater.

Proposed Changes

The bill amends s. 812.14, F.S. to provide that a person commits a third degree felony⁸ if the person violates the current provisions of s. 812.14(2), F.S. for the purpose of facilitating the manufacture, growth, or cultivation of a controlled substance⁹. The bill provides it is prima facie evidence of a person's intent to violate the newly created offense if:

- A person violates the current provisions of s. 812.14, F.S. (listed above), resulting in a dwelling or structure receiving unauthorized utility services;
- A controlled substance and materials for manufacturing, growing, or cultivating the controlled substance were found in the structure or dwelling; and
- The person knew of the presence of the controlled substance and materials for manufacturing, growing, or cultivating the controlled substance in the structure or dwelling, regardless of whether the person was involved in the manufacture, growth, or cultivation of the controlled substance.

The bill does not rank the new third degree felony in the Offense Severity Ranking Chart.¹⁰ An unranked third degree felony defaults to a Level 1 for purposes of sentencing.¹¹

HB 837 further amends s. 812.14, F.S. to provide that theft of utility services for the purpose of facilitating the manufacture, growth, or cultivation of a controlled substance is a third degree felony. The bill provides it is prima facie evidence of a person's intent to violate the newly created offense if the factors listed above exist.

The bill does not rank the new third degree felony in the Offense Severity Ranking Chart. An unranked third degree felony defaults to a Level 1 for purposes of sentencing.

⁷ Section 812.14, F.S. does not apply to licensed and certified electrical contractors performing usual and ordinary service in accordance with recognized standards.

⁸ A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. Sections 775.082, 775.083, F.S.

⁹ A "controlled substance" is defined as any substance named or described in Schedules I-V of s. 893.03. Section 893.02(4), F.S.

¹⁰ Section 921.0022, F.S.

¹¹ Section 921.0023, F.S.

The bill provides an effective date of July 1, 2008.

C. SECTION DIRECTORY:

Section 1 Amends s. 812.14, F.S., relating to trespass and larceny with relation to utility fixtures; theft of utility services.

Section 2 Provides an effective date of July 1, 2008.

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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference met on February 26, 2008 and determined this bill would have an insignificant prison bed impact.

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.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 12, 2008, the Committee on Homeland Security & Public Safety adopted a strike-all amendment that defines the term "manufacture" in accordance with s. 893.02(13)(a), F.S. The amendment also changes the terms "manufacturing, growing, and cultivating" throughout the bill to "manufacture."

A bill to be entitled

An act relating to the unlawful use of utility services; amending s. 812.14, F.S.; prohibiting trespass and larceny in relation to utility fixtures for the purpose of manufacturing, growing, or cultivating a controlled substance; providing for prima facie evidence of the intent to commit such offense; providing that trespass and larceny in relation to utility fixtures for the purpose of manufacturing, growing, or cultivating a controlled substance is a third-degree felony; providing that prosecution for trespass and larceny in relation to utility fixtures does not preclude prosecution for theft of utility services; providing that theft of utility services for the purpose of manufacturing, growing, or cultivating a controlled substance is a third-degree felony; providing that prosecution of theft of utility services is in lieu of prosecution for theft pursuant to s. 812.014, F.S.; providing for prima facie evidence of intent to commit theft of utility services; providing an effective date.

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

Section 1. Section 812.14, Florida Statutes, is amended to read:

812.14 Trespass and larceny with relation to utility fixtures; theft of utility services.--

28 (1) As used in this section, "utility" includes any
 29 person, firm, corporation, association, or political
 30 subdivision, whether private, municipal, county, or cooperative,
 31 which is engaged in the sale, generation, provision, or delivery
 32 of gas, electricity, heat, water, oil, sewer service, telephone
 33 service, telegraph service, radio service, or telecommunication
 34 service.

35 (2) It is unlawful to:

36 (a) Willfully alter, tamper with, injure, or knowingly
 37 suffer to be injured any meter, meter seal, pipe, conduit, wire,
 38 line, cable, transformer, amplifier, or other apparatus or
 39 device belonging to a utility line service in such a manner as
 40 to cause loss or damage or to prevent any meter installed for
 41 registering electricity, gas, or water from registering the
 42 quantity which otherwise would pass through the same; or to
 43 alter the index or break the seal of any such meter; or in any
 44 way to hinder or interfere with the proper action or just
 45 registration of any such meter or device; or knowingly to use,
 46 waste, or suffer the waste, by any means, of electricity or gas
 47 or water passing through any such meter, wire, pipe, or fitting,
 48 or other appliance or appurtenance connected with or belonging
 49 to any such utility, after such meter, wire, pipe or fitting, or
 50 other appliance or appurtenance has been tampered with, injured,
 51 or altered.

52 (b) Make or cause to be made any connection with any wire,
 53 main, service pipe or other pipes, appliance, or appurtenance in
 54 such manner as to use, without the consent of the utility, any
 55 service or any electricity, gas, or water, or to cause to be

56 | supplied any service or electricity, gas, or water from a
 57 | utility to any person, firm, or corporation or any lamp, burner,
 58 | orifice, faucet, or other outlet whatsoever, without such
 59 | service being reported for payment or such electricity, gas, or
 60 | water passing through a meter provided by the utility and used
 61 | for measuring and registering the quantity of electricity, gas,
 62 | or water passing through the same.

63 | (c) Use or receive the direct benefit from the use of a
 64 | utility knowing, or under such circumstances as would induce a
 65 | reasonable person to believe, that such direct benefits have
 66 | resulted from any tampering with, altering of, or injury to any
 67 | connection, wire, conductor, meter, pipe, conduit, line, cable,
 68 | transformer, amplifier, or other apparatus or device owned,
 69 | operated, or controlled by such utility, for the purpose of
 70 | avoiding payment.

71 | (d) Violate paragraph (a), paragraph (b), or paragraph (c)
 72 | for the purpose of facilitating the manufacture, growth, or
 73 | cultivation of a controlled substance.

74 | (3) The presence on property in the actual possession of a
 75 | person of any device or alteration that ~~which~~ affects the
 76 | diversion or use of the services of a utility so as to avoid the
 77 | registration of such use by or on a meter installed by the
 78 | utility or so as to otherwise avoid the reporting of use of such
 79 | service for payment is ~~shall be~~ prima facie evidence of the
 80 | violation of this section by such person; however, this
 81 | presumption does ~~shall~~ not apply unless:

82 (a) The presence of such a device or alteration can be
 83 attributed only to a deliberate act in furtherance of an intent
 84 to avoid payment for utility services;

85 (b) The person charged has received the direct benefit of
 86 the reduction of the cost of such utility services; and

87 (c) The customer or recipient of the utility services has
 88 received the direct benefit of such utility service for at least
 89 one full billing cycle.

90 (4) It is prima facie evidence of a person's intent to
 91 violate paragraph (2)(d) if:

92 (a) The person violated paragraph (2)(a), paragraph
 93 (2)(b), or paragraph (2)(c), resulting in a structure, as
 94 defined in s. 810.011, or a dwelling, as defined in s. 810.011,
 95 receiving unauthorized access to utility services;

96 (b) A controlled substance and materials for
 97 manufacturing, growing, or cultivating the controlled substance
 98 were found in the structure or dwelling; and

99 (c) The person knew of the presence of the controlled
 100 substance and materials for manufacturing, growing, or
 101 cultivating the controlled substance in the structure or
 102 dwelling, regardless of whether the person was involved in the
 103 manufacture, growth, or cultivation of the controlled substance.

104 (5)-(4) Any person who willfully violates paragraph (2)(a),
 105 paragraph (2)(b), or paragraph (2)(c) commits ~~this section shall~~
 106 be guilty of a misdemeanor of the first degree, punishable as
 107 provided in s. 775.082 or s. 775.083. Any person who willfully
 108 violates paragraph (2)(d) commits a felony of the third degree,
 109 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

110 Prosecution of a violation of subsection (2) does not preclude
 111 prosecution of theft pursuant to subsection (6) or s. 812.014.

112 (6) Theft of utility services for the purpose of
 113 facilitating the manufacture, growth, or cultivation of a
 114 controlled substance is a felony of the third degree, punishable
 115 as provided in s. 775.082, s. 775.083, or s. 775.084.

116 Prosecution pursuant this subsection is in lieu of prosecution
 117 for theft pursuant to s. 812.014.

118 (7) It is prima facie evidence of a person's intent to
 119 violate subsection (6) if:

120 (a) The person committed theft of utility services,
 121 resulting in a structure, as defined in s. 810.011, or a
 122 dwelling, as defined in s. 810.011, receiving unauthorized
 123 access to utility services;

124 (b) A controlled substance and materials for
 125 manufacturing, growing, or cultivating the controlled substance
 126 were found in the structure or dwelling; and

127 (c) The person knew of the presence of the controlled
 128 substance and materials for manufacturing, growing, or
 129 cultivating the controlled substance in the structure or
 130 dwelling, regardless of whether the person was involved in the
 131 manufacture, growth, or cultivation of the controlled substance.

132 (8)-(5) Whoever is found in a civil action to have violated
 133 the provisions of this section is hereof shall be liable to the
 134 utility involved in an amount equal to 3 times the amount of
 135 services unlawfully obtained or \$1,000, whichever is greater.

136 (9)-(6) Nothing in This section does not act shall be
 137 construed to apply to licensed and certified electrical

HB 837

2008

138 | contractors while performing usual and ordinary service in
139 | accordance with recognized standards.

140 | Section 2. This act shall take effect July 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. 837

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
 ADOPTED AS AMENDED _____ (Y/N)
 ADOPTED W/O OBJECTION x (Y/N)
 FAILED TO ADOPT _____ (Y/N)
 WITHDRAWN _____ (Y/N)
 OTHER _____

*Traveling Amendment
No Action Required*

1 Council/Committee hearing bill: Committee on Homeland Security
2 & Public Safety

3 Representative Grimsley offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 812.14, Florida Statutes, is amended to
8 read:

9 812.14 Trespass and larceny with relation to utility
10 fixtures; theft of utility services.--

11 (1) As used in this section, "utility" includes any
12 person, firm, corporation, association, or political
13 subdivision, whether private, municipal, county, or cooperative,
14 which is engaged in the sale, generation, provision, or delivery
15 of gas, electricity, heat, water, oil, sewer service, telephone
16 service, telegraph service, radio service, or telecommunication
17 service.

18 (2) As used in this section, "manufacture" has the same
19 meaning as in s. 893.02(13)(a).

20 (3)-(2) It is unlawful to:

21 (a) Willfully alter, tamper with, injure, or knowingly
22 suffer to be injured any meter, meter seal, pipe, conduit, wire,

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

23 line, cable, transformer, amplifier, or other apparatus or
24 device belonging to a utility line service in such a manner as
25 to cause loss or damage or to prevent any meter installed for
26 registering electricity, gas, or water from registering the
27 quantity which otherwise would pass through the same; or to
28 alter the index or break the seal of any such meter; or in any
29 way to hinder or interfere with the proper action or just
30 registration of any such meter or device; or knowingly to use,
31 waste, or suffer the waste, by any means, of electricity or gas
32 or water passing through any such meter, wire, pipe, or fitting,
33 or other appliance or appurtenance connected with or belonging
34 to any such utility, after such meter, wire, pipe or fitting, or
35 other appliance or appurtenance has been tampered with, injured,
36 or altered.

37 (b) Make or cause to be made any connection with any wire,
38 main, service pipe or other pipes, appliance, or appurtenance in
39 such manner as to use, without the consent of the utility, any
40 service or any electricity, gas, or water, or to cause to be
41 supplied any service or electricity, gas, or water from a
42 utility to any person, firm, or corporation or any lamp, burner,
43 orifice, faucet, or other outlet whatsoever, without such
44 service being reported for payment or such electricity, gas, or
45 water passing through a meter provided by the utility and used
46 for measuring and registering the quantity of electricity, gas,
47 or water passing through the same.

48 (c) Use or receive the direct benefit from the use of a
49 utility knowing, or under such circumstances as would induce a
50 reasonable person to believe, that such direct benefits have
51 resulted from any tampering with, altering of, or injury to any
52 connection, wire, conductor, meter, pipe, conduit, line, cable,
53 transformer, amplifier, or other apparatus or device owned,

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

54 operated, or controlled by such utility, for the purpose of
55 avoiding payment.

56 (d) Violate paragraph (a), paragraph (b), or paragraph (c)
57 for the purpose of facilitating the manufacture of a controlled
58 substance.

59 (4)-(3) The presence on property in the actual possession
60 of a person of any device or alteration that ~~which~~ affects the
61 diversion or use of the services of a utility so as to avoid the
62 registration of such use by or on a meter installed by the
63 utility or so as to otherwise avoid the reporting of use of such
64 service for payment is ~~shall be~~ prima facie evidence of the
65 violation of this section by such person; however, this
66 presumption does ~~shall~~ not apply unless:

67 (a) The presence of such a device or alteration can be
68 attributed only to a deliberate act in furtherance of an intent
69 to avoid payment for utility services;

70 (b) The person charged has received the direct benefit of
71 the reduction of the cost of such utility services; and

72 (c) The customer or recipient of the utility services has
73 received the direct benefit of such utility service for at least
74 one full billing cycle.

75 (5) It is prima facie evidence of a person's intent to
76 violate paragraph (2)(d) if:

77 (a) The person violated paragraph (2)(a), paragraph
78 (2)(b), or paragraph (2)(c), resulting in a structure, as
79 defined in s. 810.011, or a dwelling, as defined in s. 810.011,
80 receiving unauthorized access to utility services;

81 (b) A controlled substance and materials for manufacturing
82 the controlled substance were found in the structure or
83 dwelling; and

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

84 (c) The person knew of the presence of the controlled
85 substance and materials for manufacturing the controlled
86 substance in the structure or dwelling, regardless of whether
87 the person was involved in the manufacture of the controlled
88 substance.

89 (6) ~~(4)~~ Any person who willfully violates paragraph (2) (a),
90 paragraph (2) (b), or paragraph (2) (c) commits this section shall
91 be guilty of a misdemeanor of the first degree, punishable as
92 provided in s. 775.082 or s. 775.083. Any person who willfully
93 violates paragraph (2) (d) commits a felony of the third degree,
94 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
95 Prosecution of a violation of subsection (2) does not preclude
96 prosecution of theft pursuant to subsection (6) or s. 812.014.

97 (7) Theft of utility services for the purpose of
98 facilitating the manufacture of a controlled substance is a
99 felony of the third degree, punishable as provided in s.
100 775.082, s. 775.083, or s. 775.084. Prosecution pursuant this
101 subsection is in lieu of prosecution for theft pursuant to s.
102 812.014.

103 (8) It is prima facie evidence of a person's intent to
104 violate subsection (6) if:

105 (a) The person committed theft of utility services,
106 resulting in a structure, as defined in s. 810.011, or a
107 dwelling, as defined in s. 810.011, receiving unauthorized
108 access to utility services;

109 (b) A controlled substance and materials for manufacturing
110 the controlled substance were found in the structure or
111 dwelling; and

112 (c) The person knew of the presence of the controlled
113 substance and materials for manufacturing the controlled
114 substance in the structure or dwelling, regardless of whether

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

115 the person was involved in the manufacture of the controlled
116 substance.

117 (9)(5) Whoever is found in a civil action to have violated
118 the provisions of this section is hereof shall be liable to the
119 utility involved in an amount equal to 3 times the amount of
120 services unlawfully obtained or \$1,000, whichever is greater.

121 (10)(6) ~~Nothing in This section does not act shall be~~
122 ~~construed to~~ apply to licensed and certified electrical
123 contractors while performing usual and ordinary service in
124 accordance with recognized standards.

125 Section 2. This act shall take effect July 1, 2008.
126
127
128

129 -----
130 T I T L E A M E N D M E N T

131 Remove the entire title and insert:
132

133 A bill to be entitled

134 An act relating to the unlawful use of utility services;
135 amending s. 812.14, F.S.; prohibiting trespass and larceny
136 in relation to utility fixtures for the purpose of
137 manufacturing a controlled substance; providing for prima
138 facie evidence of the intent to commit such offense;
139 providing that trespass and larceny in relation to utility
140 fixtures for the purpose of manufacturing a controlled
141 substance is a third-degree felony; providing that
142 prosecution for trespass and larceny in relation to
143 utility fixtures does not preclude prosecution for theft
144 of utility services; providing that theft of utility
145 services for the purpose of manufacturing a controlled

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

146 substance is a third-degree felony; providing that
147 prosecution of theft of utility services is in lieu of
148 prosecution for theft pursuant to s. 812.014, F.S.;
149 providing for prima facie evidence of intent to commit
150 theft of utility services; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 857 Display of Flags

SPONSOR(S): Nehr

TIED BILLS: None IDEN./SIM. BILLS: SB 1378

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Courts</u>	<u>3 Y, 1 N</u>	<u>Webb</u>	<u>Bond</u>
2) <u>Safety & Security Council</u>	<u></u>	<u>Webb <i>mmw</i></u>	<u>Havlicak <i>RH</i></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Currently, a homeowner may display a portable, removable United States flag and another official, portable, removable flag in a respectful manner notwithstanding any association rule that would prohibit or limit the display of such a flag.

This bill provides that a homeowner may display a United States flag and another official flag on a freestanding flagpole not more than 20 feet high in the front, rear, or side yard of a homeowner's property regardless of any homeowners' association rules or declarations.

This bill does not appear to have a fiscal impact on state or local government revenues or expenditures.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty -- This bill allows homeowners to display a United States flag on a freestanding pole in their yard.

B. EFFECT OF PROPOSED CHANGES:

Background

The term homeowners' association means a Florida corporation responsible for the operation of a subdivision in which voting membership is made up of parcel ownership and in which membership is a mandatory condition of parcel ownership and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.¹ Homeowners' associations are regulated under ch. 720, F.S.

A declaration of covenants is a written instrument that is recorded in the public records of the county in which the homeowners' association is located.² A declaration runs with the land³ and subjects the land comprising the community to the jurisdiction and control of an association or associations.⁴ Homeowners' associations have the authority to enact rules for the benefit of the community.

Flags are generally held to be entitled to First Amendment protection as variants of speech.⁵ In *Gerber v. Longboat Harbor North Condominium, Inc.*, the United States District for the Middle District of Florida found that condominium unit owners have a right to respectfully display the United States flag. While the suit was pending, the Florida Legislature passed a bill to ensure the right to display a United States flag. The court held in *Gerber* that the statute which was passed had merely recognized the plaintiffs' previously existing federal constitutional right to display the flag. The court further held that the statute did not create rights and, therefore, did not impair existing contract rights.⁶

Currently, s. 720.304, F.S., provides that, regardless of any covenants or rules, a homeowner subject to the covenants and restrictions of a mandatory homeowners' association may display one portable, removable United States flag in a respectful manner. The statute also provides that a portable, official flag representing the United States Army, Navy, Air Force, Marine Corps, or Coast Guard may be displayed as well on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day in a respectful manner.

Effect of Bill

This bill provides that, regardless of any declarations or rules of a homeowners' association, a homeowner may display one official United States Flag not larger than 4 feet by 6 feet on a pole not to exceed 20 feet in height in the front, rear or side yard of a homeowner's property as long as it is done in a respectful manner. Furthermore, this bill provides that one official State of Florida flag, POW-MIA flag, or a flag that represents the United States Army, Navy, Air Force, Marine Corps, or Coast Guard may be displayed below the United States Flag. This flag must not be larger than 3 feet by 5 feet. This bill does not place any restrictions on which days the flags may be displayed.

¹ Section 720.301(9), F.S.

² Section 720.301(3), F.S.

³ A covenant runs with the land when it relates to the land and binds the successor grantees indefinitely.

⁴ Section 720.301(4), F.S.

⁵ *Gerber v. Longboat Harbour North Condominium, Inc.* 724 F. Supp. 884, 887-888 (D. Fla. 1989).

⁶ *Id.*

This bill specifies that its provisions do not apply to condominiums.

C. SECTION DIRECTORY:

Section 1 amends s. 720.304, F.S., relating to the right of owners to display a flag.

Section 2 provides an effective date of July 1, 2008.

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:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Right to a Portable Flag

This bill provides that a homeowner may display a flag on a freestanding flagpole. However, this bill removes language which allows a homeowner to display a removable, portable flag. Therefore, this bill may be interpreted to remove the current right of a homeowner to display a portable flag.

Roadways and Easements

Most residential lots are subject to one or more easements for road, drainage, or utility purposes. To the extent that this bill may allow a flagpole to be erected within an easement, it may unreasonably affect easement rights and usage.

D. STATEMENT OF THE SPONSOR

No Statement Submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 5, 2008, the Committee on Courts adopted one amendment to this bill. The amendment made the following revisions to the bill:

- Removes the provision that would have eliminated the right to fly a portable, removable flag.

- Provides that a flagpole may not be erected within any easements or obstruct sight lines at intersections.
- Provides that, in addition to mandatory homeowners associations, s. 720.304, F.S., will apply to nonmandatory homeowners' associations and community development districts.⁷

The bill was then reported favorably with an amendment.

⁷ A nonmandatory homeowners' association is an association made of parcel ownership where membership in the association is *not* a mandatory condition of parcel ownership. Community development districts are communities formed under ch. 190, F.S., which are similar to homeowners' associations.

1 A bill to be entitled
 2 An act relating to the display of flags; amending s.
 3 720.304, F.S.; authorizing homeowners to display certain
 4 flags in a specified manner; providing an effective date.

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

7
 8 Section 1. Subsection (2) of section 720.304, Florida
 9 Statutes, is amended to read:

10 720.304 Right of owners to peaceably assemble; display of
 11 flag; SLAPP suits prohibited.--

12 (2) (a) Any homeowner may display one official portable,
 13 ~~removable~~ United States flag, not larger than 4 feet by 6 feet,
 14 ~~or official flag of the State of Florida~~ in a respectful manner
 15 from a freestanding flagpole not to exceed 20 feet in height in
 16 the front, rear, or side yard of the property, and on Armed
 17 ~~Forces Day, Memorial Day, Flag Day, Independence Day, and~~
 18 ~~Veterans Day may display in a respectful manner portable,~~
 19 ~~removable official flags, not larger than 4 1/2 feet by 6 feet,~~
 20 ~~which represent the United States Army, Navy, Air Force, Marine~~
 21 ~~Corps, or Coast Guard,~~ regardless of any declaration rules or
 22 requirements dealing with flags or decorations.

23 (b) In addition to the display of the United States flag
 24 authorized pursuant to paragraph (a), any homeowner may display
 25 one official flag of the State of Florida, a flag that
 26 represents the United States Army, Navy, Air Force, Marine
 27 Corps, or Coast Guard, or the POW-MIA flag in a respectful
 28 manner below the United States flag from the freestanding

HB 857

2008

29 flagpole authorized pursuant to paragraph (a). The additional
30 flag authorized pursuant to this paragraph may not be larger
31 than 3 feet by 5 feet.

32 (c) The provisions of this subsection shall not apply to
33 condominiums or any property that is community owned.

34 Section 2. This act shall take effect July 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. HB 857

COUNCIL/COMMITTEE ACTION

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

*Traveling Amendment
No Action Required*

1 Council/Committee hearing bill: Committee on Courts

2 Representative Nehr offered the following:

3

4 **Amendment (with title amendment)**

5 Remove line(s) 8 - 33 and insert:

6 Section 1. Subsection (2) of section 720.304, Florida
7 Statutes, is amended, and subsection (7) is added, to read:

8 720.304 Right of owners to peaceably assemble; display of
9 flag; SLAPP suits prohibited, application to nonmandatory
10 homeowners' associations.--

11 (2) (a) Any homeowner may display one portable, removable
 12 United States flag or official flag of the State of Florida in a
 13 respectful manner, and one ~~on Armed Forces Day, Memorial Day,~~
 14 ~~Flag Day, Independence Day, and Veterans Day~~ may display in a
 15 ~~respectful manner~~ portable, removable official flag, not larger
 16 than 4 1/2 feet by 6 feet, which represents the United States
 17 Army, Navy, Air Force, Marine Corps, or Coast Guard, regardless
 18 of any covenants, restrictions, bylaws, declaration rules or
 19 requirements of the association ~~dealing with flags or~~
 20 ~~decorations.~~

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

21 (b) Any homeowner may erect a freestanding flagpole no
22 more than 20 feet in height on any portion of the homeowner's
23 real property, regardless of any covenants, restrictions,
24 bylaws, rules or requirements of the association, provided that
25 the flagpole does not obstruct sight lines at intersections nor
26 is erected within any easement. The homeowner may further
27 display in a respectful manner from that flagpole, regardless of
28 any covenants, restrictions, bylaws, rules or requirements of
29 the association, one official United States flag, not larger
30 than 4 1/2 feet by 6 feet, and may additionally display one
31 official flag of the State of Florida, the United States Army,
32 Navy, Air Force, Marine Corps, or Coast Guard, or the POW-MIA
33 flag, which additional flag must be equal in size or smaller
34 than the United States flag.

35 (7) The provisions of this section shall apply to all
36 homeowners' associations, whether or not such associations are
37 authorized to impose assessments that may become a lien on the
38 parcel. The provisions of this section shall apply to a
39 community development district.

40
41 -----

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

42
43 Remove line 4 and insert:
44 flags in a specified manner; providing for application of
45 section to nonmandatory homeowners' associations and community
46 development districts; providing an effective date.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill increases the penalties for several criminal offenses.

B. EFFECT OF PROPOSED CHANGES:

Chapter 796 contains several sections of statute which create criminal penalties for a variety of prostitution related offense as discussed further below.

Definitions: The bill removes definitions contained in several sections of statute within chapter 796 and creates a new section of statute which will apply these definitions to all of the sections contained within the chapter.

Procuring a person under age 18 for prostitution: Section 796.03, F.S. prohibits procuring a person under the age of 18 for prostitution.¹ The offense is currently a second degree felony. HB 1151 amends this section to make the offense a first degree felony. This will have the effect of increasing the maximum sentence that may be imposed for the offense. The statutory 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.²

Compelling or forcing another person to become a prostitute: Section 796.04, F.S. provides that it a third degree felony to force, compel or coerce another person to become a prostitute. The bill makes this offense a first degree felony.

Sex trafficking: Section 796.045, F.S. provides that any person who knowingly recruits, entices, harbors, transports, provides or obtains by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution commits the offense of sex trafficking. The offense is a second degree felony. If the victim of the offense was under the age of 14 or if the offense results in death, the offense is a first degree felony. The bill changes the offense of sex trafficking that involves a victim less than 14 years of age to include a victim less than 18 years of age. The bill makes the offense of sex trafficking a first degree felony when it does not involve a victim under the age of 18 and makes the offense a life felony when it involves a victim under the age of 18 or if it results in death.

Section 796.035, F.S. provides that any parent, legal guardian, or other person having custody or control of a minor who sells or transfers custody of the minor with knowledge that, as a consequence of the sale or transfer, force, fraud, or coercion will be used to cause the minor to engage in prostitution or otherwise participate in the trade of sex trafficking commits a first degree felony. The bill makes this offense a life felony.

The bill combines sections 796.045 and 796.035 into one section of statute. The bill also makes conforming changes to the sexual predator (s. 775.21, F.S.) and sexual offender (ss.943.0435, 944.606 and 944.607, F.S.) statutes.

¹ In *Petty v. State*, 761 So.2d 474 (Fla. 3rd DCA 2000), the court reversed a conviction where the defendant paid a minor to have sex with him where there was no evidence that the minor was exploited for the defendant's personal gain or that a third party was involved. The court held that the "statute at issue addresses the criminal act of hiring of a minor for sexual activity with a third party. The term 'procurement' connotes a pecuniary gain from the exploitation of another.... [I]n the context of prostitution, the word 'procure' must be given its specialized meaning, which is to 'obtain as a prostitute for another,' connoting a commercial motive." (quoting *Kobel v. State*, 745 So.2d 979 (Fla. 4th DCA 1999)).

² s. 775.082, F.S.

Deriving support from the proceeds of prostitution: Section 796.05, F.S. makes it a third degree felony for any person with reasonable belief or knowing that another person is engaged in prostitution to live or derive support or maintenance in whole or in part from what is believed to be the earnings or proceeds of such person's prostitution.³ The bill amends this section to apply this offense to living or deriving support "directly or indirectly" from prostitution proceeds.

Renting space for lewdness, assignation or prostitution: Section 796.06, F.S. provides that it is a second degree misdemeanor to let or rent any place, structure or trailer or other conveyance, with the knowledge that it will be used for the purpose of lewdness, assignation, or prostitution. The bill modifies this language to provide that any person who owns, establishes, maintains, lets, rents or operates any place, structure, building or part thereof or trailer or other conveyance with knowledge or reasonable cause to believe that it is being used or will be used in whole or in part for the purpose of activity prohibited under chapter 796, commits a third degree felony.

Prostitution: Currently, section 796.07, F.S. provides that it is unlawful:

- (a) To own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness, assignation, or prostitution.
- (b) To offer, or to offer or agree to secure, another for the purpose of prostitution or for any other lewd or indecent act.
- (c) To receive, or to offer or agree to receive, any person into any place, structure, building, or conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose.
- (d) To direct, take, or transport, or to offer or agree to direct, take, or transport, any person to any place, structure, or building, or to any other person, with knowledge or reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation.
- (e) To offer to commit, or to commit, or to engage in, prostitution, lewdness, or assignation.
- (f) To solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.
- (g) To reside in, enter, or remain in, any place, structure, or building, or to enter or remain in any conveyance, for the purpose of prostitution, lewdness, or assignation.
- (h) To aid, abet, or participate in any of the acts or things enumerated in this subsection.
- (i) To purchase the services of any person engaged in prostitution.

HB 1151 amends this section to remove the provision making it unlawful to own, establish, maintain or operate any place, structure, building or conveyance for the purpose of lewdness, assignation or prostitution. This offense will be covered by the changes made to section 796.06, F.S., discussed above.

The bill also makes other changes to this section in order to clarify what offenses are prohibited by this section and what offenses are prohibited by other sections within the chapter.

³ *State v. Morris*, 540 So.2d 226, 226 -227 (Fla. 5th DCA 1989)("The information is deficient and fails to state a violation of the statute because it fails to allege that appellant derived support from the prostitution earnings. It merely says he got support from her, knowing she was a prostitute. At the hearing below appellant's attorney convinced the judge to dismiss the case with the argument that merely knowing she was a prostitute and receiving support do not necessarily combine to make a violation of the statute. We agree. In order to charge a crime under the statute it must be alleged the accused lived from or derived support from the prostitution earnings.")

Coercion or inducement – civil cause of action: According to section 796.09, F.S., a person has a cause of action for compensatory and punitive damages against:

- (a) A person who coerced⁴ that person into prostitution;
- (b) A person who coerces that person to remain in prostitution; or
- (c) A person who uses coercion to collect or receive any part of that person's earnings derived from prostitution.

The bill will apply the cause of action to a person who coerced or *induced*⁵ that person to become a prostitute or remain in prostitution or who used coercion or *inducement* to collect earnings derived from prostitution.

The section currently provides that certain facts do not constitute a defense to a complaint under this section including that:

- (a) The plaintiff was paid or otherwise compensated for acts of prostitution;
- (b) The plaintiff engaged in acts of prostitution prior to any involvement with the defendant; or
- (c) The plaintiff made no attempt to escape, flee, or otherwise terminate contact with the defendant.

Under the bill, the fact that the plaintiff stipulated or otherwise agreed that the prohibited acts did not occur as a result of coercion or inducement will not constitute a defense to a complaint under this section. Further, in the case of a cause of action based on inducement, the fact that the victim consented will not be a defense.

Current law authorizes the court to award prevailing plaintiff's reasonable attorney's fees and costs. The bill will require the court to award these costs and fees.

Civil remedies for criminal offenses: Chapter 772 is known as the "Civil Remedies for Criminal Practices Act". Section 772.103, F.S. makes it unlawful for a person with criminal intent to receive any proceeds derived, directly or indirectly, from a pattern of criminal activity. Section 772.104, F.S. provides that any person who proves by clear and convincing evidence that he or she has been injured by reason of any violation of s. 772.103, F.S. has a cause of action for threefold the actual damages sustained and reasonable attorney's fees and court costs. Section 772.102 defines the term "criminal activity" to include a list of criminal offenses. Several offenses within chapter 796 are currently included within the definition. The bill adds section 796.06, F.S., relating to owning or renting a place for the purpose of any activity prohibited under chapter 796, to the definition of criminal activity.

⁴ The bill provides that the term coerces means uses force or intimidation, or any practice of domination or restraint, in order to bring about or cause a person to take certain action. The term includes, but is not limited to, the use of:

- (a) Physical force or threat of physical force.
- (b) Physical or mental torture.
- (c) Kidnapping.
- (d) Blackmail.
- (e) Extortion or claims of indebtedness.
- (f) Threat of legal complaint or report of delinquency.
- (g) Threat to interfere with parental rights or responsibilities, whether by judicial or administrative action or otherwise.
- (h) Restraint of speech or communication with others.
- (i) Exploitation of a condition of developmental disability, cognitive limitation, affective disorder, or substance dependency.
- (j) Exploitation of victimization by sexual abuse.
- (k) Exploitation of pornographic performance.
- (l) Exploitation of human needs for food, shelter, safety, or affection.

⁵ The bill defines the term "induces" to mean "offers, promises or withholds or threatens to withhold, a benefit or advantage, whether legal, financial, or otherwise, such as a promise of marriage, employment, or material support or advantage, in order to bring about or cause a person to take certain action.

RICO: Sections 895.01 – 895.06, F.S. are known as the Florida Racketeer Influenced and Corrupt Organization Act (RICO Act) The sections contain criminal penalties and a civil cause of action for racketeering activity. Section 895.02, F.S. defines the term “racketeering activity” to include a list of criminal offenses including several offenses within chapter 796. The bill adds section 796.06, F.S., relating to owning or renting a place for the purpose of any activity prohibited under chapter 796, to the definition.

Violation by a business entity of chapter 796: The bill creates s. 796.10, F.S. which provides that if a business entity is convicted of a violation of chapter 796, the court may, when appropriate order:

- Its dissolution or reorganization;
- The suspension or revocation of any license, including, but not limited to, any occupational license, license under chapter 561⁶, permit or prior approval granted to the business entity by a state agency; or
- The surrender of its charter, if organized under the laws of this state, or any certificate to conduct business in this state, if it is not organized by the laws of this state.

The section also provides that all property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of a provision of chapter 796 is subject to civil forfeiture to the state under sections 932.701-932.706.⁷

Local administrative action to abate prostitution related nuisances:

Section 893.138, F.S. gives a county or municipality the authority, by ordinance, to create an administrative board to hear complaints regarding nuisances described in the section. If the board declares a place or premises to be a public nuisance, it may enter an order requiring the owner of the place or premises to adopt a procedure to abate the nuisance or it may enter an order prohibiting:

1. The maintaining of the ordinance;
2. The operating or maintaining of the place or premises, including the closure of the place or premises or any part, thereof; or
3. The conduct, operation or maintenance of any business or activity on the premises which is conducive to such nuisance.

This section provides that any place or premises that has been used on more than two occasions within a 6-month period as the site of a violation of the prostitution statute, s. 796.07, may be declared to be a public nuisance, and such nuisance may be abated pursuant to the procedures provided in the section. The bill expands this to apply to a place or premises that has been used on more than two occasions within a 6-month period as the site of a violation of any offense in chapter 796, rather than only a violation of s. 796.07, F.S.

Places declared a nuisance: Section 823.05, F.S. provides, in part, that whoever erects, establishes, continues or maintains, owns or leases any building, booth, tent or place which tends to annoy the community or injure the health of the community or any place or prostitution, assignation or lewdness shall be deemed guilty of maintaining a nuisance. The section provides that such places shall be abated or enjoined as provided in section 60.05 and 60.06, F.S.

⁶ Chapter 561 relates to alcoholic beverages and tobacco.

⁷ Sections 932.701-932.707, F.S. are known as the Florida Contraband Forfeiture Act. Contraband includes any real property or personal property used in the commission of any felony or obtained as a result of a violation of the Florida Contraband Forfeiture Act. An order of forfeiture gives the law enforcement agency that seized the property the right or title to the contraband property. The law enforcement agency can then retain the property for the agency's use or sell the property.

Section 60.05, F.S. provides that when any nuisance as defined in s. 823.05 exists, the Attorney General, state attorney, city attorney, county attorney, or any citizen of the county may sue in the name of the state to enjoin the nuisance, the person or persons maintaining it, and the owner or agent of the building or ground on which the nuisance exists. The court may issue a temporary injunction enjoining the nuisance and after trial, may issue a permanent injunction.

The bill amends s. 823.05, F.S. to provide that any place, structure, building or part or trailer of other conveyance that has been used:

1. On more than two occasions within a 6-month period, as the site of a violation of chapter 796;
2. On more than two occasions within a 6-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
3. On one occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony and that has been previously used on more than one occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
4. By a criminal street gang for the purpose of conducting a pattern of criminal street gang activity as defined by s. 874.03; or
5. On more than two occasions within a 6-month period, as the site of a violation of s. 812.019 relating to dealing in stolen property

may be declared a public nuisance and abated or enjoined as provide in section 60.05 and 60.06, F.S.

Offense severity ranking chart: The bill amends the offense severity ranking chart to include the offense of a third or subsequent prostitution violation within level 1; furthering criminal activity prohibited in chapter 796 in level 2; deriving support from prostitution proceeds in level 4; sex trafficking in level 8; sex trafficking involving a minor and selling or buying of minors in sex trafficking in level 9.

C. SECTION DIRECTORY:

Section 1. Amends s. 772.102, F.S., relating to definitions.

Section 2. Amends s. 775.21, F.S., relating to Florida Sexual Predators Act.

Section 3. Creates s. 796.011, F.S. relating to definitions.

Section 4. Amends s. 796.03, F.S., relating to procuring a minor for prostitution.

Section 5. Amends s. 796.04, F.S., relating to forcing, compelling or coercing another to become a prostitute.

Section 6. Amends s. 796.045, F.S., relating to sex trafficking.

Section 7. Amends s. 796.05, F.S., relating to deriving support from the proceeds of prostitution.

Section 8. Amends s. 796.06, F.S., relating to further activity prohibited under chapter 796.

Section 9. Amends s. 796.07, F.S., relating to prohibiting prostitution.

Section 10. Amends s. 796.09, F.S., relating to coercion.

Section 11. Creates s. 796.10, F.S. relating to violations by a business entity; sanctions.

Section 12. Amends s. 823.05, F.S. relating to places declared a nuisance; abatement and injunction.

Section 13. Amends s. 893.138, F.S. relating to local administrative action to abate drug-related, prostitution-related, or stolen-property related public nuisances and criminal street gang activity.

Section 14. Amends s. 895.02, F.S., relating to definitions.

Section 15. Amends s. 921.0022, F.S. relating to offense severity ranking chart.

Sections 16-20. Amends ss. 322.28, 943.0435, 944.606 and 944.607, F.S., to conform cross-references to changes made by bill.

Section 20. Provides effective date of July 1, 2008.

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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

E. The Criminal Justice Impact Conference met on March 14, 2008, and determined this bill would have an insignificant prison bed impact.

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.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

29 of chapter 796, F.S., may be subject to specified
 30 sanctions and forfeiture of property; amending s. 823.05,
 31 F.S.; providing that a place used for specified violations
 32 relating to prostitution may be may be declared a public
 33 nuisance and abated or enjoined; amending s. 893.138,
 34 F.S.; providing additional prostitution offenses that may
 35 subject a place to being declared a public nuisance by a
 36 county or municipality and abated pursuant to specified
 37 provisions; amending s. 895.02, F.S.; redefining the term
 38 "racketeering activity" to revise the offenses included
 39 for purposes of the Florida RICO Act; amending s.
 40 921.0022, F.S.; conforming the offense severity ranking
 41 chart of the Criminal Punishment Code; amending ss.
 42 322.28, 943.0435, 944.606, and 944.607, F.S.; conforming
 43 cross-references; providing an effective date.
 44

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

46
 47 Section 1. Paragraph (a) of subsection (1) of section
 48 772.102, Florida Statutes, is amended to read:

49 772.102 Definitions.--As used in this chapter, the term:

50 (1) "Criminal activity" means to commit, to attempt to
 51 commit, to conspire to commit, or to solicit, coerce, or
 52 intimidate another person to commit:

53 (a) Any crime that is chargeable by indictment or
 54 information under the following provisions:

55 1. Section 210.18, relating to evasion of payment of
 56 cigarette taxes.

- 57 2. Section 414.39, relating to public assistance fraud.
- 58 3. Section 440.105 or s. 440.106, relating to workers'
- 59 compensation.
- 60 4. Part IV of chapter 501, relating to telemarketing.
- 61 5. Chapter 517, relating to securities transactions.
- 62 6. Section 550.235, s. 550.3551, or s. 550.3605, relating
- 63 to dogracing and horseracing.
- 64 7. Chapter 550, relating to jai alai frontons.
- 65 8. Chapter 552, relating to the manufacture, distribution,
- 66 and use of explosives.
- 67 9. Chapter 562, relating to beverage law enforcement.
- 68 10. Section 624.401, relating to transacting insurance
- 69 without a certificate of authority, s. 624.437(4)(c)1., relating
- 70 to operating an unauthorized multiple-employer welfare
- 71 arrangement, or s. 626.902(1)(b), relating to representing or
- 72 aiding an unauthorized insurer.
- 73 11. Chapter 687, relating to interest and usurious
- 74 practices.
- 75 12. Section 721.08, s. 721.09, or s. 721.13, relating to
- 76 real estate timeshare plans.
- 77 13. Chapter 782, relating to homicide.
- 78 14. Chapter 784, relating to assault and battery.
- 79 15. Chapter 787, relating to kidnapping or human
- 80 trafficking.
- 81 16. Chapter 790, relating to weapons and firearms.
- 82 17. Section 796.03, s. 796.04, s. 796.045, s. 796.05, s.
- 83 796.06, or s. 796.07, relating to prostitution.
- 84 18. Chapter 806, relating to arson.

- 85 19. Section 810.02(2)(c), relating to specified burglary
- 86 of a dwelling or structure.
- 87 20. Chapter 812, relating to theft, robbery, and related
- 88 crimes.
- 89 21. Chapter 815, relating to computer-related crimes.
- 90 22. Chapter 817, relating to fraudulent practices, false
- 91 pretenses, fraud generally, and credit card crimes.
- 92 23. Section 827.071, relating to commercial sexual
- 93 exploitation of children.
- 94 24. Chapter 831, relating to forgery and counterfeiting.
- 95 25. Chapter 832, relating to issuance of worthless checks
- 96 and drafts.
- 97 26. Section 836.05, relating to extortion.
- 98 27. Chapter 837, relating to perjury.
- 99 28. Chapter 838, relating to bribery and misuse of public
- 100 office.
- 101 29. Chapter 843, relating to obstruction of justice.
- 102 30. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
- 103 s. 847.07, relating to obscene literature and profanity.
- 104 31. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
- 105 849.25, relating to gambling.
- 106 32. Chapter 893, relating to drug abuse prevention and
- 107 control.
- 108 33. Section 914.22 or s. 914.23, relating to witnesses,
- 109 victims, or informants.
- 110 34. Section 918.12 or s. 918.13, relating to tampering
- 111 with jurors and evidence.
- 112 Section 2. Paragraph (a) of subsection (4) and paragraph

113 (b) of subsection (10) of section 775.21, Florida Statutes, are
 114 amended to read:

115 775.21 The Florida Sexual Predators Act.--

116 (4) SEXUAL PREDATOR CRITERIA.--

117 (a) For a current offense committed on or after October 1,
 118 1993, upon conviction, an offender shall be designated as a
 119 "sexual predator" under subsection (5), and subject to
 120 registration under subsection (6) and community and public
 121 notification under subsection (7) if:

122 1. The felony is:

123 a. A capital, life, or first-degree felony violation, or
 124 any attempt thereof, of s. 787.01 or s. 787.02, where the victim
 125 is a minor and the defendant is not the victim's parent or
 126 guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a
 127 violation of a similar law of another jurisdiction; or

128 b. Any felony violation, or any attempt thereof, of s.
 129 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a
 130 minor and the defendant is not the victim's parent or guardian;
 131 s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03;
 132 former s. 796.035; s. 796.045(2); s. 800.04; s. 825.1025(2)(b);
 133 s. 827.071; s. 847.0145; or s. 985.701(1); or a violation of a
 134 similar law of another jurisdiction, and the offender has
 135 previously been convicted of or found to have committed, or has
 136 pled nolo contendere or guilty to, regardless of adjudication,
 137 any violation of s. 787.01, s. 787.02, or s. 787.025(2)(c),
 138 where the victim is a minor and the defendant is not the
 139 victim's parent or guardian; s. 794.011, excluding s.
 140 794.011(10); s. 794.05; s. 796.03; former s. 796.035; s.

141 796.045(2); s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s.
 142 847.0135, excluding s. 847.0135(4); s. 847.0145; or s.
 143 985.701(1); or a violation of a similar law of another
 144 jurisdiction;

145 2. The offender has not received a pardon for any felony
 146 or similar law of another jurisdiction that is necessary for the
 147 operation of this paragraph; and

148 3. A conviction of a felony or similar law of another
 149 jurisdiction necessary to the operation of this paragraph has
 150 not been set aside in any postconviction proceeding.

151 (10) PENALTIES.--

152 (b) A sexual predator who has been convicted of or found
 153 to have committed, or has pled nolo contendere or guilty to,
 154 regardless of adjudication, any violation, or attempted
 155 violation, of s. 787.01, s. 787.02, or s. 787.025(2)(c), where
 156 the victim is a minor and the defendant is not the victim's
 157 parent or guardian; s. 794.011, excluding s. 794.011(10); s.
 158 794.05; s. 796.03; former s. 796.035; s. 796.045(2); s. 800.04;
 159 s. 827.071; s. 847.0133; s. 847.0145; or s. 985.701(1); or a
 160 violation of a similar law of another jurisdiction when the
 161 victim of the offense was a minor, and who works, whether for
 162 compensation or as a volunteer, at any business, school, day
 163 care center, park, playground, or other place where children
 164 regularly congregate, commits a felony of the third degree,
 165 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

166 Section 3. Section 796.011, Florida Statutes, is created
 167 to read:

168 796.011 Definitions.--As used in this chapter, the term:

169 (1) "Assignment" means the making of any appointment or
 170 engagement for prostitution or lewdness or any act in
 171 furtherance of such appointment or engagement.

172 (2) "Coerces" means uses force or intimidation, or any
 173 practice of domination or restraint, in order to bring about or
 174 cause a person to take certain action. The term includes, but is
 175 not limited to, the use of:

176 (a) Physical force or threat of physical force.

177 (b) Physical or mental torture.

178 (c) Kidnapping.

179 (d) Blackmail.

180 (e) Extortion or claims of indebtedness.

181 (f) Threat of legal complaint or report of delinquency.

182 (g) Threat to interfere with parental rights or
 183 responsibilities, whether by judicial or administrative action
 184 or otherwise.

185 (h) Restraint of speech or communication with others.

186 (i) Exploitation of a condition of developmental
 187 disability, cognitive limitation, affective disorder, or
 188 substance dependency.

189 (j) Exploitation of victimization by sexual abuse.

190 (k) Exploitation of pornographic performance.

191 (l) Exploitation of human needs for food, shelter, safety,
 192 or affection.

193 (3) "Induces" means offers, promises, or withholds or
 194 threatens to withhold, a benefit or advantage, whether legal,
 195 financial, or otherwise, such as a promise of marriage,

196 employment, or material support or advantage, in order to bring
 197 about or cause a person to take certain action.

198 (4) "Lewdness" means any indecent or obscene act.

199 (5) "Prostitution" means the giving or receiving of the
 200 body for sexual activity for hire; however, the term does not
 201 include sexual activity between spouses.

202 (6) "Sexual activity" means oral, anal, or vaginal
 203 penetration by, or union with, the sexual organ of another; anal
 204 or vaginal penetration of another by any other object; or the
 205 handling or fondling of the sexual organ of another for the
 206 purpose of masturbation; however, the term does not include acts
 207 done for bona fide medical purposes.

208 Section 4. Section 796.03, Florida Statutes, is amended to
 209 read:

210 796.03 Procuring minor ~~person under age of 18~~ for
 211 prostitution.--A person who procures for prostitution, or causes
 212 to be prostituted, any minor ~~person who is under the age of 18~~
 213 ~~years~~ commits a felony of the first ~~second~~ degree, punishable as
 214 provided in s. 775.082, s. 775.083, or s. 775.084.

215 Section 5. Section 796.04, Florida Statutes, is amended to
 216 read:

217 796.04 Forcing, compelling, or coercing another to become
 218 a prostitute.--

219 ~~(1) After May 1, 1943, It is shall be~~ unlawful for anyone
 220 to force, compel, or coerce another to become a prostitute.

221 ~~(2) A person anyone~~ violating this section commits shall
 222 ~~be guilty of~~ a felony of the first ~~third~~ degree, punishable as
 223 provided in s. 775.082, s. 775.083, or s. 775.084.

224 Section 6. Section 796.035, Florida Statutes, is
 225 renumbered as subsection (2) of section 796.045, Florida
 226 Statutes, and amended, and section 796.045, Florida Statutes, is
 227 amended, to read:

228 796.045 Sex trafficking; penalties.--

229 (1) (a) Any person who knowingly recruits, entices,
 230 harbors, transports, provides, or obtains by any means a person,
 231 knowing that force, fraud, or coercion will be used to cause
 232 that person to engage in prostitution, commits the offense of
 233 sex trafficking, a felony of the first ~~second~~ degree, punishable
 234 as provided in s. 775.082, s. 775.083, or s. 775.084.

235 (b) A person commits a life felony ~~of the first degree~~,
 236 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 237 if the offense ~~of sex trafficking~~ is committed against a minor
 238 ~~person who is under the age of 14 or the~~ if such offense results
 239 in death.

240 (2) ~~796.035 Selling or buying of minors into sex~~
 241 ~~trafficking or prostitution; penalties.--~~Any parent, legal
 242 guardian, or other person having custody or control of a minor
 243 who sells or otherwise transfers custody or control of such
 244 minor, or offers to sell or otherwise transfer custody of such
 245 minor, with knowledge that, as a consequence of the sale or
 246 transfer, force, fraud, or coercion will be used to cause the
 247 minor to engage in prostitution or otherwise participate in the
 248 trade of sex trafficking, commits a life felony ~~of the first~~
 249 ~~degree~~, punishable as provided in s. 775.082, s. 775.083, or s.
 250 775.084.

HB 1151

2008

251 Section 7. Section 796.05, Florida Statutes, is amended to
 252 read:

253 796.05 Deriving support from the proceeds of
 254 prostitution.--

255 (1) It shall be unlawful for any person with reasonable
 256 belief or knowing another person is engaged in prostitution to
 257 live or derive support or maintenance in whole or in part,
 258 directly or indirectly, from what is believed to be the earnings
 259 or proceeds of such person's prostitution.

260 (2) Anyone violating this section commits a felony of the
 261 third degree, punishable as provided in s. 775.082, s. 775.083,
 262 or s. 775.084.

263 Section 8. Section 796.06, Florida Statutes, is amended to
 264 read:

265 796.06 Use of space for prohibited activities; sanctions
 266 ~~Renting space to be used for lewdness, assignation, or~~
 267 ~~prostitution.--~~

268 (1) Any person who owns, lets, rents, maintains, controls,
 269 or operates ~~It is unlawful to let, or rent~~ any place, structure,
 270 building, or part thereof, or trailer or other conveyance, with
 271 the knowledge or reasonable cause to believe that it is being
 272 used, or will be used, in whole or in part, for the purpose of
 273 any activity prohibited under this chapter commits a felony of
 274 the third degree, punishable as provided in s. 775.082, s.
 275 775.083, or s. 775.084. ~~lewdness, assignation, or prostitution.~~

276 ~~(2) A person who violates this section commits:~~

277 ~~(a) A misdemeanor of the second degree for a first~~
 278 ~~violation, punishable as provided in s. 775.082 or s. 775.083.~~

279 ~~(b) A misdemeanor of the first degree for a second or~~
 280 ~~subsequent violation, punishable as provided in s. 775.082 or s.~~
 281 ~~775.083.~~

282 Section 9. Section 796.07, Florida Statutes, is amended to
 283 read:

284 796.07 Prohibiting prostitution, lewdness, and assignation
 285 ~~etc.; evidence; penalties; definitions.--~~

286 ~~(1) As used in this section:~~

287 ~~(a) "Prostitution" means the giving or receiving of the~~
 288 ~~body for sexual activity for hire but excludes sexual activity~~
 289 ~~between spouses.~~

290 ~~(b) "Lewdness" means any indecent or obscene act.~~

291 ~~(c) "Assignation" means the making of any appointment or~~
 292 ~~engagement for prostitution or lewdness, or any act in~~
 293 ~~furtherance of such appointment or engagement.~~

294 ~~(d) "Sexual activity" means oral, anal, or vaginal~~
 295 ~~penetration by, or union with, the sexual organ of another; anal~~
 296 ~~or vaginal penetration of another by any other object; or the~~
 297 ~~handling or fondling of the sexual organ of another for the~~
 298 ~~purpose of masturbation; however, the term does not include acts~~
 299 ~~done for bona fide medical purposes.~~

300 ~~(1)(2)~~ It is unlawful for a person:

301 ~~(a) To own, establish, maintain, or operate any place,~~
 302 ~~structure, building, or conveyance for the purpose of lewdness,~~
 303 ~~assignation, or prostitution.~~

304 ~~(a)(b)~~ To offer, or to offer or agree to secure, any
 305 person another for the purpose of prostitution, lewdness, or
 306 assignation ~~or for any other lewd or indecent act.~~

307 (b)~~(e)~~ To receive, or to offer or agree to receive, any
 308 person into any place, structure, building, or trailer or other
 309 conveyance for the purpose of prostitution, lewdness, or
 310 assignation, ~~or to permit any person to remain there for such~~
 311 ~~purpose.~~

312 (c)~~(d)~~ To direct, take, or transport, or to offer or agree
 313 to direct, take, or transport, any person to any place,
 314 structure, ~~or~~ building, or trailer or other conveyance or to any
 315 other person, with knowledge or reasonable cause to believe that
 316 the purpose of such directing, taking, or transporting is
 317 prostitution, lewdness, or assignation.

318 (d)~~(e)~~ To offer to commit, or to commit, or to engage in,
 319 prostitution, lewdness, or assignation.

320 (e)~~(f)~~ To solicit, induce, entice, or procure any person
 321 ~~another~~ to commit prostitution, lewdness, or assignation.

322 (f)~~(g)~~ To reside in, enter, or remain in, any place,
 323 structure, or building, or to enter or remain in any trailer or
 324 other conveyance, for the purpose of prostitution, lewdness, or
 325 assignation.

326 (g)~~(h)~~ To aid, abet, or participate in prostitution,
 327 lewdness, or assignation ~~any of the acts or things enumerated in~~
 328 ~~this subsection.~~

329 (h)~~(i)~~ To purchase the services of any person engaged in
 330 prostitution.

331 (2)~~(3)~~(a) In the trial of a person charged with a
 332 violation of this section, testimony concerning the reputation
 333 of any place, structure, building, or trailer or other
 334 conveyance involved in the charge;~~;~~ testimony concerning the

335 reputation of any person residing in, operating, or frequenting
 336 such place, structure, building, or trailer or other
 337 conveyance; ~~7~~ and testimony concerning the reputation of the
 338 defendant is admissible in evidence in support of the charge.

339 (b) Notwithstanding any other provision of law, a police
 340 officer may testify as an offended party in an action regarding
 341 charges filed pursuant to this section.

342 ~~(3)-(4)~~ Except as otherwise provided in this chapter, a
 343 person who violates any provision of this section commits:

344 (a) A misdemeanor of the second degree for a first
 345 violation, punishable as provided in s. 775.082 or s. 775.083.

346 (b) A misdemeanor of the first degree for a second
 347 violation, punishable as provided in s. 775.082 or s. 775.083.

348 (c) A felony of the third degree for a third or subsequent
 349 violation, punishable as provided in s. 775.082, s. 775.083, or
 350 s. 775.084.

351 ~~(4)-(5)~~ A person who is charged with a third or subsequent
 352 violation of this section shall be offered admission to a
 353 pretrial intervention program or a substance-abuse treatment
 354 program as provided in s. 948.08.

355 ~~(5)-(6)~~ In addition to the punishment provided in
 356 subsection (3), a person who violates paragraph (1) (e) ~~(2) (f)~~
 357 shall be assessed a civil penalty of \$500 if the violation
 358 results in any judicial disposition other than acquittal or
 359 dismissal. The proceeds from penalties assessed under this
 360 subsection shall be paid to the circuit court administrator for
 361 the sole purpose of paying the administrative costs of
 362 treatment-based drug court programs provided under s. 397.334.

363 Section 10. Section 796.09, Florida Statutes, is amended
 364 to read:

365 796.09 Coercion or inducement; civil cause of action;
 366 evidence; defenses; attorney's fees.--

367 (1) A person has a cause of action for compensatory and
 368 punitive damages against:

369 (a) A person who coerces or induces ~~coerced~~ that person
 370 into prostitution.†

371 (b) A person who coerces or induces that person to remain
 372 in prostitution.†~~or~~

373 (c) A person who collects or receives ~~uses coercion to~~
 374 ~~collect or receive~~ any part of another ~~that~~ person's earnings
 375 derived from prostitution.

376 ~~(2) As used in this section, the term "prostitution" has~~
 377 ~~the same meaning as in s. 796.07.~~

378 ~~(3) As used in this section, the term "coercion" means any~~
 379 ~~practice of domination, restraint, or inducement for the purpose~~
 380 ~~of or with the reasonably foreseeable effect of causing another~~
 381 ~~person to engage in or remain in prostitution or to relinquish~~
 382 ~~earnings derived from prostitution, and includes, but is not~~
 383 ~~limited to:~~

384 ~~(a) Physical force or threats of physical force.~~

385 ~~(b) Physical or mental torture.~~

386 ~~(c) Kidnapping.~~

387 ~~(d) Blackmail.~~

388 ~~(e) Extortion or claims of indebtedness.~~

389 ~~(f) Threat of legal complaint or report of delinquency.~~

390 ~~(g) Threat to interfere with parental rights or~~
 391 ~~responsibilities, whether by judicial or administrative action~~
 392 ~~or otherwise.~~

393 ~~(h) Promise of legal benefit.~~

394 ~~(i) Promise of greater financial rewards.~~

395 ~~(j) Promise of marriage.~~

396 ~~(k) Restraint of speech or communication with others.~~

397 ~~(l) Exploitation of a condition of developmental~~
 398 ~~disability, cognitive limitation, affective disorder, or~~
 399 ~~substance dependency.~~

400 ~~(m) Exploitation of victimization by sexual abuse.~~

401 ~~(n) Exploitation of pornographic performance.~~

402 ~~(o) Exploitation of human needs for food, shelter, safety,~~
 403 ~~or affection.~~

404 (2)~~(4)~~ In the course of litigation under this section, any
 405 transaction about which a plaintiff testifies or produces
 406 evidence does not subject such plaintiff to criminal prosecution
 407 or any penalty or forfeiture. Further, any testimony or
 408 evidence, documentary or otherwise, or information directly or
 409 indirectly derived from such testimony or evidence which is
 410 given or produced by a plaintiff or a witness for a plaintiff
 411 shall not be used against these persons in any other
 412 investigation or proceeding. Such testimony or evidence,
 413 however, may be used against a plaintiff or a witness for a
 414 plaintiff upon any criminal investigation or proceeding for
 415 perjury committed while giving such testimony or producing such
 416 evidence.

417 (3)-(5) It does not constitute a defense to a complaint
 418 under this section that:

419 (a) The plaintiff was paid or otherwise compensated for
 420 acts of prostitution or other acts prohibited under this
 421 chapter;

422 (b) The plaintiff engaged in acts of prostitution or other
 423 acts prohibited under this chapter prior to any involvement with
 424 the defendant; ~~or~~

425 (c) The plaintiff made no attempt to escape, flee, or
 426 otherwise terminate contact with the defendant;~~;~~

427 (d) In the case of a cause of action based on inducement,
 428 the victim consented; or

429 (e) The plaintiff stipulated or otherwise agreed that the
 430 prohibited acts did not occur as a result of coercion.

431 (4)-(6) Evidence of convictions for prostitution or other
 432 acts prohibited under this chapter ~~or prostitution related~~
 433 ~~offenses~~ are inadmissible in a proceeding brought under this
 434 section for purposes of attacking the plaintiff's credibility.

435 (5)-(7) In any action brought under this section, the court
 436 ~~shall, in its discretion, may~~ award prevailing plaintiffs
 437 reasonable attorney's fees and costs.

438 Section 11. Section 796.10, Florida Statutes, is created
 439 to read:

440 796.10 Violations by a business entity; sanctions.--

441 (1) For purposes of this section, the term "business
 442 entity" includes, but is not limited to, any corporation,
 443 syndicate, association, firm, joint venture, partnership,
 444 limited liability company, or business trust.

445 (2) If a business entity is convicted of a violation of
 446 this chapter, the court may, when appropriate, order:
 447 (a) Its dissolution or reorganization;
 448 (b) The suspension or revocation of any license,
 449 including, but not limited to, any occupational license, license
 450 under chapter 561, permit, or prior approval granted to the
 451 business entity by a state agency; or
 452 (c) The surrender of its charter, if organized under the
 453 laws of this state, or any certificate to conduct business in
 454 this state, if it is not organized by the laws of this state.
 455 (3) All property, real or personal, including money, used
 456 in the course of, intended for use in the course of, derived
 457 from, or realized through conduct in violation of a provision of
 458 this chapter is subject to civil forfeiture to the state under
 459 ss. 932.701-932.706.

460 Section 12. Section 823.05, Florida Statutes, is amended
 461 to read:

462 823.05 Places declared a nuisance; abatement ~~may be abated~~
 463 and injunction ~~enjoined~~.--

464 (1) Whoever shall erect, establish, continue, or maintain,
 465 own or lease any building, booth, tent or place which tends to
 466 annoy the community or injure the health of the community, or
 467 become manifestly injurious to the morals or manners of the
 468 people as described in s. 823.01, or shall be frequented by the
 469 class of persons mentioned in s. 856.02, or any house or place
 470 of prostitution, assignation, lewdness or place or building
 471 where games of chance are engaged in violation of law or any
 472 place where any law of the state is violated, shall be deemed

HB 1151

2008

473 guilty of maintaining a nuisance, and the building, erection,
 474 place, tent or booth and the furniture, fixtures and contents
 475 are declared a nuisance. All such places or persons shall be
 476 abated or enjoined as provided in ss. 60.05 and 60.06.

477 (2) Any place, structure, building, or part thereof, or
 478 trailer or other conveyance that has been used as provided in s.
 479 893.138(2), may be declared a public nuisance and abated or
 480 enjoined as provided in ss. 60.05 and 60.06.

481 Section 13. Paragraph (a) of subsection (2) of section
 482 893.138, Florida Statutes, is amended to read:

483 893.138 Local administrative action to abate drug-related,
 484 prostitution-related, or stolen-property-related public
 485 nuisances and criminal street gang activity.--

486 (2) Any place or premises that has been used:

487 (a) On more than two occasions within a 6-month period, as
 488 the site of a violation of chapter 796 ~~s. 796.07~~;

489
 490 may be declared to be a public nuisance, and such nuisance may
 491 be abated pursuant to the procedures provided in this section.

492 Section 14. Paragraph (a) of subsection (1) of section
 493 895.02, Florida Statutes, is amended to read:

494 895.02 Definitions.--As used in ss. 895.01-895.08, the
 495 term:

496 (1) "Racketeering activity" means to commit, to attempt to
 497 commit, to conspire to commit, or to solicit, coerce, or
 498 intimidate another person to commit:

- 499 (a) Any crime that is chargeable by indictment or
 500 information under the following provisions of the Florida
 501 Statutes:
- 502 1. Section 210.18, relating to evasion of payment of
 503 cigarette taxes.
 - 504 2. Section 403.727(3)(b), relating to environmental
 505 control.
 - 506 3. Section 409.920 or s. 409.9201, relating to Medicaid
 507 fraud.
 - 508 4. Section 414.39, relating to public assistance fraud.
 - 509 5. Section 440.105 or s. 440.106, relating to workers'
 510 compensation.
 - 511 6. Section 443.071(4), relating to creation of a
 512 fictitious employer scheme to commit unemployment compensation
 513 fraud.
 - 514 7. Section 465.0161, relating to distribution of medicinal
 515 drugs without a permit as an Internet pharmacy.
 - 516 8. Sections 499.0051, 499.0052, 499.00535, 499.00545, and
 517 499.0691, relating to crimes involving contraband and
 518 adulterated drugs.
 - 519 9. Part IV of chapter 501, relating to telemarketing.
 - 520 10. Chapter 517, relating to sale of securities and
 521 investor protection.
 - 522 11. Section 550.235, s. 550.3551, or s. 550.3605, relating
 523 to dogracing and horseracing.
 - 524 12. Chapter 550, relating to jai alai frontons.
 - 525 13. Section 551.109, relating to slot machine gaming.

HB 1151

2008

- 526 14. Chapter 552, relating to the manufacture,
 527 distribution, and use of explosives.
- 528 15. Chapter 560, relating to money transmitters, if the
 529 violation is punishable as a felony.
- 530 16. Chapter 562, relating to beverage law enforcement.
- 531 17. Section 624.401, relating to transacting insurance
 532 without a certificate of authority, s. 624.437(4)(c)1., relating
 533 to operating an unauthorized multiple-employer welfare
 534 arrangement, or s. 626.902(1)(b), relating to representing or
 535 aiding an unauthorized insurer.
- 536 18. Section 655.50, relating to reports of currency
 537 transactions, when such violation is punishable as a felony.
- 538 19. Chapter 687, relating to interest and usurious
 539 practices.
- 540 20. Section 721.08, s. 721.09, or s. 721.13, relating to
 541 real estate timeshare plans.
- 542 21. Chapter 782, relating to homicide.
- 543 22. Chapter 784, relating to assault and battery.
- 544 23. Chapter 787, relating to kidnapping or human
 545 trafficking.
- 546 24. Chapter 790, relating to weapons and firearms.
- 547 25. Section 796.03, ~~s. 796.035~~, s. 796.04, s. 796.045, s.
 548 796.05, s. 796.06, or s. 796.07, relating to prostitution and
 549 sex trafficking.
- 550 26. Chapter 806, relating to arson.
- 551 27. Section 810.02(2)(c), relating to specified burglary
 552 of a dwelling or structure.

- 553 28. Chapter 812, relating to theft, robbery, and related
554 crimes.
- 555 29. Chapter 815, relating to computer-related crimes.
- 556 30. Chapter 817, relating to fraudulent practices, false
557 pretenses, fraud generally, and credit card crimes.
- 558 31. Chapter 825, relating to abuse, neglect, or
559 exploitation of an elderly person or disabled adult.
- 560 32. Section 827.071, relating to commercial sexual
561 exploitation of children.
- 562 33. Chapter 831, relating to forgery and counterfeiting.
- 563 34. Chapter 832, relating to issuance of worthless checks
564 and drafts.
- 565 35. Section 836.05, relating to extortion.
- 566 36. Chapter 837, relating to perjury.
- 567 37. Chapter 838, relating to bribery and misuse of public
568 office.
- 569 38. Chapter 843, relating to obstruction of justice.
- 570 39. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
571 s. 847.07, relating to obscene literature and profanity.
- 572 40. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
573 849.25, relating to gambling.
- 574 41. Chapter 874, relating to criminal street gangs.
- 575 42. Chapter 893, relating to drug abuse prevention and
576 control.
- 577 43. Chapter 896, relating to offenses related to financial
578 transactions.

HB 1151

2008

579 44. Sections 914.22 and 914.23, relating to tampering with
 580 a witness, victim, or informant, and retaliation against a
 581 witness, victim, or informant.

582 45. Sections 918.12 and 918.13, relating to tampering with
 583 jurors and evidence.

584 Section 15. Paragraphs (a), (b), (d), (g), (h), and (i) of
 585 subsection (3) of section 921.0022, Florida Statutes, are
 586 amended to read:

587 921.0022 Criminal Punishment Code; offense severity
 588 ranking chart.--

589 (3) OFFENSE SEVERITY RANKING CHART

590 (a) LEVEL 1

591

Florida Statute	Felony Degree	Description
24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than \$300 but less than \$20,000.

594

595

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

HB 1151

2008

596	316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
597	319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
598	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
599	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
600	322.212(1)(a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver's license; possession of simulated identification.
601	322.212(4)	3rd	Supply or aid in supplying unauthorized driver's license or identification card.
602	322.212(5)(a)	3rd	False application for driver's license or identification card.
	414.39(2)	3rd	Unauthorized use, possession,

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

HB 1151

2008

			forgery, or alteration of food stamps, Medicaid ID, value greater than \$200.
603	414.39 (3) (a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
604	443.071 (1)	3rd	False statement or representation to obtain or increase unemployment compensation benefits.
605	509.151 (1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.
606	517.302 (1)	3rd	Violation of the Florida Securities and Investor Protection Act.
607	562.27 (1)	3rd	Possess still or still apparatus.
608	713.69	3rd	Tenant removes property upon which lien has accrued, value more than \$50.
609	<u>796.07 (3) (c)</u>	<u>3rd</u>	<u>Prostitution, 3rd or subsequent violation.</u>
610			

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

HB 1151

2008

611	812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
612	812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
613	815.04(4)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
614	817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
615	817.569(2)	3rd	Use of public record or public records information to facilitate commission of a felony.
616	826.01	3rd	Bigamy.
617	828.122(3)	3rd	Fighting or baiting animals.
618	831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.

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

HB 1151

2008

619	831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
620	832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.
621	832.05(2)(b)&(4)(c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
622	838.15(2)	3rd	Commercial bribe receiving.
623	838.16	3rd	Commercial bribery.
624	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
625	847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
626	849.01	3rd	Keeping gambling house.
	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise

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

HB 1151

2008

			drawing for prizes, or dispose of property or money by means of lottery.
627	849.23	3rd	Gambling-related machines; "common offender" as to property rights.
628	849.25 (2)	3rd	Engaging in bookmaking.
629	860.08	3rd	Interfere with a railroad signal.
630	860.13 (1) (a)	3rd	Operate aircraft while under the influence.
631	893.13 (2) (a) 2.	3rd	Purchase of cannabis.
632	893.13 (6) (a)	3rd	Possession of cannabis (more than 20 grams).
633	934.03 (1) (a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.
634			
635	(b) LEVEL 2		
636			
	Florida	Felony	Description
	Statute	Degree	
637			

HB 1151

2008

638	370.12(1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
639	370.12(1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
640	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.
641	517.07	3rd	Registration of securities and furnishing of prospectus required.
642	590.28(1)	3rd	Willful, malicious, or intentional burning.
643	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
644	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.

HB 1151

2008

645	<u>796.06</u>	<u>3rd</u>	<u>Use of space for activity prohibited in chapter 796.</u>
646	806.13 (1) (b) 3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
647	810.061 (2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
648	810.09 (2) (e)	3rd	Trespassing on posted commercial horticulture property.
649	812.014 (2) (c) 1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
650	812.014 (2) (d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
651	812.015 (7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
652	817.234 (1) (a) 2.	3rd	False statement in support of insurance claim.

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

HB 1151

2008

653	817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
654	817.52(3)	3rd	Failure to redeliver hired vehicle.
655	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
656	817.60(5)	3rd	Dealing in credit cards of another.
657	817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
658	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
659	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
660	831.01	3rd	Forgery.
661	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.

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

HB 1151

2008

662	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
663	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
664	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
665	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
666	832.05 (3) (a)	3rd	Cashing or depositing item with intent to defraud.
667	843.08	3rd	Falsely impersonating an officer.
668	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.
669	893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.
670	(d) LEVEL 4		
671			

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

HB 1151

2008

	Florida Statute	Felony Degree	Description
672	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.
673	499.0051(1)	3rd	Failure to maintain or deliver pedigree papers.
674	499.0051(2)	3rd	Failure to authenticate pedigree papers.
675	499.0051(6)	2nd	Sale or delivery, or possession with intent to sell, contraband legend drugs.
676	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, intake officer, etc.
677	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
678	784.075	3rd	Battery on detention or commitment

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

HB 1151

2008

			facility staff.
679	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
680	784.08 (2) (c)	3rd	Battery on a person 65 years of age or older.
681	784.081 (3)	3rd	Battery on specified official or employee.
682	784.082 (3)	3rd	Battery by detained person on visitor or other detainee.
683	784.083 (3)	3rd	Battery on code inspector.
684	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
685	787.03 (1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
686	787.04 (2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
687			

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

HB 1151

2008

688	787.04 (3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
689	790.115 (1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
690	790.115 (2) (b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
691	790.115 (2) (c)	3rd	Possessing firearm on school property.
692	<u>796.05</u>	<u>3rd</u>	<u>Deriving support from prostitution proceeds.</u>
693	800.04 (7) (d)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
694	810.02 (4) (a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
	810.02 (4) (b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed;

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

HB 1151

2008

			no assault or battery.
695	810.06	3rd	Burglary; possession of tools.
696	810.08 (2) (c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
697	812.014 (2) (c) 3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
698	812.014 (2) (c) 4. - 10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
699	812.0195 (2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
700	817.563 (1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03 (5) drugs.
701	817.568 (2) (a)	3rd	Fraudulent use of personal identification information.
702	817.625 (2) (a)	3rd	Fraudulent use of scanning device or reencoder.
703			

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

HB 1151

2008

704	828.125 (1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
705	837.02 (1)	3rd	Perjury in official proceedings.
706	837.021 (1)	3rd	Make contradictory statements in official proceedings.
707	838.022	3rd	Official misconduct.
708	839.13 (2) (a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
709	839.13 (2) (c)	3rd	Falsifying records of the Department of Children and Family Services.
710	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
711	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.

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

HB 1151

2008

712	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
713	874.05(1)	3rd	Encouraging or recruiting another to join a criminal street gang.
714	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).
715	914.14(2)	3rd	Witnesses accepting bribes.
716	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
717	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
718	918.12	3rd	Tampering with jurors.
719	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
720	(g) LEVEL 7		
721			

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

HB 1151

2008

	Florida Statute	Felony Degree	Description
722	316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
723	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
724	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.
725	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
726	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
727	409.920(2)	3rd	Medicaid provider fraud.
728			

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

HB 1151

2008

729	456.065 (2)	3rd	Practicing a health care profession without a license.
730	456.065 (2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
731	458.327 (1)	3rd	Practicing medicine without a license.
732	459.013 (1)	3rd	Practicing osteopathic medicine without a license.
733	460.411 (1)	3rd	Practicing chiropractic medicine without a license.
734	461.012 (1)	3rd	Practicing podiatric medicine without a license.
735	462.17	3rd	Practicing naturopathy without a license.
736	463.015 (1)	3rd	Practicing optometry without a license.
737	464.016 (1)	3rd	Practicing nursing without a license.

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

HB 1151

2008

738	465.015 (2)	3rd	Practicing pharmacy without a license.
739	466.026 (1)	3rd	Practicing dentistry or dental hygiene without a license.
740	467.201	3rd	Practicing midwifery without a license.
741	468.366	3rd	Delivering respiratory care services without a license.
742	483.828 (1)	3rd	Practicing as clinical laboratory personnel without a license.
743	483.901 (9)	3rd	Practicing medical physics without a license.
744	484.013 (1) (c)	3rd	Preparing or dispensing optical devices without a prescription.
745	484.053	3rd	Dispensing hearing aids without a license.
	494.0018 (2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully

HB 1151

2008

			obtained exceeded \$50,000 and there were five or more victims.
746	560.123 (8) (b) 1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by money transmitter.
747	560.125 (5) (a)	3rd	Money transmitter business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
748	655.50 (10) (b) 1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
749	775.21 (10) (a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
750	775.21 (10) (b)	3rd	Sexual predator working where children regularly congregate.
751	775.21 (10) (g)	3rd	Failure to report or providing false

HB 1151

2008

752			information about a sexual predator; harbor or conceal a sexual predator.
	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
753			
	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
754			
	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
755			
	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
756			
	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
757			
	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
758			

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

HB 1151

2008

759	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
760	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
761	784.048 (7)	3rd	Aggravated stalking; violation of court order.
762	784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.
763	784.074 (1) (a)	1st	Aggravated battery on sexually violent predators facility staff.
764	784.08 (2) (a)	1st	Aggravated battery on a person 65 years of age or older.
765	784.081 (1)	1st	Aggravated battery on specified official or employee.
766	784.082 (1)	1st	Aggravated battery by detained person on visitor or other detainee.
767	784.083 (1)	1st	Aggravated battery on code inspector.

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

HB 1151

2008

768	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
769	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
770	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
771	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
772	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
773	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim

HB 1151

2008

			younger than 18 years of age.
774	796.03	<u>1st</u> 2nd	Procuring any <u>minor</u> person under 16 years for prostitution.
775	800.04 (5) (c) 1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
776	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.
777	806.01 (2)	2nd	Maliciously damage structure by fire or explosive.
778	810.02 (3) (a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
779	810.02 (3) (b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
780	810.02 (3) (d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
781	810.02 (3) (e)	2nd	Burglary of authorized emergency

HB 1151

2008

782			vehicle.
	812.014 (2) (a) 1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
783			
	812.014 (2) (b) 2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
784			
	812.014 (2) (b) 3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
785			
	812.014 (2) (b) 4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
786			
	812.0145 (2) (a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
787			
	812.019 (2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
788			

HB 1151

2008

789	812.131(2)(a)	2nd	Robbery by sudden snatching.
790	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
791	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
792	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
793	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
794	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.
795	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.

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

HB 1151

2008

796	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.
797	827.03 (3) (b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
798	827.04 (3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
799	837.05 (2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
800	838.015	2nd	Bribery.
801	838.016	2nd	Unlawful compensation or reward for official behavior.
802	838.021 (3) (a)	2nd	Unlawful harm to a public servant.
803	838.22	2nd	Bid tampering.
	847.0135 (3)	3rd	Solicitation of a child, via a

HB 1151

2008

			computer service, to commit an unlawful sex act.
804	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
805	872.06	2nd	Abuse of a dead human body.
806	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.
807	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.
808	893.13(4)(a)	1st	Deliver to minor cocaine (or other

HB 1151

2008

			s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
809	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
810	893.135(1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
811	893.135(1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
812	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
813	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
814	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
815	893.135(1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
816	893.135(1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less

HB 1151

2008

817	893.135(1)(j)1.a.	1st	than 5 kilograms.
818	893.135(1)(k)2.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
819	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
820	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
821	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
822	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
823			

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

HB 1151

2008

824	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
825	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
826	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
827	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
828	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
829	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
830	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
	985.4815(10)	3rd	Sexual offender; failure to submit

HB 1151

2008

			to the taking of a digitized photograph.
831	985.4815 (12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
832	985.4815 (13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
833			
834	(h) LEVEL 8		
835			
	Florida	Felony	Description
	Statute	Degree	
836			
	316.193 (3) (c) 3.a.	2nd	DUI manslaughter.
837			
	316.1935 (4) (b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
838			
	327.35 (3) (c) 3.	2nd	Vessel BUI manslaughter.
839			
	499.0051 (7)	1st	Forgery of prescription or legend drug labels.
840			

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

HB 1151

2008

841	499.0052	1st	Trafficking in contraband legend drugs.
842	560.123 (8) (b) 2.	2nd	Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
843	560.125 (5) (b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.
844	655.50 (10) (b) 2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
845	777.03 (2) (a)	1st	Accessory after the fact, capital felony.
	782.04 (4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aircraft piracy, or

			unlawfully discharging bomb.
846	782.051 (2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
847	782.071 (1) (b)	1st	Committing vehicular homicide and failing to render aid or give information.
848	782.072 (2)	1st	Committing vessel homicide and failing to render aid or give information.
849	790.161 (3)	1st	Discharging a destructive device which results in bodily harm or property damage.
850	794.011 (5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.
851	794.08 (3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
852			

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

HB 1151

2008

853	<u>796.045 (1) (a)</u>	<u>1st</u>	<u>Sex trafficking.</u>
854	800.04 (4)	2nd	Lewd or lascivious battery.
855	806.01 (1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
856	810.02 (2) (a)	1st, PB L	Burglary with assault or battery.
857	810.02 (2) (b)	1st, PB L	Burglary; armed with explosives or dangerous weapon.
858	810.02 (2) (c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
859	812.014 (2) (a) 2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
860	812.13 (2) (b)	1st	Robbery with a weapon.
861	812.135 (2) (c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.

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

HB 1151

2008

862	817.568 (6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
863	825.102 (2)	2nd	Aggravated abuse of an elderly person or disabled adult.
864	825.1025 (2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
865	825.103 (2) (a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$100,000 or more.
866	837.02 (2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
867	837.021 (2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
868	860.121 (2) (c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
869	860.16	1st	Aircraft piracy.

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

HB 1151

2008

870	893.13 (1) (b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03 (1) (a) or (b).
871	893.13 (2) (b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03 (1) (a) or (b).
872	893.13 (6) (c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03 (1) (a) or (b).
873	893.135 (1) (a) 2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
874	893.135 (1) (b) 1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
875	893.135 (1) (c) 1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
876	893.135 (1) (d) 1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
877	893.135 (1) (e) 1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.

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

HB 1151

2008

878	893.135(1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
879	893.135(1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
880	893.135(1)(h)1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
881	893.135(1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
882	893.135(1)(k)2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
883	895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
884	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
	895.03(3)	1st	Conduct or participate in any enterprise through pattern of

HB 1151

2008

racketeering activity.

885

896.101 (5) (b) 2nd Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.

886

896.104 (4) (a) 2. 2nd Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$20,000 but less than \$100,000.

887

888 (i) LEVEL 9

889

Florida Statute	Felony Degree	Description
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890

316.193 (3) (c) 3.b.	1st	DUI manslaughter; failing to render aid or give information.
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891

327.35 (3) (c) 3.b.	1st	BUI manslaughter; failing to render aid or give information.
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892

499.00535	1st	Sale or purchase of contraband legend drugs resulting in great bodily harm.
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893

HB 1151

2008

894	560.123 (8) (b) 3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
895	560.125 (5) (c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
896	655.50 (10) (b) 3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
897	775.0844	1st	Aggravated white collar crime.
898	782.04 (1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
899	782.04 (3)	1st, PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, and other specified felonies.
	782.051 (1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s.

HB 1151

2008

			782.04(3).
900	782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
901	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
902	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
903	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
904	787.02(3)(a)	1st	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
905	790.161	1st	Attempted capital destructive device offense.
906	790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass

HB 1151

2008

			destruction.
907	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
908	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
909	794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
910	794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
911	794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
912	<u>796.045(1)(b)</u>	<u>Life</u>	<u>Sex trafficking involving a minor or resulting in death.</u>
913	<u>796.045(2)</u>	<u>Life</u>	<u>Selling or buying of minors into sex trafficking or prostitution.</u>
914			

HB 1151

2008

915	800.04 (5) (b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
916	812.13 (2) (a)	1st, PBL	Robbery with firearm or other deadly weapon.
917	812.133 (2) (a)	1st, PBL	Carjacking; firearm or other deadly weapon.
918	812.135 (2) (b)	1st	Home-invasion robbery with weapon.
919	817.568 (7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
920	827.03 (2)	1st	Aggravated child abuse.
921	847.0145 (1)	1st	Selling, or otherwise transferring custody or control, of a minor.
922	847.0145 (2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.

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

HB 1151

2008

923	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
924	893.135	1st	Attempted capital trafficking offense.
925	893.135 (1) (a) 3.	1st	Trafficking in cannabis, more than 10,000 lbs.
926	893.135 (1) (b) 1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
927	893.135 (1) (c) 1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
928	893.135 (1) (d) 1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
929	893.135 (1) (e) 1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
930	893.135 (1) (f) 1.c.	1st	Trafficking in amphetamine, more than 200 grams.

HB 1151

2008

931 893.135(1)(h)1.c. 1st Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.

932 893.135(1)(j)1.c. 1st Trafficking in 1,4-Butanediol, 10 kilograms or more.

933 893.135(1)(k)2.c. 1st Trafficking in Phenethylamines, 400 grams or more.

934 896.101(5)(c) 1st Money laundering, financial instruments totaling or exceeding \$100,000.

935 896.104(4)(a)3. 1st Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$100,000.

936 Section 16. Subsection (7) of section 322.28, Florida

937 Statutes, is amended to read:

938 322.28 Period of suspension or revocation.--

939 (7) Following a second or subsequent violation of s.

940 796.07(1)(e)~~(2)(f)~~ which involves a motor vehicle and which

941 results in any judicial disposition other than acquittal or

942 dismissal, in addition to any other sentence imposed, the court

943 shall revoke the person's driver's license or driving privilege,

944 effective upon the date of the disposition, for a period of not

945 less than 1 year. A person sentenced under this subsection may

946 request a hearing under s. 322.271.

947 Section 17. Paragraph (a) of subsection (1) of section
 948 943.0435, Florida Statutes, is amended to read:

949 943.0435 Sexual offenders required to register with the
 950 department; penalty.--

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

952 (a)1. "Sexual offender" means a person who meets the
 953 criteria in sub-subparagraph a., sub-subparagraph b., sub-
 954 subparagraph c., or sub-subparagraph d., as follows:

955 a.(I) Has been convicted of committing, or attempting,
 956 soliciting, or conspiring to commit, any of the criminal
 957 offenses proscribed in the following statutes in this state or
 958 similar offenses in another jurisdiction: s. 787.01, s. 787.02,
 959 or s. 787.025(2)(c), where the victim is a minor and the
 960 defendant is not the victim's parent or guardian; s. 794.011,
 961 excluding s. 794.011(10); s. 794.05; s. 796.03; former s.
 962 796.035; s. 796.045(2); s. 800.04; s. 825.1025; s. 827.071; s.
 963 847.0133; s. 847.0135, excluding s. 847.0135(4); s. 847.0137; s.
 964 847.0138; s. 847.0145; or s. 985.701(1); or any similar offense
 965 committed in this state which has been redesignated from a
 966 former statute number to one of those listed in this sub-sub-
 967 subparagraph; and

968 (II) Has been released on or after October 1, 1997, from
 969 the sanction imposed for any conviction of an offense described
 970 in sub-sub-subparagraph (I). For purposes of sub-sub-
 971 subparagraph (I), a sanction imposed in this state or in any
 972 other jurisdiction includes, but is not limited to, a fine,
 973 probation, community control, parole, conditional release,

974 control release, or incarceration in a state prison, federal
 975 prison, private correctional facility, or local detention
 976 facility;

977 b. Establishes or maintains a residence in this state and
 978 who has not been designated as a sexual predator by a court of
 979 this state but who has been designated as a sexual predator, as
 980 a sexually violent predator, or by another sexual offender
 981 designation in another state or jurisdiction and was, as a
 982 result of such designation, subjected to registration or
 983 community or public notification, or both, or would be if the
 984 person were a resident of that state or jurisdiction, without
 985 regard to whether the person otherwise meets the criteria for
 986 registration as a sexual offender;

987 c. Establishes or maintains a residence in this state who
 988 is in the custody or control of, or under the supervision of,
 989 any other state or jurisdiction as a result of a conviction for
 990 committing, or attempting, soliciting, or conspiring to commit,
 991 any of the criminal offenses proscribed in the following
 992 statutes or similar offense in another jurisdiction: s. 787.01,
 993 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
 994 the defendant is not the victim's parent or guardian; s.
 995 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; former
 996 s. 796.035; s. 796.045(2); s. 800.04; s. 825.1025; s. 827.071;
 997 s. 847.0133; s. 847.0135, excluding s. 847.0135(4); s. 847.0137;
 998 s. 847.0138; s. 847.0145; or s. 985.701(1); or any similar
 999 offense committed in this state which has been redesignated from
 1000 a former statute number to one of those listed in this sub-
 1001 subparagraph; or

1002 d. On or after July 1, 2007, has been adjudicated
 1003 delinquent for committing, or attempting, soliciting, or
 1004 conspiring to commit, any of the criminal offenses proscribed in
 1005 the following statutes in this state or similar offenses in
 1006 another jurisdiction when the juvenile was 14 years of age or
 1007 older at the time of the offense:

- 1008 (I) Section 794.011, excluding s. 794.011(10);
- 1009 (II) Section 800.04(4)(b) where the victim is under 12
 1010 years of age or where the court finds sexual activity by the use
 1011 of force or coercion;
- 1012 (III) Section 800.04(5)(c)1. where the court finds
 1013 molestation involving unclothed genitals; or
- 1014 (IV) Section 800.04(5)(d) where the court finds the use of
 1015 force or coercion and unclothed genitals.

1016 2. For all qualifying offenses listed in sub-subparagraph
 1017 (1)(a)1.d., the court shall make a written finding of the age of
 1018 the offender at the time of the offense.

1019
 1020 For each violation of a qualifying offense listed in this
 1021 subsection, the court shall make a written finding of the age of
 1022 the victim at the time of the offense. For a violation of s.
 1023 800.04(4), the court shall additionally make a written finding
 1024 indicating that the offense did or did not involve sexual
 1025 activity and indicating that the offense did or did not involve
 1026 force or coercion. For a violation of s. 800.04(5), the court
 1027 shall additionally make a written finding that the offense did
 1028 or did not involve unclothed genitals or genital area and that
 1029 the offense did or did not involve the use of force or coercion.

HB 1151

2008

1030 Section 18. Paragraph (b) of subsection (1) of section
 1031 944.606, Florida Statutes, is amended to read:

1032 944.606 Sexual offenders; notification upon release.--

1033 (1) As used in this section:

1034 (b) "Sexual offender" means a person who has been
 1035 convicted of committing, or attempting, soliciting, or
 1036 conspiring to commit, any of the criminal offenses proscribed in
 1037 the following statutes in this state or similar offenses in
 1038 another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c),
 1039 where the victim is a minor and the defendant is not the
 1040 victim's parent or guardian; s. 794.011, excluding s.
 1041 794.011(10); s. 794.05; s. 796.03; former s. 796.035; s.
 1042 796.045(2); s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s.
 1043 847.0135, excluding s. 847.0135(4); s. 847.0137; s. 847.0138; s.
 1044 847.0145; or s. 985.701(1); or any similar offense committed in
 1045 this state which has been redesignated from a former statute
 1046 number to one of those listed in this subsection, when the
 1047 department has received verified information regarding such
 1048 conviction; an offender's computerized criminal history record
 1049 is not, in and of itself, verified information.

1050 Section 19. Paragraph (a) of subsection (1) of section
 1051 944.607, Florida Statutes, is amended to read:

1052 944.607 Notification to Department of Law Enforcement of
 1053 information on sexual offenders.--

1054 (1) As used in this section, the term:

1055 (a) "Sexual offender" means a person who is in the custody
 1056 or control of, or under the supervision of, the department or is
 1057 in the custody of a private correctional facility:

1058 1. On or after October 1, 1997, as a result of a
 1059 conviction for committing, or attempting, soliciting, or
 1060 conspiring to commit, any of the criminal offenses proscribed in
 1061 the following statutes in this state or similar offenses in
 1062 another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c),
 1063 where the victim is a minor and the defendant is not the
 1064 victim's parent or guardian; s. 794.011, excluding s.
 1065 794.011(10); s. 794.05; s. 796.03; former s. 796.035; s.
 1066 796.045(2); s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s.
 1067 847.0135, excluding s. 847.0135(4); s. 847.0137; s. 847.0138; s.
 1068 847.0145; or s. 985.701(1); or any similar offense committed in
 1069 this state which has been redesignated from a former statute
 1070 number to one of those listed in this paragraph; or

1071 2. Who establishes or maintains a residence in this state
 1072 and who has not been designated as a sexual predator by a court
 1073 of this state but who has been designated as a sexual predator,
 1074 as a sexually violent predator, or by another sexual offender
 1075 designation in another state or jurisdiction and was, as a
 1076 result of such designation, subjected to registration or
 1077 community or public notification, or both, or would be if the
 1078 person were a resident of that state or jurisdiction, without
 1079 regard as to whether the person otherwise meets the criteria for
 1080 registration as a sexual offender.

1081 Section 20. This act shall take effect July 1, 2008.

