



**COMMITTEE ON
HOMELAND SECURITY
& PUBLIC SAFETY**

COMMITTEE MEETING

**WEDNESDAY, FEBRUARY 6, 2008
1:00 p.m. – 2:30 p.m.**

**ROOM
Reed Hall
(102 House Office Building)**

MEETING PACKET

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

Committee on Homeland Security & Public Safety

Start Date and Time: Wednesday, February 06, 2008 01:00 pm

End Date and Time: Wednesday, February 06, 2008 02:30 pm

Location: Reed Hall (102 HOB)

Duration: 1.50 hrs

Consideration of the following bill(s):

HB 173 Controlled Substances by Thompson, N.
HB 203 Use of Electronic Surveillance Equipment by Ross
HB 233 Elderly Persons and Disabled Adults by Anderson
HB 267 False and Fraudulent Insurance Claims by Hays
HB 313 Dating Violence by Kelly

NOTICE FINALIZED on 01/30/2008 15:16 by SPT



The Florida House of Representatives

Safety & Security Council

Committee on Homeland Security & Public Safety

**Marco Rubio
Speaker**

**Sandra Adams
Chair**

AGENDA

Wednesday, February 6, 2008

1:00 p.m. – 2:30 p.m.

Reed Hall

(102 House Office Building)

- I. Opening remarks by Chair Adams**
- II. Roll call by Sonja Thompson, CAA**
- III. Consideration of the following bills:**
 - HB 173 Controlled Substances by Thompson, N.**
 - HB 203 Use of Electronic Surveillance Equipment by Ross**
 - HB 233 Elderly Persons and Disabled Adults by Anderson**
 - HB 267 False and Fraudulent Insurance Claims by Hays**
 - HB 313 Dating Violence by Kelly**
- IV. Closing Remarks**
- V. Meeting Adjourned**

**Marco Rubio
Speaker**

**Sandra Adams
Chair**

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill creates new criminal offenses relating to controlled substances.

B. EFFECT OF PROPOSED CHANGES:

Drug Schedules: Section 893.13, F.S., provides penalties for various drug offenses depending on the type and quantity of the controlled substance involved and whether the controlled substance is possessed, sold, manufactured, delivered or purchased as well as the location of the sale, manufacture or delivery. If the amount of controlled substance possessed, sold, manufactured, purchased or delivered is of a specified quantity, the offense is considered drug trafficking and the penalties in s. 893.135, F.S., apply. The type and quantity of controlled substance sold, purchased, manufactured or delivered - in other words, trafficked - dictates the penalties that apply.

Lease or rental of a place used in drug trafficking: Section 893.1351, F.S. provides that a person may not lease or rent any place, structure, or part thereof, trailer, or other conveyance, with the knowledge that such place, structure, trailer, or conveyance will be used for the purpose of trafficking in a controlled substance or the sale of a controlled substance. The offense is a third degree felony. The bill expands this offense to include owning as well as leasing or renting any place, structure, trailer or conveyance with the knowledge that it will be used for the purpose of manufacture of a controlled substance intended for sale or distribution to another.

The bill creates a new subsection in s. 893.1351 which provides that a person may not knowingly be in actual or constructive *possession* of any place, structure, or part thereof, trailer or any conveyance with the knowledge that the place, structure, or part thereof, trailer or conveyance will be used for the purpose or trafficking in a controlled substance, the sale of a controlled substance or the manufacture of a controlled substance intended for sale or distribution to another. This offense will be a third degree felony.

The bill also provides that proof of the possession of 25 or more cannabis plants constitutes prima facie evidence that the cannabis is intended for sale or distribution.

The bill creates section 893.1352, F.S. which provides that a person who is found to be in actual or constructive possession of a place, structure, trailer or conveyance with the knowledge that the place, structure, trailer or conveyance is being used to manufacture a controlled substance intended for sale or distribution to another and who knew or should have known that a minor is present or resides in the place, structure, trailer or conveyance commits a first degree felony.

Possession of controlled substance in presence of a minor:

Currently, the possession of a controlled substance in a quantity less than the threshold required for trafficking is a third degree felony.¹ The bill provides that a person may not possess any amount of a controlled substance in close proximity to an infant or toddler. The offense is a first degree felony. The

¹ See s. 893.13(6)(a), F.S. The possession of less than 20 grams of cannabis is a first degree misdemeanor.

term “close proximity” is defined to mean that “the item is so close to the infant or toddler as to be within his or her reach without regard to whether the infant or toddler is likely to attempt to reach for the item.”

Evidence: Section 90.91, F.S. provides that in any prosecution for a crime involving the wrongful taking of property, a photograph of the property alleged to have been wrongfully taken may be deemed competent evidence of such property and may be admissible in the prosecution to the same extent as if such property were introduced as evidence. Such photograph shall bear a written description of the property alleged to have been wrongfully taken, the name of the owner of the property, the location where the alleged wrongful taking occurred, the name of the investigating law enforcement officer, the date the photograph was taken, and the name of the photographer. Such writing shall be made under oath by the investigating law enforcement officer, and the photograph shall be identified by the signature of the photographer. Upon the filing of such photograph and writing with the law enforcement authority or court holding such property as evidence, the property may be returned to the owner from whom the property was taken.

The bill provides that in the prosecution of an offense involving the cultivation² or manufacture of a controlled substance, a photograph or video recording of the manufacturing or cultivation equipment used in committing the offense, including, but not limited to, grow lights, growing trays, and chemical fertilizers, may be introduced as competent evidence of the existence and use of the equipment and is admissible in the prosecution of the offense to the same extent as if the property were introduced as evidence.

Currently, section 893.12, F.S. provides that controlled substances which are possessed in violation of the chapter are contraband and subject to seizure and confiscation. The court having jurisdiction must order the substances forfeited and destroyed. A record of the place where the controlled substance was seized, of the kinds and quantities of controlled substances destroyed and of the time, place and manner of destruction must be kept and a return under oath reporting the destruction must be made to the court by the officer who destroys them.

The bill provides that after a law enforcement agency documents the manufacturing and cultivation equipment by photography or video recording, the manufacturing and cultivation equipment may be destroyed on site and left in disrepair. The law enforcement agency destroying the equipment is immune from civil liability for the destruction of the equipment. The destruction of the equipment must be recorded in the manner described in s. 893.12(1)(a), F.S. above and records must be maintained for 12 months.

C. SECTION DIRECTORY:

Section 1. Amends s. 893.02, F.S., relating to definitions.

Section 2. Amends s. 893.1351, F.S., relating to owning, leasing, renting or possessing for the purpose of trafficking or manufacturing a controlled substance.

Section 3. Creates s. 893.1352, F.S. relating to unlawful possession of a controlled substance in the presence of a minor.

Section 4. Amends s. 893.10, F.S. relating to burden of proof.

² The bill defines the term “cultivation” to mean “the preparation of any soil or hydroponic medium for the planting of cannabis plants, the tending and caring of cannabis plants, or the harvesting of mature cannabis plants.”

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

Section 6-8: Amends s. 465.016, 465.023 and 893.135, F.S. to correct cross-references.

Section 9. 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:

On January 17, 2008, the Criminal Justice Impact Conference determined that this bill could have a potentially significant prison bed impact on the Department of Corrections.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

STORAGE NAME: h0173.HSPS.doc
DATE: 1/14/2008

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:

Section 1 of the bill defines the term "cultivation" to mean "the preparation of any soil or hydroponic medium for the planting of cannabis plants, the tending and caring of cannabis plants, or the harvesting or mature cannabis plants". The definition does not include controlled substances other than cannabis. Although cannabis is likely the most commonly cultivated controlled substance, other plants are listed in the drug schedules and could possibly be cultivated.

Section 3 of the bill prohibits a person from possessing any amount of a controlled substance in close proximity to an infant or toddler. Apparently this is intended to only apply to a controlled substance that the person does not legally possess. However, as written, the bill does not list any exceptions to this offense. As a result, possession of a controlled substance for which the person had a legal prescription within close proximity to an infant or toddler would be a first degree felony. Under this provision as drafted, a person would not be able to give a controlled substance to an infant or toddler because the controlled substance would be within close proximity to the infant or toddler while it is being administered.

If this provision were limited to creating a first degree felony offense for *unlawful* possession of a controlled substance in close proximity to an infant or toddler, it would have the effect of significantly increasing the severity of possession of a controlled substance, depending on the controlled substance at issue. For example, possession of less than 20 grams of cannabis is a first degree misdemeanor.³ Under the bill, if a person possessed less than 20 grams of cannabis within close proximity to an infant or toddler, the severity of the offense would increase from a first degree misdemeanor, punishable by up to one year in county jail to a first degree felony, punishable by up to 30 years in prison. Further, the bill ranks the newly created offense in level 8 of the offense severity ranking chart. As a result, the lowest permissible sentence for the offense would be 36 months in prison.

Section 4 of the bill provides that in the prosecution of an offense involving the "cultivation or manufacture" of a controlled substance, photographs or video recording of the equipment used in the cultivation or manufacture may be introduced into evidence instead of the equipment itself. However, there is no separate criminal offense of "cultivation" of a controlled substance. Instead, s. 893.13, F.S. prohibits the manufacture of a controlled substance. In turn, the definition of the term manufacture

³ s. 893.13(6)(b), F.S. The offense of possession of a controlled substance other than cannabis is a third degree felony. See s. 893.13(6)(a), F.S.

includes the term cultivation. [s. 893.02(13), F.S.] It is recommended that this provision be amended to remove reference to the offense of cultivation of a controlled substance.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled

2 An act relating to controlled substances; amending s.
3 893.02, F.S.; defining the term "cultivation" for
4 specified purposes; amending s. 893.1351, F.S.;
5 prohibiting a person from owning or actually or
6 constructively possessing a place, structure, trailer, or
7 other described place with knowledge that the place will
8 be used to manufacture, sell, or traffic in a controlled
9 substance; providing that possession of a specified number
10 or more of cannabis plants constitutes prima facie
11 evidence of intent to sell or distribute; providing
12 criminal penalties; creating s. 893.1352, F.S.; defining
13 terms; providing that a person with actual or constructive
14 possession of a place, structure, trailer, or conveyance
15 being used to manufacture a controlled substance for sale
16 and distribution commits a felony of the first degree if a
17 minor is present or resides in the place, structure,
18 trailer, or conveyance; providing that a person who allows
19 an infant or toddler to be in close proximity to a
20 controlled substance commits a felony of the first degree;
21 providing criminal penalties; amending s. 893.10, F.S.;
22 providing that equipment used in the cultivation or
23 manufacture of controlled substances may be photographed
24 or video recorded and the photograph or video recording
25 used as evidence for later use at trial; providing for the
26 destruction of the equipment; amending s. 921.0022, F.S.;
27 ranking specified offenses in the offense severity ranking
28 chart of the Criminal Punishment Code; amending ss.

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

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29 465.016, , 465.023, and 893.135, F.S.; conforming cross-
 30 references; providing an effective date.

31

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

33

34 Section 1. Subsections (5) through (21) of section 893.02,
 35 Florida Statutes, are renumbered as subsections (6) through
 36 (22), respectively, and a new subsection (5) is added to that
 37 section to read:

38 893.02 Definitions.--The following words and phrases as
 39 used in this chapter shall have the following meanings, unless
 40 the context otherwise requires:

41 (5) "Cultivation" means the preparation of any soil or
 42 hydroponic medium for the planting of cannabis plants, the
 43 tending and caring of cannabis plants, or the harvesting of
 44 mature cannabis plants.

45 Section 2. Section 893.1351, Florida Statutes, is amended
 46 to read:

47 893.1351 Ownership, lease, rental, or possession ~~or rent~~
 48 ~~for the purpose of~~ trafficking in or manufacturing a controlled
 49 substance.--

50 (1) A person may not own, lease, or rent any place,
 51 structure, or part thereof, trailer, or other conveyance, with
 52 the knowledge that the ~~such~~ place, structure, trailer, or
 53 conveyance will be used for the purpose of trafficking in a
 54 controlled substance, as provided in s. 893.135; for, ~~or~~ the
 55 sale of a controlled substance, as provided in s. 893.13; or for
 56 the manufacture of a controlled substance intended for sale or

57 distribution to another.

58 (2) A person may not knowingly be in actual or
 59 constructive possession of any place, structure, or part
 60 thereof, trailer, or other conveyance with the knowledge that
 61 the place, structure, or part thereof, trailer, or conveyance
 62 will be used for the purpose of trafficking in a controlled
 63 substance, as provided in s. 893.135; for the sale of a
 64 controlled substance, as provided in s. 893.13; or for the
 65 manufacture of a controlled substance intended for sale or
 66 distribution to another.

67 (3) Proof of the possession of 25 or more cannabis plants
 68 constitutes prima facie evidence that the cannabis is intended
 69 for sale or distribution.

70 (4)-(2) A person who violates any provision of this section
 71 commits subsection (1) is guilty of a felony of the third
 72 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 73 775.084.

74 Section 3. Section 893.1352, Florida Statutes, is created
 75 to read:

76 893.1352 Unlawful possession of a controlled substance in
 77 the presence of a minor.--

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

79 (a) "Close proximity" means the item is so close to the
 80 infant or toddler as to be within his or her reach without
 81 regard to whether the infant or toddler is likely to attempt to
 82 reach for the item.

83 (b) "Infant or toddler" means any child from birth until
 84 the child's third birthday.

85 (2) A person who is found to be in actual or constructive
 86 possession of a place, structure, trailer, or conveyance with
 87 the knowledge that the place, structure, trailer, or conveyance
 88 is being used to manufacture a controlled substance intended for
 89 sale or distribution to another and who knew or should have
 90 known that a minor is present or resides in the place,
 91 structure, trailer, or conveyance commits a felony of the first
 92 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 93 775.084.

94 (3) A person may not possess any amount of a controlled
 95 substance in close proximity to an infant or toddler. A person
 96 who violates this subsection commits a felony of the first
 97 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 98 775.084.

99 Section 4. Section 893.10, Florida Statutes, is amended to
 100 read:

101 893.10 Burden of proof; photograph or video recording of
 102 evidence.--

103 (1) It is ~~shall~~ not be necessary for the state to negative
 104 any exemption or exception set forth in this chapter in any
 105 indictment, information, or other pleading or in any trial,
 106 hearing, or other proceeding under this chapter, and the burden
 107 of going forward with the evidence with respect to any ~~such~~
 108 exemption or exception is ~~shall be~~ upon the person claiming its
 109 benefit.

110 (2) In the case of a person charged under s. 893.14(1)
 111 with the possession of a controlled substance, the label
 112 required under s. 893.04(1) or s. 893.05(2) is ~~shall be~~

113 | admissible in evidence and ~~shall be~~ prima facie evidence that
 114 | such substance was obtained pursuant to a valid prescription
 115 | form or dispensed by a practitioner while acting in the course
 116 | of his or her professional practice.

117 | (3) In the prosecution of an offense involving the
 118 | cultivation or manufacture of a controlled substance, a
 119 | photograph or video recording of the manufacturing or
 120 | cultivation equipment used in committing the offense, including,
 121 | but not limited to, grow lights, growing trays, and chemical
 122 | fertilizers, may be introduced as competent evidence of the
 123 | existence and use of the equipment and is admissible in the
 124 | prosecution of the offense to the same extent as if the property
 125 | were introduced as evidence.

126 | (4) After a law enforcement agency documents the
 127 | manufacturing and cultivation equipment by photography or video
 128 | recording, the manufacturing and cultivation equipment may be
 129 | destroyed on site and left in disrepair. The law enforcement
 130 | agency destroying the equipment is immune from civil liability
 131 | for the destruction of the equipment. The destruction of the
 132 | equipment must be recorded by the supervising law enforcement
 133 | officer in the manner described in s. 893.12(1)(a) and records
 134 | must be maintained for 12 months.

135 | Section 5. Paragraphs (e) and (h) of subsection (3) of
 136 | section 921.0022, Florida Statutes, are amended to read:

137 | 921.0022 Criminal Punishment Code; offense severity
 138 | ranking chart.--

139 | (3) OFFENSE SEVERITY RANKING CHART

140 | (e) LEVEL 5

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141

Florida	Felony	Description
Statute	Degree	

142

316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
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143

316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
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144

322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
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145

327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
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146

381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
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147

440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
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148

440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
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149

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150	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
151	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
152	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
153	790.01(2)	3rd	Carrying a concealed firearm.
154	790.162	2nd	Threat to throw or discharge destructive device.
155	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
156	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.

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157	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
158	800.04 (7) (c)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
159	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
160	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
161	812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
162	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
163	812.131 (2) (b)	3rd	Robbery by sudden snatching.
164	812.16 (2)	3rd	Owning, operating, or conducting a chop shop.
165	817.034 (4) (a) 2.	2nd	Communications fraud, value

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			\$20,000 to \$50,000.
166	817.234 (11) (b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
167	817.2341 (1) , (2) (a) & (3) (a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
168	817.568 (2) (b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.
169	817.625 (2) (b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
170	825.1025 (4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person

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			or disabled adult.
171	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
172	827.071(5)	3rd	Possess any photographic material, motion picture, etc., which includes sexual conduct by a child.
173	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
174	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
175	847.0137(2)&(3)	3rd	Transmission of pornography by electronic device or equipment.
176	847.0138(2)&(3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.

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177

874.05 (2) 2nd Encouraging or recruiting another to join a criminal street gang; second or subsequent offense.

178

893.13 (1) (a) 1. 2nd Sell, manufacture, or deliver cocaine (or other s. 893.03 (1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4. drugs).

179

893.13 (1) (c) 2. 2nd Sell, manufacture, or deliver cannabis (or other s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.

180

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

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181	893.13 (1) (e) 2.	2nd	<p>university.</p> <p>Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.</p>
182	893.13 (1) (f) 1.	1st	<p>Sell, manufacture, or deliver cocaine (or other s. 893.03 (1) (a), (1) (b), (1) (d), or (2) (a), (2) (b), or (2) (c) 4. drugs) within 1,000 feet of public housing facility.</p>
183	893.13 (4) (b)	2nd	<p>Deliver to minor cannabis (or other s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) drugs).</p>
184	<u>893.1351</u>	<u>3rd</u>	<p><u>Ownership, lease, rental, or possession for trafficking in or manufacturing of controlled</u></p>

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substance.

185

186

(h) LEVEL 8

187

Florida

Felony

Description

Statute

Degree

188

316.193 (3) (c) 3.a.

2nd

DUI manslaughter.

189

316.1935 (4) (b)

1st

Aggravated fleeing or attempted
eluding with serious bodily
injury or death.

190

327.35 (3) (c) 3.

2nd

Vessel BUI manslaughter.

191

499.0051 (7)

1st

Forgery of prescription or legend
drug labels.

192

499.0052

1st

Trafficking in contraband legend
drugs.

193

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.

194

560.125 (5) (b)

2nd

Money transmitter business by
unauthorized person, currency or

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			payment instruments totaling or exceeding \$20,000, but less than \$100,000.
195	655.50 (10) (b) 2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
196	777.03 (2) (a)	1st	Accessory after the fact, capital felony.
197	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.
198	782.051 (2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04 (3).
199	782.071 (1) (b)	1st	Committing vehicular homicide and failing to render aid or give

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			information.
200	782.072 (2)	1st	Committing vessel homicide and failing to render aid or give information.
201	790.161 (3)	1st	Discharging a destructive device which results in bodily harm or property damage.
202	794.011 (5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.
203	794.08 (3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
204	800.04 (4)	2nd	Lewd or lascivious battery.
205	806.01 (1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
206	810.02 (2) (a)	1st, PBL	Burglary with assault or battery.
207	810.02 (2) (b)	1st, PBL	Burglary; armed with explosives

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208			or dangerous weapon.
	810.02 (2) (c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
209			
	812.014 (2) (a) 2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
210			
	812.13 (2) (b)	1st	Robbery with a weapon.
211			
	812.135 (2) (c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
212			
	817.568 (6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
213			
	825.102 (2)	2nd	Aggravated abuse of an elderly person or disabled adult.
214			
	825.1025 (2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
215			

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216	825.103 (2) (a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$100,000 or more.
217	837.02 (2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
218	837.021 (2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
219	860.121 (2) (c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
220	860.16	1st	Aircraft piracy.
221	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).
222	893.13 (2) (b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03 (1) (a) or (b).

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223	893.13 (6) (c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03 (1) (a) or (b).
224	893.135 (1) (a) 2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
225	893.135 (1) (b) 1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
226	893.135 (1) (c) 1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
227	893.135 (1) (d) 1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
228	893.135 (1) (e) 1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
229	893.135 (1) (f) 1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
	893.135 (1) (g) 1.b.	1st	Trafficking in flunitrazepam, 14

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			grams or more, less than 28 grams.
230	893.135 (1) (h) 1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
231	893.135 (1) (j) 1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
232	893.135 (1) (k) 2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
233	<u>893.1352 (2)</u>	<u>1st</u>	<u>Possession of a place used to manufacture or cultivate controlled substance when minor is present or resides there.</u>
234	<u>893.1352 (3)</u>	<u>1st</u>	<u>Possession of controlled substance in proximity to infant or toddler.</u>
235	895.03 (1)	1st	Use or invest proceeds derived from pattern of racketeering activity.

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236

895.03 (2) 1st Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.

237

895.03 (3) 1st Conduct or participate in any enterprise through pattern of racketeering activity.

238

896.101 (5) (b) 2nd Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.

239

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.

240

241 Section 6. Paragraph (s) of subsection (1) of section
242 465.016, Florida Statutes, is amended to read:

243 465.016 Disciplinary actions.--

244 (1) The following acts constitute grounds for denial of a
245 license or disciplinary action, as specified in s. 456.072(2):

246 (s) Dispensing any medicinal drug based upon a

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247 communication that purports to be a prescription as defined by
 248 s. 465.003(14) or s. 893.02 ~~893.02(20)~~ when the pharmacist knows
 249 or has reason to believe that the purported prescription is not
 250 based upon a valid practitioner-patient relationship.

251 Section 7. Paragraph (e) of subsection (1) of section
 252 465.023, Florida Statutes, is amended to read:

253 465.023 Pharmacy permittee; disciplinary action.--

254 (1) The department or the board may revoke or suspend the
 255 permit of any pharmacy permittee, and may fine, place on
 256 probation, or otherwise discipline any pharmacy permittee who
 257 has:

258 (e) Dispensed any medicinal drug based upon a
 259 communication that purports to be a prescription as defined by
 260 s. 465.003(14) or s. 893.02 ~~893.02(20)~~ when the pharmacist knows
 261 or has reason to believe that the purported prescription is not
 262 based upon a valid practitioner-patient relationship that
 263 includes a documented patient evaluation, including history and
 264 a physical examination adequate to establish the diagnosis for
 265 which any drug is prescribed and any other requirement
 266 established by board rule under chapter 458, chapter 459,
 267 chapter 461, chapter 463, chapter 464, or chapter 466.

268 Section 8. Subsection (6) of section 893.135, Florida
 269 Statutes, is amended to read:

270 893.135 Trafficking; mandatory sentences; suspension or
 271 reduction of sentences; conspiracy to engage in trafficking.--

272 (6) A mixture, as defined in s. 893.02 ~~893.02(14)~~,
 273 containing any controlled substance described in this section
 274 includes, but is not limited to, a solution or a dosage unit,

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275 including but not limited to, a pill or tablet, containing a
276 controlled substance. For the purpose of clarifying legislative
277 intent regarding the weighing of a mixture containing a
278 controlled substance described in this section, the weight of
279 the controlled substance is the total weight of the mixture,
280 including the controlled substance and any other substance in
281 the mixture. If there is more than one mixture containing the
282 same controlled substance, the weight of the controlled
283 substance is calculated by aggregating the total weight of each
284 mixture.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 203 Use of Electronic Surveillance Equipment

SPONSOR(S): Ross

TIED BILLS: **IDEN./SIM. BILLS:** SB 742

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security & Public Safety</u>		Padgett <i>PH</i>	Kramer <i>JK</i>
2) <u>Safety & Security Council</u>			
3) <u>Policy & Budget Council</u>			
4) _____			
5) _____			

SUMMARY ANALYSIS

HB 203 creates s. 775.08451, F.S. which provides that any person who uses electronic surveillance equipment to assist in the commission of, or escape from a crime is subject to enhanced penalties for the underlying offense. The offense will be treated as if it were an offense of the next higher degree. Likewise, for purposes of sentencing, the bill provides the underlying felony offense be treated as if it were the next higher level in the offense severity ranking chart.

In addition, the bill provides that a person commits a first degree misdemeanor if the person uses information obtained from electronic surveillance equipment to aid a known criminal suspect in evading arrest.

At its January 17, 2008 meeting, the Criminal Justice Impact Conference determined that this bill would have a potentially significant prison bed impact on the Department of Corrections.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility: This bill enhances criminal sanctions if a person uses electronic surveillance equipment to assist in the commission of a crime. Also, this bill provides for criminal sanctions if a person uses electronic surveillance equipment to aid a known suspect in escaping from a crime.

B. EFFECT OF PROPOSED CHANGES:

According to law enforcement, drug dealers who are based out of residences are using sophisticated video surveillance equipment to provide advance warning of approaching law enforcement officers. In addition, law enforcement officials have expressed concern that the video surveillance systems could provide criminals the opportunity to ambush police officers who attempt to enter these drug houses.

Currently, there are two statutes which address the use of communications equipment during the commission of a crime. Section 934.215, F.S., provides that a person commits a third degree felony if the person uses a two-way communications device to assist in the commission of a felony offense. Similarly, s. 843.167, F.S. provides that a person is subject to enhanced criminal penalties if the person uses a scanner to intercept police communication and uses the information to assist in the commission of, or escape from, a crime. The enhanced penalties in s. 843.167, F.S. are identical to the enhanced penalties proposed by HB 203.

HB 203 creates s. 775.08451(2)(a), F.S. which provides for enhanced criminal penalties if a person uses electronic surveillance equipment to assist in committing a crime or uses electronic surveillance equipment to avoid arrest. HB 203 defines electronic surveillance equipment as any mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting visual images of another person.

HB 203 provides that any person who violates s. 775.08451(2)(a), F.S. will be subject to enhanced penalties for the underlying criminal offense. The offense will be treated as if it were an offense of the next higher degree as follows:

- A second degree misdemeanor would be punished as a first degree misdemeanor
- A first degree misdemeanor would be punished as a third degree felony
- A third degree felony would be punished as a second degree felony
- A second degree felony would be punished as a first degree felony
- A first degree felony would be punished as a life felony

In addition, for purposes of sentencing, HB 203 reclassifies the underlying felony offense to the next higher offense level in the offense severity ranking chart¹.

HB 203 also creates s. 775.08451(2)(b)1, F.S., which prohibits a person from using information received from electronic surveillance equipment to assist a known suspect in escaping from a crime. The bill provides that a person who violates this section commits a first degree misdemeanor². The enhanced penalties listed above do not apply to this section.

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

C. SECTION DIRECTORY:

Section 1 Creates s. 775.08451, F.S., relating to the use of electronic surveillance equipment in criminal acts.

Section 2 Amends s. 921.0022, F.S., relating to the offense severity ranking chart.

Section 3 Provides effective date of 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:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

At its January 17, 2008 meeting, the Criminal Justice Impact Conference determined that this bill would have a potentially significant prison bed impact on the Department of Corrections.

¹ ss. 921.0022, 921.0023, F.S.

² ss. 775.082, 775.083, F.S.

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 16 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 bill enhances criminal penalties for all crimes in which electronic surveillance equipment is used. Thus, the bill would be applicable to crimes where electronic surveillance equipment is an essential element of the offense. For example, a video camera is an intrinsic element of video voyeurism³. Therefore, every person convicted of video voyeurism would be subject to the enhanced penalties in the bill.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

³ Section 810.145, F.S.

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1 A bill to be entitled

2 An act relating to use of electronic surveillance
3 equipment; creating s. 775.08451, F.S.; defining the term
4 "electronic surveillance equipment"; prohibiting use of
5 electronic surveillance equipment for specified purposes
6 in connection with the commission of a criminal offense;
7 prohibiting specified actions concerning information
8 received through the use of electronic surveillance
9 equipment; providing penalties; providing for
10 reclassification of offenses when electronic surveillance
11 equipment is used in connection with them; amending s.
12 921.0022, F.S.; conforming provisions; providing an
13 effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Section 775.08451, Florida Statutes, is created
18 to read:

19 775.08451 Use of electronic surveillance equipment while
20 committing certain offenses.--

21 (1) For the purposes of this section, the term "electronic
22 surveillance equipment" means any mechanical, digital, or
23 electronic viewing device; still camera; camcorder; motion
24 picture camera; or any other instrument, equipment, or format
25 capable of recording, storing, or transmitting visual images of
26 another person.

27 (2) A person shall not:

28 (a) Use any form of electronic surveillance equipment to
 29 assist in committing a crime or to escape from or avoid
 30 detection, arrest, trial, conviction, or punishment in
 31 connection with the commission of such crime.

32 (b)1. Divulge the existence, contents, substance, purport,
 33 effect, or meaning of any information received through the use
 34 of electronic surveillance equipment to any person he or she
 35 knows to be a suspect in the commission of a crime with the
 36 intent that the suspect may escape from or avoid detention,
 37 arrest, trial, conviction, or punishment.

38 2. Any person who violates subparagraph 1. commits a
 39 misdemeanor of the first degree, punishable as provided in s.
 40 775.082 or s. 775.083.

41 (3) The felony or misdemeanor degree of any criminal
 42 offense underlying a violation of paragraph (2)(a) shall be
 43 reclassified to the next higher degree as follows:

44 (a) A misdemeanor of the second degree shall be punished
 45 as if it were a misdemeanor of the first degree.

46 (b) A misdemeanor of the first degree shall be punished as
 47 if it were a felony of the third degree.

48 (c) A felony of the third degree shall be punished as if
 49 it were a felony of the second degree.

50 (d) A felony of the second degree shall be punished as if
 51 it were a felony of the first degree.

52 (e) A felony of the first degree shall be punished as if
 53 it were a life felony.

54

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55 For purposes of sentencing under chapter 921, a felony offense
56 that is reclassified under this subsection is ranked one level
57 above the ranking under s. 921.0022 or s. 921.0023 of the
58 offense committed.

59 Section 2. Subsection (2) of section 921.0022, Florida
60 Statutes, is amended to read:

61 921.0022 Criminal Punishment Code; offense severity
62 ranking chart.--

63 (2) The offense severity ranking chart has 10 offense
64 levels, ranked from least severe, which are level 1 offenses, to
65 most severe, which are level 10 offenses, and each felony
66 offense is assigned to a level according to the severity of the
67 offense. For purposes of determining which felony offenses are
68 specifically listed in the offense severity ranking chart and
69 which severity level has been assigned to each of these
70 offenses, the numerical statutory references in the left column
71 of the chart and the felony degree designations in the middle
72 column of the chart are controlling; the language in the right
73 column of the chart is provided solely for descriptive purposes.
74 Reclassification of the degree of the felony through the
75 application of s. 775.0845, s. 775.08451, s. 775.0861, s.
76 775.087, s. 775.0875, s. 794.023, or any other law that provides
77 an enhanced penalty for a felony offense, to any offense listed
78 in the offense severity ranking chart in this section shall not
79 cause the offense to become unlisted and is not subject to the
80 provisions of s. 921.0023.

81 Section 3. This act shall take effect October 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 233 Elderly Persons and Disabled Adults

SPONSOR(S): Anderson and others

TIED BILLS: IDEN./SIM. BILLS: SB 366

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Homeland Security & Public Safety		Kramer <i>TK</i>	Kramer <i>TK</i>
2) Safety & Security Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

The bill reclassifies the offense of aggravated abuse of an elderly or disabled person from a second degree felony to a first degree felony. The bill requires certified law enforcement personnel to receive training in the identification and investigation of elder abuse and neglect.

On January 17, 2008, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections. The required law enforcement training has already being implemented; therefore no additional fiscal impact to state government is expected.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility - This bill increases the severity of the sanction for potentially injurious behavior.

B. EFFECT OF PROPOSED CHANGES:

Abuse of an elderly person or disabled adult:

Chapter 825, F.S., provides criminal penalties for offenses committed against elderly persons¹ and disabled adults². Section 825.102(2), F.S., specifies that a person who commits aggravated abuse of an elderly person or disabled adult commits a felony of the second degree. According to this provision, aggravated abuse of an elderly person or disabled adult occurs when a person:

1. Commits aggravated battery on an elderly person or disabled adult;
2. Willfully tortures, maliciously punishes, or willfully and unlawfully cages, an elderly person or disabled adult; or
3. Knowingly or willfully abuses an elderly person or disabled adult and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the elderly person or disabled adult.

This bill reclassifies the offense of aggravated abuse of an elderly person or disabled adult from a second degree to a first degree felony. Aggravated child abuse is currently a first degree felony.³ This will have the effect of increasing the maximum sentence for the offense from fifteen years in prison to thirty years in prison. The bill does not change the ranking of the offense within the offense severity ranking chart of the Criminal Punishment Code. The offense of aggravated abuse of an elderly person or disabled adult is currently ranked in level eight of the chart. As under current law, the lowest permissible sentence for a first time offender who commits this offense and has no additional sentencing factors will be 36 months in prison.

¹ "Elderly person" means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired. s. 825.101(5), F.S.

² "Disabled adult" means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living. s. 825.101(4), F.S.

³ s. 827.03(3), F.S.

Law enforcement training:

Sections 943.171 through 943.17295, F.S., contain a number of specific requirements relevant to law enforcement officer training including training in subjects such as victims assistance, juvenile sexual offender investigations, and domestic violence. Although special training relating to elder abuse is not currently required by statute, the Department of Law Enforcement states that the law enforcement officer Basic Recruit Curriculum already includes a six-hour unit entitled, Responding to the Elderly, which addresses the aging process including age-related medical conditions such as dementia, crimes against the elderly, response, and resources.⁴ This training unit was developed with the assistance of the Adult Services Program of the Department of Children and Families and the Department of Elderly Affairs. The six-hour unit included in the Basic Recruit Curriculum can be extracted and delivered by law enforcement training schools as a separate specialized course to fulfill the continuing education requirement under s. 943.135, F.S.

This bill creates s. 943.17296, F.S., which requires certified law enforcement officers to receive training in identification and investigation of abuse and neglect either as a part of basic recruit training or continuing education before June 30, 2010. The training is to be developed in consultation with the Department of Elderly Affairs and the Department of Children and Family Services and must incorporate instruction on identification of and appropriate responses for persons suffering from dementia and on identifying and investigating elder abuse and neglect. If an officer fails to meet the required training, the officer's certification becomes inactive until the employing agency notifies the Criminal Justice Standards and Training Commission that the officer has completed the training.

As noted above, the curriculum provided for law enforcement officer Basic Recruit Training and the advanced training that is currently available to law enforcement officers for continuing education appear to satisfy the training requirements of the bill.⁵

C. SECTION DIRECTORY:

Section 1. Amends section 825.102, F.S., to reclassify aggravated abuse of an elderly or disabled person from a felony of the 2nd degree to a felony of the 1st degree.

Section 2. Amends section 921.0022, F.S., the Offense Severity Ranking Chart, to conform to the change made in section 1 of the bill.

Section 3. Creates section 943.17296, F.S., related to training for certified law enforcement officers.

Section 4. Proves an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

⁴ The Criminal Justice Professionalism Program (CJPP) is responsible for developing and maintaining the law enforcement officer Basic Recruit Training Curriculum.

⁵ According to FDLE, the CJPP is responsible for maintaining documentation on the required continuing education for criminal justice officers and, therefore, would be responsible for maintaining records of successful completion of the continuing education requirement stipulated in this bill.

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 January 17, 2008, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections. According to the Department of Corrections, during the 2006-2007 fiscal year there were four offenders sentenced to prison and seven offenders sentenced to probation for this offense.

According to the FDLE, the training required by the bill is included in the Basic Recruit Training approved by the Criminal Justice Standards and Training Commission. The department indicates that the bill would have no fiscal 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

The sponsor submitted the following statement:

Frail elders and disabled adults are preyed upon by strangers, health care workers and even family members. This bill will make sure law enforcement is trained to recognize these crimes and that the abuse perpetrator gets punished with a first degree felony.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to elderly persons and disabled adults;
 3 amending s. 825.102, F.S.; reclassifying the offense of
 4 aggravated abuse of an elderly person or disabled adult
 5 from a second-degree felony to a first-degree felony;
 6 amending s. 921.0022, F.S., relating to the offense
 7 severity ranking chart of the Criminal Punishment Code, to
 8 conform; creating s. 943.17296, F.S., relating to training
 9 on identifying and investigating elder abuse for certified
 10 law enforcement officers; requiring that the training be
 11 completed by a time certain; providing that an officer's
 12 certification becomes inactive in certain circumstances
 13 related to the failure to complete the training; providing
 14 an effective date.

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

17
 18 Section 1. Subsection (2) of section 825.102, Florida
 19 Statutes, is amended to read:

20 825.102 Abuse, aggravated abuse, and neglect of an elderly
 21 person or disabled adult; penalties.--

22 (2) "Aggravated abuse of an elderly person or disabled
 23 adult" occurs when a person:

24 (a) Commits aggravated battery on an elderly person or
 25 disabled adult;

26 (b) Willfully tortures, maliciously punishes, or willfully
 27 and unlawfully cages, an elderly person or disabled adult; or

28 (c) Knowingly or willfully abuses an elderly person or

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29 disabled adult and in so doing causes great bodily harm,
 30 permanent disability, or permanent disfigurement to the elderly
 31 person or disabled adult.

32
 33 A person who commits aggravated abuse of an elderly person or
 34 disabled adult commits a felony of the first ~~second~~ degree,
 35 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

36 Section 2. Paragraph (h) of subsection (3) of section
 37 921.0022, Florida Statutes, is amended to read:

38 921.0022 Criminal Punishment Code; offense severity
 39 ranking chart.--

40 (3) OFFENSE SEVERITY RANKING CHART

41 (h) LEVEL 8

Florida Statute	Felony Degree	Description
42 316.193 (3)(c)3.a.	2nd	DUI manslaughter.
43 316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
44 327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
45 499.0051(7)	1st	Forgery of prescription or legend drug labels.
46 499.0052	1st	Trafficking in contraband legend

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			drugs.
47	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.
48	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.
49	655.50 (10) (b) 2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
50	777.03 (2) (a)	1st	Accessory after the fact, capital felony.
51	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.

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52	782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
53	782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
54	782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
55	790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
56	794.011(5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.
57	794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
58	800.04(4)	2nd	Lewd or lascivious battery.
59	806.01(1)	1st	Maliciously damage dwelling or

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			structure by fire or explosive, believing person in structure.
60	810.02 (2) (a)	1st, PBL	Burglary with assault or battery.
61	810.02 (2) (b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.
62	810.02 (2) (c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
63	812.014 (2) (a) 2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
64	812.13 (2) (b)	1st	Robbery with a weapon.
65	812.135 (2) (c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
66	817.568 (6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
67	825.102 (2)	<u>1st</u> 2nd	Aggravated abuse of an elderly person or disabled adult.

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68	825.1025 (2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
69	825.103 (2) (a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$100,000 or more.
70	837.02 (2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
71	837.021 (2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
72	860.121 (2) (c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
73	860.16	1st	Aircraft piracy.
74	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).
75	893.13 (2) (b)	1st	Purchase in excess of 10 grams

			of any substance specified in s. 893.03(1)(a) or (b).
76	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
77	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
78	893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
79	893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
80	893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
81	893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
82	893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.

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83	893.135 (1) (g) 1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
84	893.135 (1) (h) 1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
85	893.135 (1) (j) 1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
86	893.135 (1) (k) 2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
87	895.03 (1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
88	895.03 (2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
89	895.03 (3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.

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896.101(5)(b) 2nd Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.

91

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.

92

93 Section 3. Section 943.17296, Florida Statutes, is created
94 to read:

95 943.17296 Training in identifying and investigating elder
96 abuse and neglect.--Each certified law enforcement officer must
97 successfully complete training on identifying and investigating
98 elder abuse and neglect as a part of the basic recruit training
99 of the officer required in s. 943.13(9) or continuing education
100 under s. 943.135(1) before June 30, 2011. The training shall be
101 developed in consultation with the Department of Elderly Affairs
102 and the Department of Children and Family Services and must
103 incorporate instruction on the identification of and appropriate
104 responses for persons suffering from dementia and on identifying
105 and investigating elder abuse and neglect. If an officer fails
106 to complete the required training, his or her certification is
107 inactive until the employing agency notifies the commission that

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108 | the officer has completed the training.

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

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>Cunningham</u>	<u>Kramer JK</u>
2) <u>Safety & Security Council</u>	_____	_____	_____
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 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.

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.

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.

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 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."

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.

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.

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.

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

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1 A bill to be entitled

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

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

11
12 Section 1. Subsection (13) is added to section 817.234,
13 Florida Statutes, to read:

14 817.234 False and fraudulent insurance claims.--

15 (13) (a) For offenses committed on or after October 1,
16 2008, and notwithstanding any other law, a person committing a
17 violation of this section involving a claim under s. 627.736
18 shall be punished:

19 1. For a first violation, by a mandatory minimum term of
20 imprisonment of 2 years and a mandatory minimum fine of
21 \$200,000.

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

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

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

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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 OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 313
SPONSOR(S):
TIED BILLS:

Dating Violence
Kelly

IDEN./SIM. BILLS: SB 1188

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security & Public Safety</u>	_____	<u>Cunningham</u>	<u>Kramer JK</u>
2) <u>Safety & Security Council</u>	_____	_____	_____
3) <u>Policy & Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Section 741.29, F.S., provides a variety of requirements for law enforcement officers who are investigating alleged incidents of domestic violence. Such requirements include providing victims notice of their legal rights and remedies, providing the victim information about local domestic violence centers, and including certain information in police reports. However, these requirements only pertain to incidents of *domestic violence*, and do not pertain to incidents of dating violence.

HB 313 adds the requirements of s. 741.29, F.S., to the dating violence statute so that they apply to incidents of dating violence as well as domestic violence.

This bill has an insignificant fiscal impact and takes effect on October 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – HB 313 provides a variety of requirements for law enforcement officers who are investigating alleged incidents of dating violence.

B. EFFECT OF PROPOSED CHANGES:

Definitions

“Domestic violence” is defined as “any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.”¹

“Dating violence” is defined as “violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on the consideration of the following factors:

- A dating relationship must have existed within the past 6 months;
- The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
- The frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.

The term does not include violence in a casual acquaintanceship or violence between individuals who only have engaged in ordinary fraternization in a business or social context.”²

Requirements Regarding Domestic Violence Investigations

Section 741.29, F.S., provides requirements for law enforcement officers who are investigating alleged incidents of *domestic violence*. Specifically, the statute requires law enforcement officers who are investigating alleged incidents of domestic violence to:

- Assist the victim to obtain medical treatment if required.
- Advise the victim that there is a domestic violence center that may provide services to the victim.
- Give the victim a “Legal Rights and Remedies Notice to Victims” form³ that describes available legal rights and remedies.
- Handle the incident pursuant to the arrest policy provided in s. 901.15(7), F.S.⁴
- Obtain, where possible, a written statement from the victim and witness concerning the alleged domestic violence incident.
- Make a written police report that:
 - o Clearly indicates that the alleged offense was an incident of domestic violence;
 - o Includes a description of the physical injuries observed;

¹ s. 741.28, F.S.

² s. 784.046, F.S.

³ This form is developed and distributed by the Florida Department of Law Enforcement and serves as a model form to be used by all law enforcement agencies throughout the state. See s. 741.29, F.S.

⁴ Section 901.15(7), F.S., provides that a law enforcement officer may arrest a person without a warrant when there is probable cause to believe that the person has committed an act of domestic violence. The statute further specifies that the decision to arrest shall not require the consent of the victim.

- Includes, if applicable, the grounds for not arresting anyone or arresting two or more parties;
- Includes a statement indicating that the Legal Rights and Remedies Notice to Victims form was given to the victim.
- Give the police report to the officer's supervisor, file such report in a manner that will permit data on domestic violence cases to be compiled, and send a copy of such report to the nearest certified domestic violence center.

Section 741.29, F.S., also provides that when complaints are received from two or more parties, a law enforcement officer must:

- Evaluate each complaint separately to determine whether there is probably cause for arrest.
- Try to determine who the primary aggressor was.

The statute further specifies that if a law enforcement officer determines upon probable cause that an act of domestic violence has been committed, the officer may arrest the person suspected of its commission and charge such person with the appropriate crime.

Section 741.29, F.S., also provides that:

- The decision to arrest and charge does not require the consent of the victim.
- Arrest is the preferred response only with respect to the primary aggressor and not the preferred response with respect to a person who acts reasonably to protect or defend oneself.

Additionally, persons who willfully violate a condition of pretrial release, when the original arrest was for an act of domestic violence, commit a first degree misdemeanor and must be held in custody until his or her first appearance.

The above provisions of s. 741.29, F.S., only pertain to incidents of *domestic violence* and do not currently pertain to incidents of *dating violence*.

Effect of the Bill

HB 313 adds the above provisions to s. 784.046, F.S., the *dating violence* statute, so that they apply to incidents of dating violence as well as domestic violence. HB 313 also makes conforming changes to s. 901.15(7), F.S., which will permit a law enforcement officer to make a warrantless arrest when there is probable cause to believe that the person has committed an act of dating violence.

C. SECTION DIRECTORY:

Section 1. Amends s. 784.046, F.S., relating to action by victim of repeat violence, sexual violence, or dating violence for protective injunction; powers and duties of court and clerk of courts; filing and form of petition; notice and hearing; temporary injunction; issuance; statewide verification system; enforcement.

Section 2. Amends s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

Section 3. 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:

1. Revenues:

None.

2. Expenditures:

Indeterminate. See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

In their fiscal analysis of this bill, FDLE stated that modifying the existing "Legal Rights and Remedies" brochure will have minimal fiscal impact, which FDLE will absorb.

This bill may have a fiscal impact in that it imposes additional requirements on local law enforcement.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

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 dating violence; providing a short
 3 title; amending s. 784.046, F.S.; revising provisions
 4 relating to dating violence incidents to provide
 5 requirements for investigations, notice to victims, and
 6 reporting similar to those for incidents of domestic
 7 violence and to apply certain immunity provisions thereto;
 8 prohibiting certain willful violations of conditions of
 9 pretrial release; providing penalties; amending s. 901.15,
 10 F.S.; providing for warrantless arrests of persons for
 11 dating violence; conforming provisions; providing an
 12 effective date.

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

15
 16 Section 1. This act may be cited as the "Barwick-Ruschak
 17 Act."

18 Section 2. Subsection (11) of section 784.046, Florida
 19 Statutes, is renumbered as subsection (16), and a new subsection
 20 (11) and subsections (12), (13), (14), and (15) are added to
 21 that section, to read:

22 784.046 Action by victim of repeat violence, sexual
 23 violence, or dating violence for protective injunction; dating
 24 violence investigations, notice to victims, and reporting;
 25 pretrial release violations ~~powers and duties of court and clerk~~
 26 ~~of court; filing and form of petition; notice and hearing;~~
 27 ~~temporary injunction; issuance; statewide verification system;~~
 28 ~~enforcement.--~~

29 (11) Any law enforcement officer who investigates an
 30 alleged incident of dating violence shall assist the victim to
 31 obtain medical treatment if such is required as a result of the
 32 alleged incident to which the officer responds. Any law
 33 enforcement officer who investigates an alleged incident of
 34 dating violence shall advise the victim of such violence that
 35 there is a domestic violence center from which the victim may
 36 receive services. The law enforcement officer shall give the
 37 victim immediate notice of the legal rights and remedies
 38 available on a standard form developed and distributed by the
 39 Department of Law Enforcement. As necessary, the Department of
 40 Law Enforcement shall revise the Legal Rights and Remedies
 41 Notice to Victims to include a general summary of this section,
 42 using simple English as well as Spanish, and shall distribute
 43 the notice as a model form to be used by all law enforcement
 44 agencies throughout the state. The notice shall include:

45 (a) The resource listing, including telephone number, for
 46 the area domestic violence center designated by the Department
 47 of Children and Family Services; and

48 (b) A copy of the following statement: "IF YOU ARE THE
 49 VICTIM OF DATING VIOLENCE, you may ask the state attorney to
 50 file a criminal complaint. You also have the right to go to
 51 court and file a petition requesting an injunction for
 52 protection from dating violence which may include, but need not
 53 be limited to, provisions that restrain the abuser from further
 54 acts of abuse; direct the abuser to leave your household; and
 55 prevent the abuser from entering your residence, school,
 56 business, or place of employment."

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57 (12) When a law enforcement officer investigates an
58 allegation that an incident of dating violence has occurred, the
59 officer shall handle the incident pursuant to the arrest policy
60 provided in s. 901.15(7), and as developed in accordance with
61 subsections (13), (14), and (16). Whether or not an arrest is
62 made, the officer shall make a written police report that is
63 complete and clearly indicates that the alleged offense was an
64 incident of dating violence. Such report shall be given to the
65 officer's supervisor and filed with the law enforcement agency
66 in a manner that will permit data on dating violence cases to be
67 compiled. Such report must include:

68 (a) A description of physical injuries observed, if any.

69 (b) If a law enforcement officer decides not to make an
70 arrest or decides to arrest two or more parties, the grounds for
71 not arresting anyone or for arresting two or more parties.

72 (c) A statement which indicates that a copy of the legal
73 rights and remedies notice was given to the victim.

74
75 Whenever possible, the law enforcement officer shall obtain a
76 written statement from the victim and witnesses concerning the
77 alleged dating violence. The officer shall submit the report to
78 the supervisor or other person to whom the employer's rules or
79 policies require reports of similar allegations of criminal
80 activity to be made. The law enforcement agency shall, without
81 charge, send a copy of the initial police report, as well as any
82 subsequent, supplemental, or related report, which excludes
83 victim or witness statements or other materials that are part of
84 an active criminal investigation and are exempt from disclosure

85 under chapter 119, to the nearest locally certified domestic
 86 violence center within 24 hours after the agency's receipt of
 87 the report. The report furnished to the domestic violence center
 88 must include a narrative description of the dating violence
 89 incident.

90 (13) Whenever a law enforcement officer determines upon
 91 probable cause that an act of dating violence has been committed
 92 within the jurisdiction, the officer may arrest the person or
 93 persons suspected of its commission and charge such person or
 94 persons with the appropriate crime. The decision to arrest and
 95 charge shall not require consent of the victim or consideration
 96 of the relationship of the parties.

97 (14) (a) When complaints are received from two or more
 98 parties, the officers shall evaluate each complaint separately
 99 to determine whether there is probable cause for arrest.

100 (b) If a law enforcement officer has probable cause to
 101 believe that two or more persons have committed a misdemeanor or
 102 felony, or if two or more persons make complaints to the
 103 officer, the officer shall try to determine who was the primary
 104 aggressor. Arrest is the preferred response only with respect to
 105 the primary aggressor and not the preferred response with
 106 respect to a person who acts in a reasonable manner to protect
 107 or defend himself or herself or another family or household
 108 member from dating violence.

109 (15) A person who willfully violates a condition of
 110 pretrial release provided in s. 903.047, when the original
 111 arrest was for an act of dating violence as defined in this
 112 section, commits a misdemeanor of the first degree, punishable

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113 as provided in s. 775.082 or s. 775.083, and shall be held in
 114 custody until his or her first appearance.

115 (16)~~(11)~~ A law enforcement officer acting in good faith
 116 under this section and the officer's employing agency shall be
 117 immune from all liability, civil or criminal, that might
 118 otherwise be incurred or imposed by reason of the officer's or
 119 agency's actions in carrying out the provisions of this section.

120 Section 3. Subsection (7) of section 901.15, Florida
 121 Statutes, is amended to read:

122 901.15 When arrest by officer without warrant is
 123 lawful.--A law enforcement officer may arrest a person without a
 124 warrant when:

125 (7) There is probable cause to believe that the person has
 126 committed an act of domestic violence, as defined in s. 741.28,
 127 or dating violence, as provided in s. 784.046. The decision to
 128 arrest shall not require consent of the victim or consideration
 129 of the relationship of the parties. It is the public policy of
 130 this state to strongly discourage arrest and charges of both
 131 parties for domestic violence or dating violence on each other
 132 and to encourage training of law enforcement and prosecutors in
 133 these areas ~~this area~~. A law enforcement officer who acts in
 134 good faith and exercises due care in making an arrest under this
 135 subsection, under s. 741.31(4) or s. 784.047, or pursuant to a
 136 foreign order of protection accorded full faith and credit
 137 pursuant to s. 741.315, is immune from civil liability that
 138 otherwise might result by reason of his or her action.

139 Section 4. This act shall take effect October 1, 2008.

