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# **Justice Appropriations Subcommittee**

# **Meeting Packet**

**February 19, 2014  
1:00 p.m. – 3:00 p.m.  
Morris Hall**



**The Florida House of Representatives**  
APPROPRIATION COMMITTEE

Justice Appropriations Subcommittee

**Will Weatherford**  
Speaker

**Charles McBurney**  
Chair

**MEETING AGENDA**

Morris Hall

February 19, 2014

- I.** Meeting Called To Order
- II.** Opening Remarks by Chair
- III.** Consideration of the following bill(s):
  - HB 53 Inmate Reentry by Rep. Stone
  - CS/HB 99 - Controlled Substances by Criminal Justice Subcommittee; Rep. Edwards
  - CS/HB 139 - Athletic Coaches for Youth Athletic Teams by Criminal Justice Subcommittee, Rep. Jones, S.
  - HB 627 - Service of Process by Rep. Pilon
- IV.** Closing Remarks
- V.** Meeting Adjourned



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 53 Inmate Reentry  
**SPONSOR(S):** Stone; Baxley and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 274

| REFERENCE                              | ACTION    | ANALYST   | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|-----------|-----------|--|
| 1) Criminal Justice Subcommittee       | 12 Y, 1 N | Jones     | Cunningham                               |
| 2) Justice Appropriations Subcommittee |           | McAuliffe | Lloyd                                    |
| 3) Judiciary Committee                 |           |           |  |

### SUMMARY ANALYSIS

The Department of Corrections (DOC) reports that 87% of all inmates incarcerated in Florida will eventually be released from prison. In FY 2012-13, 33,173 inmates were released. Florida's most recent recidivism rates show that 27.6% of inmates released will return to prison within three years. Inmate reentry efforts are designed to reduce recidivism rates, which in turn will result in fewer new crime victims.

Many inmates leaving prison and returning to society do not have a state-issued identification card. Without an ID card, one has difficulty finding employment or housing and opening a bank account. This bill requires DOC, working in conjunction with the Department of Health (DOH) and Department of Highway Safety and Motor Vehicles (DHSMV), to assist Florida-born inmates in acquiring a birth certificate and a state ID card prior to release. To accomplish this, the bill waives the \$9 fee DOH charges for a copy of a Florida birth certificate and the \$25 fee DHSMV charges to issue a state ID card. For non-Florida born inmates, the bill directs DOC to assist inmates in completing the necessary forms or applications to obtain a social security card, driver license, or state identification card. The bill requires DOC to assist all inmates in applying for and obtaining a social security card.

Faith- and character-based institutions and programs have been effectively used in preparing inmates for their transition to society. The bill provides DOC with policy direction to expand its faith- and character-based institutions to serve both male and female inmates at their respective institutions. It also requires peer-to-peer programs, such as Alcoholics Anonymous and literacy instruction, to be offered at faith- and character-based institutions.

This bill will have a total recurring fiscal impact of \$1,017,996 and a non-recurring expense of \$243,782. The negative fiscal impact is due to the waiver of the fee for a state-issued ID and the waiver of the charge for a certified copy of a Florida birth certificate for an estimated 21,745 (12,180 in-state inmates and 9,565 out-of-state) qualifying inmates expected to be released in Fiscal Year 2014-15. The DOH would require \$109,620, and the DHSMV would require \$543,625 to recoup the revenue from the fee waiver for in-state inmates. The DOC would be responsible for procuring out-of-state inmates birth certificates at a cost of approximately \$143,475. There would also be a non-recurring expense of \$243,782 for DHSMV to purchase of two mobile units to process ID cards at prisons, and \$221,276 in related recurring operating expenses. See fiscal section.

The bill takes effect on July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

The Department of Corrections (DOC) reports that 87% of all inmates incarcerated in Florida will eventually be released from prison.<sup>1</sup> In FY 2012-13, DOC released 33,137 inmates.<sup>2</sup> Florida's most recent recidivism rates show that 27.6% of inmates released will return to prison within three years.<sup>3</sup> Inmate reentry efforts are designed to reduce recidivism rates, which in turn mean fewer new crime victims and a lower cost to DOC. "A one percent reduction in recidivism equates to a cost avoidance of nearly \$19 million over five years."<sup>4</sup>

##### **State-Issued ID Cards for Prisoners**

The Real ID Act of 2005<sup>5</sup> (Act) took effect on May 11, 2008.<sup>6</sup> The Act is an extensive federal law that addresses a number of issues ranging from state-issued identification cards to asylum provisions. Title II of the Act creates national standards for issuing driver licenses and identification cards (state-issued ID), as well as detailed specifications for verifying the identity of those who apply for state-issued ID.<sup>7</sup> The federal Department of Homeland Security is vested with the authority to govern these requirements and determine which states are in compliance with the Act.<sup>8</sup>

In order for a state-issued ID to be compliant with the Act, applicants must present a number of identifying documents when applying.<sup>9</sup> Specifically, the applicant's documentation must include a photo identity document, or a non-photo identity document that includes the applicant's full name and date of birth, as well as independent documentation of the applicant's date of birth, social security number, and principal residence.<sup>10</sup> Once the Act is fully implemented on a national level, an individual must have a photo ID issued in compliance with the Act in order to prove identity for any federal purpose, including boarding airplanes and accessing federal buildings.<sup>11</sup>

According to the Florida Department of Highway Safety and Motor Vehicles (DHSMV), a U.S. citizen must provide one piece of primary identification, proof of the individual's social security number, and two documents proving residence in order to acquire a state-issued ID.<sup>12</sup> Primary identification can be an original U.S. birth certificate, valid U.S. Passport, consular report of birth abroad, certificate of naturalization, or other similar listed documents.<sup>13</sup> Proof of social security number can be satisfied with a U.S. social security card, tax forms, paycheck stubs, or other similar documents.<sup>14</sup> Proof of residence can

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<sup>1</sup> See, *Recidivism Reduction Strategic Plan*. Fiscal Year 2009-2014. Department of Corrections. <http://www.dc.state.fl.us/orginfo/FinalRecidivismReductionPlan.pdf> (last visited December 20, 2013).

<sup>2</sup> See, *Quick Facts About the Florida Department of Corrections*. Revised September 2013 <http://www.dc.state.fl.us/oth/Quickfacts.html> (last visited December 20, 2013).

<sup>3</sup> *Id.* These numbers are for inmates released in 2008.

<sup>4</sup> Press Release, Florida Department of Corrections (Feb. 4, 2013) <http://www.dc.state.fl.us/secretary/press/2013/02-04-Recidivism.html> (last visited December 20, 2013).

<sup>5</sup> Real ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231 (2005).

<sup>6</sup> 12 Mass. Prac. Series, Motor Vehicle Law and Practice, § 21:2 (4th ed.).

<sup>7</sup> Real ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231 (2005).

<sup>8</sup> 1 IMMIGRATION LAW SERVICE 2d § 1:88 (2013).

<sup>9</sup> § 202(c), 119 Stat. at 312-14.

<sup>10</sup> *Id.* at 312-13.

<sup>11</sup> 1 IMMIGRATION LAW SERVICE 2d § 1:88 (2013).

<sup>12</sup> *Florida Driver License Identification Requirements*, FLORIDA DEPARTMENT OF MOTOR VEHICLES, <http://www.dmvflorida.org/drivers-license-identification.shtml> (last visited December 20, 2013).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

include deeds, utility bills, a Certification of Address Form from a homeless shelter or halfway house, or other similar documents.<sup>15</sup> The DHSMV charges a \$25 fee for issuing or renewing a state-issued ID.<sup>16</sup>

Currently, a birth certificate is an essential part of acquiring state-issued ID for a Florida-born applicant.<sup>17</sup> A Floridian may request a copy of his or her birth certificate from the Department of Health (DOH) after paying a \$9 fee, providing valid photo identification, and submitting a written request.<sup>18</sup> Florida law also permits any Florida or Federal agency to acquire a copy of a birth certificate upon request and payment of the \$9 fee.<sup>19</sup> There is no statutory fee waiver for Florida prisoners applying for a copy of his or her Florida birth certificate.<sup>20</sup>

In December 2009, the Office of Program Policy Analysis & Government Accountability (OPPAGA) issued a report based on their study of DOC rehabilitation efforts.<sup>21</sup> The report identified the importance of an inmate acquiring an identification card upon release from prison. The report found:

Proper identification generally is required to find employment, obtain housing, or apply for public benefits that may be necessary to obtain medication or other treatment services that can help reduce inmates' risks of reoffending.<sup>22</sup>

Similarly, the lack of a state-issued ID makes it difficult to cash paychecks or open a bank account, and increases the likelihood of an inmate failing to successfully reenter society.

Over the last few years, DOC, partnering with DHSMV and DOH, worked to get inmates' identification cards prior to release using DHSMV's mobile units that travel to the prison facilities and issue ID cards to those inmates with the proper identification documents and upon payment of the \$25 fee. In 2011, DHSMV conducted 17 prison visits and issued 642 ID cards; in 2012 those numbers were 13 prison visits and 458 ID cards. Through October 22, 2013, DHSMV conducted 49 prison visits and issued 1,386 ID cards, and expect to issue over 500 more ID cards before the end of the 2013.<sup>23</sup>

### **Effect of the Bill**

The bill amends s. 322.051(9), F.S., to provide statutory authorization for DHSMV to waive the fee charged for issuing or renewing a state identification card. This waiver is for Florida-born inmates.

The bill also amends s. 382.0255, F.S., to provide a similar waiver of the fee that DOH charges a person requesting a certified copy of a Florida birth certificate.

The bill amends s. 944.605, F.S., to direct DOC to work with DOH and DHSMV to provide every Florida-born inmate a certified copy of their birth certificate and a state-issued ID card upon release. DOC is required to provide DOH with a list of all Florida-born inmates, including a photo and various identifying information for each inmate. Inmates that do not cooperate with DOC in providing this information are subject to discipline.

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<sup>15</sup> *Id.*

<sup>16</sup> Section 322.21(1)(f), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> Fla. Admin. Code Ann. R. 64V-1.0131.

<sup>19</sup> Section 382.025, F.S.

<sup>20</sup> A number of states have various fee waivers for vital records. *See* N.C. Gen. Stat. Ann. § 130A-93.1 (2013); Md. Code Ann., Health-Gen. § 4-217 (2013).

<sup>21</sup> *See*, OPPAGA, Report No. 09-44, *Department of Corrections Should Maximize Use of Best Practices in Inmate Rehabilitation Efforts*. <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=09-44> (last visited December 20, 2013).

<sup>22</sup> *Id.* at 5.

<sup>23</sup> DHSMV currently has 19 prison visits planned from October through December 2013. *See*, e-mail from DHSMV dated October 24, 2013 (on file with the Criminal Justice Subcommittee).

DOC is not required to provide a birth certificate or state-issued ID to inmates who:

- DOC determines have a valid driver license or state identification card;
- Have an active detainer, unless the department determines that cancellation of the detainer is likely or that the incarceration for which the detainer was issued will be less than 12 months in duration;
- Are released due to an emergency release or a conditional medical release under s. 947.149, F.S.;
- Are not in the physical custody of the department at or within 180 days before release; and
- Are subject to sex offender residency restrictions, and who, upon release under such restrictions, do not have a qualifying address.

The bill directs DOC to assist all inmates in applying for and obtaining their social security cards. Additionally, DOC must assist all non-Florida born inmates in obtaining their social security card, driver license, or state ID card. The bill also requires DOC to provide an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing the number of inmates released with or without identification cards, as the factors and difficulties involved in providing such identification cards, and recommendations to improve the process.

### **Background: Faith- and Character-Based Institutions**

The Legislature set forth policy direction for DOC in 1997 when it first addressed faith- and character-based (FCB) programming by enacting s. 944.803, F.S.<sup>24</sup> Over the years this section has been amended, most recently in 2011 when the Legislature directed DOC to focus its FCB programs more at full institutions rather than dormitories within institutions. The statute was also amended in 2011 to provide for peer-to-peer programming such as Alcoholic Anonymous within FCB institutions.<sup>25</sup>

DOC currently operates FCB programs at 16 institutions and houses 6,500 inmates, including 553 beds for females.

### **Effect of the Bill**

The bill amends s. 944.803, F.S., to give DOC policy direction to expand its FCB programs into both male and female institutions. It also requires peer-to-peer programs, such as Alcoholics Anonymous and literacy instruction, to be offered at faith- and character-based institutions.

### **B. SECTION DIRECTORY:**

Section 1. Amends s. 322.051, F.S., relating to identification cards.

Section 2. Amends s. 382.0255, F.S., relating to fees.

Section 3. Amends s. 944.605, F.S., relating to inmate release; notification.

Section 4. Amends s. 944.803, F.S., relating to faith- and character-based programs.

Section 5. Provides an effective date of July 1, 2014.

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

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

#### **1. Revenues:**

This bill will have a negative fiscal impact on state revenues. This negative fiscal impact is due to the waiver of the fee for a state-issued ID and the waiver of the charge for a certified copy of a Florida birth certificate for an estimated 21,745 (12,180 in-state inmates and 9,565 out-of-state) qualifying inmates expected to be released in Fiscal Year 2014-15. The DOH would require

<sup>24</sup> See, s. 19, ch. 97-78, L.O.F.

<sup>25</sup> See, s. 1, ch. 2011-185, L.O.F.

\$109,620, and the DHSMV would require \$543,625 to recoup the revenue from the fee waiver for in-state inmates.

2. Expenditures:

This bill does have an anticipated increase in DOC, DOH and DHSMV's workload. DOH and DHSMV would be required to process the birth certificates and state-issued ID cards (see Revenues above). The DOC would be responsible for procuring out-of-state inmates birth certificates at a cost of approximately \$143,475.

In order for the DHSMV to process the increase in state-issued IDs at the prisons they have requested the purchase of two mobile units (FLOW mobiles) at a nonrecurring cost of \$243,782 and \$221,276 in related recurring operating expenses.

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:

The bill does not appear the 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:

The implementation and administration of the reentry program may require DOC to promulgate rules. The bill provides DOC with adequate rulemaking authority to do so.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES



1                                   A bill to be entitled  
 2           An act relating to inmate reentry; amending s.  
 3           322.051, F.S.; waiving the fee for identification  
 4           cards issued to certain inmates; amending s. 382.0255,  
 5           F.S.; requiring a waiver of fees for certain inmates  
 6           receiving a copy of a birth certificate; amending s.  
 7           944.605, F.S.; requiring the Department of Corrections  
 8           to work with other agencies in acquiring necessary  
 9           documents for certain inmates to acquire an  
 10          identification card before release; providing  
 11          exceptions; requiring the department to provide  
 12          specified assistance to inmates born outside this  
 13          state; requiring a report; amending s. 944.803, F.S.;  
 14          authorizing the department to operate male and female  
 15          faith- and character-based institutions; providing an  
 16          effective date.

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

19  
 20           Section 1. Subsection (9) of section 322.051, Florida  
 21   Statutes, is amended to read:

22           322.051   Identification cards.—

23           (9)   Notwithstanding any other provision of this section or  
 24   s. 322.21 to the contrary, the department shall issue or renew a  
 25   card at no charge to a person who presents evidence satisfactory  
 26   to the department that he or she is homeless as defined in s.

27 | 414.0252(7) or to an inmate receiving a card issued pursuant to  
 28 | s. 944.605(7).

29 | Section 2. Subsection (3) of section 382.0255, Florida  
 30 | Statutes, is amended to read:

31 | 382.0255 Fees.—

32 | (3) Fees shall be established by rule. However, until  
 33 | rules are adopted, the fees assessed pursuant to this section  
 34 | shall be the minimum fees cited. The fees established by rule  
 35 | must be sufficient to meet the cost of providing the service.  
 36 | All fees shall be paid by the person requesting the record, are  
 37 | due and payable at the time services are requested, and are  
 38 | nonrefundable, except that, when a search is conducted and no  
 39 | vital record is found, any fees paid for additional certified  
 40 | copies shall be refunded. The department may waive all or part  
 41 | of the fees required under this section for any government  
 42 | entity. The department shall waive all fees required under this  
 43 | section for a certified copy of a birth certificate issued for  
 44 | purposes of an inmate acquiring a state identification card  
 45 | before release pursuant to s. 944.605(7).

46 | Section 3. Subsection (7) is added to section 944.605,  
 47 | Florida Statutes, to read:

48 | 944.605 Inmate release; notification; identification  
 49 | card.—

50 | (7)(a) The department, working in conjunction with the  
 51 | Department of Health and the Department of Highway Safety and  
 52 | Motor Vehicles, shall provide every Florida-born inmate with a

53 certified copy of their birth certificate and a state  
 54 identification card before his or her release upon expiration of  
 55 the inmate's sentence.

56 (b) Paragraph (a) does not apply to inmates who:

57 1. The department determines have a valid driver license  
 58 or state identification card.

59 2. Have an active detainer, unless the department  
 60 determines that cancellation of the detainer is likely or that  
 61 the incarceration for which the detainer was issued will be less  
 62 than 12 months in duration.

63 3. Are released due to an emergency release or a  
 64 conditional medical release under s. 947.149.

65 4. Are not in the physical custody of the department at or  
 66 within 180 days before release.

67 5. Are subject to sex offender residency restrictions, and  
 68 who, upon release under such restrictions, do not have a  
 69 qualifying address.

70 (c) The department shall assist each inmate in applying  
 71 for and obtaining a social security card before release if the  
 72 inmate needs a social security card.

73 (d) The department, for purposes of assisting the inmate  
 74 in obtaining a birth certificate, shall submit to the Department  
 75 of Health on all Florida-born inmates in its custody, the  
 76 department's inmate photo or digitized photo, and as provided by  
 77 the inmate his or her date of birth, full name at birth and any  
 78 subsequent legal name changes, city or county of birth, mother's

79 full name including her maiden surname, and father's full name.  
 80 Failure of the inmate to cooperate with the department in  
 81 providing this information may subject the inmate to  
 82 disciplinary action.

83 (e) For inmates born outside of this state, the department  
 84 shall assist the inmate in completing the necessary forms or  
 85 applications to obtain a social security card, driver license,  
 86 or state identification card. The department shall also provide  
 87 the inmate with the location and address of the appropriate  
 88 licensing authority the inmate will need to obtain a valid  
 89 identification card in proximity to the inmate's release  
 90 address.

91 (f) The department shall, as part of its annual report,  
 92 provide a report that identifies the number of inmates released  
 93 with and without identification cards, identifies any  
 94 impediments in the implementation of this subsection, and  
 95 provides recommendations to improve obtaining release documents  
 96 and identification cards for all inmates.

97 Section 4. Subsections (2) and (6) of section 944.803,  
 98 Florida Statutes, are amended to read:

99 944.803 Faith- and character-based programs.-

100 (2) It is the intent of the Legislature that the  
 101 department expand the faith- and character-based initiative  
 102 through the use of faith- and character-based institutions. The  
 103 department is encouraged to phase out the faith-based and self  
 104 improvement dormitory programs and move toward the goal of only

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2014

105 implementing faith- and character-based institutions. The  
106 department is also encouraged to dedicate and maintain faith-  
107 and character-based institutions that serve both male and female  
108 inmates at their respective institutions.

109 (6) Within faith- and character-based institutions of the  
110 state correctional system, peer-to-peer programming shall be  
111 offered ~~allowed~~, such as Alcoholics Anonymous, literacy  
112 instruction, and other activities, ~~when appropriate.~~

113 Section 5. This act shall take effect July 1, 2014.



Amendment No. 01

18 All fees shall be paid by the person requesting the record, are  
19 due and payable at the time services are requested, and are  
20 nonrefundable, except that, when a search is conducted and no  
21 vital record is found, any fees paid for additional certified  
22 copies shall be refunded. The department may waive all or part  
23 of the fees required under this section for any government  
24 entity. The department shall waive all fees required under this  
25 section for a certified copy of a birth certificate issued for  
26 purposes of an inmate acquiring a state identification card  
27 before release pursuant to s. 944.605(7).

28 Section 3. Subsection (7) is added to section 944.605,  
29 Florida Statutes, to read:

30 944.605 Inmate release; notification; identification  
31 card.—

32 (7) (a) The department, working in conjunction with the  
33 Department of Health and the Department of Highway Safety and  
34 Motor Vehicles, shall provide every Florida-born inmate with a  
35 certified copy of their birth certificate and a state  
36 identification card before his or her release upon expiration of  
37 the inmate's sentence.

38 (b) Paragraph (a) does not apply to inmates who:

39 1. The department determines have a valid driver license  
40 or state identification card, except that the department shall  
41 provide these inmates with a replacement state identification  
42 card or replacement driver license if necessary.

43

Amendment No. 02

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Justice Appropriations  
 2 Subcommittee

3 Representative Rouson offered the following:

4

5 **Amendment**

6 Remove lines 80-82



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 53 (2014)

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Justice Appropriations  
2 Subcommittee

3 Representative McBurney offered the following:

4  
5           **Amendment (with title amendment)**

6           Between lines 112 and 113, insert:

7           Section 5. For fiscal year 2014-2015 the sum of \$796,720 in  
8 recurring funds is appropriated from the General Revenue Fund to  
9 the Department of Corrections for the implementation of this  
10 act. From such funds, the Department of Corrections shall  
11 reimburse the Department of Highway Safety and Motor Vehicles  
12 for the cost of the State Identification Cards and shall  
13 reimburse the Department of Health for birth certificates for  
14 inmates born in-state. The Department of Corrections may also  
15 expend funds for birth certificates for inmates born out-of-  
16 state. There is also appropriated to the Department of Highway  
17 Safety and Motor Vehicles for fiscal year 2014-2015 the sum of

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Amendment No. 3

18 \$221,276 in recurring funds and \$243,782 in nonrecurring funds  
19 from the Highway Safety Operating Trust Fund for the purpose of  
20 purchasing, equipping, and operating mobile licensing vehicles  
21 whose primary responsibility shall be to issue identification  
22 and licensing credentials to inmates before their release from  
23 the custody of the Department of Corrections. The Department of  
24 Health and the Department of Highway Safety and Motor Vehicles  
25 may request a budget amendment pursuant to ch. 216, if  
26 additional trust fund authority is required for the  
27 implementation of this act.

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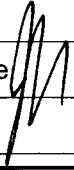

**T I T L E   A M E N D M E N T**

Remove line 16 and insert:  
appropriation; providing an effective date.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 99 Sentencing for Controlled Substance Violations  
**SPONSOR(S):** Criminal Justice Subcommittee; Edwards; Hood and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 360

| REFERENCE                              | ACTION              | ANALYST   | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF  |
|--|---------------------|---|---|
| 1) Criminal Justice Subcommittee       | 11 Y, 1 N, As<br>CS | Cox   | Cunningham  |
| 2) Justice Appropriations Subcommittee |                     | McAuliffe  | Lloyd  |
| 3) Judiciary Committee                 |                     |   |   |

### SUMMARY ANALYSIS

Section 893.135, F.S., relates to drug trafficking, which occurs when a person knowingly sells, purchases, manufactures, delivers, or brings into this state; or when a person is knowingly in actual or constructive possession of, a specified quantity of a drug. Generally, drug trafficking offenses are first degree felonies that are subject to mandatory minimum sentences, which vary depending on the type and quantity of drug trafficked. A judge has no discretion to sentence a person below the mandatory minimum sentence.

Paragraph (1)(c) of s. 893.135, F.S., establishes the offense of "trafficking in illegal drugs," and specifically addresses trafficking in morphine (including its derivative heroin), opium, oxycodone, hydrocodone, and hydromorphone. If a person violates s. 893.135(1)(c), F.S., and the quantity involved is:

- 4 grams or more, but less than 14 grams - 3 year minimum mandatory and a \$50,000 fine.
- 14 grams or more, but less than 28 grams - 15 year minimum mandatory and a \$100,000 fine.
- 28 grams or more, but less than 30 kilograms - 25 year minimum mandatory and a \$500,000 fine.

There are numerous prescription medications that are within the scope of s. 893.135(1)(c), F.S., such as oxycontin, vicodin, percocet, etc. As such, a person who unlawfully possesses, purchases, sells, etc., these prescription medications in a trafficking weight may be subject to the mandatory minimum penalties outlined above.

The bill amends s. 893.135(1)(c), F.S., to establish two new offenses - "trafficking in hydrocodone" and "trafficking in oxycodone." The bill provides that a person who violates the newly-created "trafficking in hydrocodone" offense and the quantity involved is:

- 14 grams or more, but less than 28 grams - 3 year mandatory minimum and a fine of \$50,000
- 28 grams or more, but less than 50 grams - 7 year mandatory minimum and a fine of \$100,000.
- 50 grams or more, but less than 200 grams - 15 year mandatory minimum and a fine of \$500,000.
- 200 grams or more, but less than 30 kilograms - 25 year mandatory minimum and a fine of \$750,000.

A person who violates the newly-created "trafficking in oxycodone" offense and the quantity involved is:

- 7 grams or more, but less than 14 grams - 3 year mandatory minimum and a fine of \$50,000.
- 14 grams or more, but less than 25 grams - 7 year mandatory minimum and a fine of \$100,000.
- 25 grams or more, but less than 100 grams - 15 year mandatory minimum and a fine of \$500,000.
- 100 grams or more, but less than 30 kilograms - 25 year mandatory minimum and a fine of \$750,000.

On January 30, 2014, the Criminal Justice Impact Conference determined that this bill will have a positive prison bed impact to the Department of Corrections (a reduction of 465 beds over five years). CJIC determined that this will result in a savings of \$16 million in operating costs over five years.

The bill is effective on July 1, 2014.

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

STORAGE NAME: h0099b.JUAS

DATE: 2/18/2014

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Drug Trafficking – Generally**

Section 893.135, F.S., creates a variety of drug trafficking offenses. Drug trafficking occurs when a person knowingly sells, purchases, manufactures, delivers, or brings into this state; or is knowingly in actual or constructive possession of, a specified quantity of a controlled substance.<sup>1</sup> Section 893.135, F.S., categorizes drug trafficking offenses by drug type as follows:

- Paragraph (1)(a) establishes the offense of “trafficking in cannabis;”
- Paragraph (1)(b) establishes the offense of “trafficking in cocaine;”
- Paragraph (1)(c) establishes the offense of “trafficking in illegal drugs;”
- Paragraph (1)(d) establishes the offense of “trafficking in phencyclidine;”
- Paragraph (1)(e) establishes the offense of “trafficking in methaqualone;”
- Paragraph (1)(f) establishes the offense of “trafficking in amphetamine;”
- Paragraph (1)(g) establishes the offense of “trafficking in flunitrazepam;”
- Paragraph (1)(h) establishes the offense of “trafficking in GHB;”
- Paragraph (1)(i) establishes the offense of “trafficking in GBL;”
- Paragraph (1)(j) establishes the offense of “trafficking in 1,4-butanediol;”
- Paragraph (1)(k) establishes the offense of “trafficking in phenethylamines;” and
- Paragraph (1)(l) establishes the offense of “trafficking in LSD.”

Generally, drug trafficking offenses are first degree felonies<sup>2</sup> that are subject to mandatory minimum terms of imprisonment.<sup>3</sup> The mandatory minimum sentence applicable to a drug trafficking offense depends on the type and quantity of drug trafficked. A sentencing judge has no discretion to sentence a person below the mandatory minimum prison sentences outlined in statute, regardless of any mitigating testimony provided to the court.<sup>4</sup> Only the state attorney has the discretion to waive the mandatory minimum sentence for trafficking offenses.<sup>5</sup>

##### **Trafficking in Illegal Drugs**

Paragraph (1)(c) of s. 893.135, F.S., establishes the offense of “trafficking in illegal drugs,” and specifically addresses trafficking in morphine, opium, oxycodone, hydrocodone, and hydromorphone. The statute provides:

Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., F.S., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as “trafficking in illegal drugs.”<sup>6</sup>

<sup>1</sup> See s. 893.135(1)(a)-(l), F.S.

<sup>2</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>3</sup> Section 893.135, F.S., provides for more severe penalties in certain situations. For example, drug trafficking is a capital felony if, during the commission of the offense, the defendant intentionally killed a person; counseled, commanded, induced, procured, or caused the intentional killing of an individual; or the trafficking led to a natural, though not inevitable, lethal result to another person.

<sup>4</sup> 16 Fla. Prac., Sentencing s. 6:69 (2012-2013 ed.).

<sup>5</sup> *Id.*

<sup>6</sup> Section 893.135(10)(c)1., F.S.

If a person violates s. 893.135(1)(c)1., F.S., and the quantity involved:

- Is 4 grams<sup>7</sup> or more, but less than 14 grams, the person must be sentenced to a mandatory minimum term of imprisonment of 3 years and ordered to pay a fine of \$50,000.<sup>8</sup>
- Is 14 grams or more, but less than 28 grams, the person must be sentenced to a mandatory minimum term of imprisonment of 15 years and ordered to pay a fine of \$100,000.<sup>9</sup>
- Is 28 grams or more, but less than 30 kilograms, the person must be sentenced to a mandatory minimum term of imprisonment of 25 years and pay a fine of \$500,000.<sup>10</sup>
- Is 30 kilograms or more, the person must be sentenced to life and pay a fine of \$500,000.<sup>11,12</sup>
- Is 60 kilograms or more, the person must be sentenced to death or life imprisonment and pay a fine of \$500,000.<sup>13</sup>

There are numerous prescription medications that are within the scope of s. 893.135(1)(c), F.S., such as oxycontin, vicodin, percocet, etc. As such, a person who unlawfully possesses, purchases, sells, etc., these prescription medications in a trafficking weight may be subject to prosecution for drug trafficking under s. 893.135(1)(c), F.S.

### **Weighing Prescription Medications for Drug Trafficking Offenses**

When determining the weight of pills or tablets for trafficking offenses, the weight is determined by the total weight of each pill or tablet multiplied by the number of pills or tablets possessed, sold, etc. The total weight of a pill or tablet includes the weight of the controlled substance in the pill or tablet (e.g., hydrocodone) and the weight of noncontrolled substances or matter in the pill or tablet, such as coating, binders, and nonprescription drugs (e.g., acetaminophen).<sup>14</sup>

In a 2012 report, the Office of Program Policy Analysis and Government Accountability (OPPAGA) cited a pill that had a weight of 0.65 grams with 10 milligrams (mg.) of hydrocodone and stated "... [I]t takes 7 pills of 10 mg. hydrocodone, which are large pills with 325 to 750 mg. of acetaminophen, to reach the threshold of 4 grams for a minimum mandatory prison sentence of three years."<sup>15</sup> Based upon this medication, OPPAGA found that 22 pills would meet the 14 gram threshold (15-year mandatory minimum term) and 44 pills would meet the 28 gram threshold (25-year mandatory minimum term).<sup>16</sup>

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<sup>7</sup> For the purpose of comparison, the approximate weight of a U.S. currency note, regardless of denomination, is one gram. [www.moneyfactory.gov/faqlibrary.html](http://www.moneyfactory.gov/faqlibrary.html) (last visited on January 26, 2014).

<sup>8</sup> Section 893.135(1)(c)1.a., F.S. This offense is ranked in Level 7 of the Criminal Punishment Code offense severity ranking chart. Section 921.0022(3)(g), F.S.

<sup>9</sup> Section 893.135(1)(c)1.b., F.S. This offense is ranked in Level 8 of the Criminal Punishment Code offense severity ranking chart. Section 921.0022(3)(h), F.S.

<sup>10</sup> Section 893.135(1)(c)1.c., F.S. This offense is ranked in Level 9 of the Criminal Punishment Code offense severity ranking chart. Section 921.0022(3)(i), F.S.

<sup>11</sup> Section 893.135(1)(c)2., F.S., provides that this offense is a first degree felony that is punishable by life. A first degree felony that statutorily carries a life sentence is punishable by imprisonment for a term of years not exceeding life imprisonment. A person convicted under this subparagraph is ineligible for any form of discretionary early release except for pardon or executive clemency. This offense is unranked in the offense severity ranking chart, which defaults to Level 9. Section 921.0023, F.S.

<sup>12</sup> Section 893.135(1)(c)2., F.S., further provides that if the court determines that, in addition to committing any act of trafficking in illegal drugs: a. the person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or b. the person's conduct in committing the trafficking led to a natural, though not inevitable, lethal result, such person commits the capital felony of trafficking in illegal drugs and is subject to the death penalty or life imprisonment and must be ordered to pay \$750,000. A capital felony is punishable by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141, F.S., results in findings by the court that such person shall be punished by death, otherwise such person is punishable by life imprisonment and shall be ineligible for parole. Section 775.082, F.S.

<sup>13</sup> This offense is entitled "capital importation of illegal drugs" and requires a finding that the defendant knows that the probable result of such importation would be the death of any person.

<sup>14</sup> See ss. 893.02(16) and 893.135(6), F.S.

<sup>15</sup> *Opinions Are Mixed About Sentencing Laws for Painkiller Trafficking*, Office of Program Policy Analysis and Government Accountability, <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=12-02> (last visited on January 26, 2014). Report No. 12-02 (January, 2012), at 5. This report is further cited as "OPPAGA Report."

<sup>16</sup> *Id.*

Due to the different compositions of prescription opioids, noncontrolled substances may add significantly to the total weight of the pill or tablet as, for example, is the case with medication that contains hydrocodone and acetaminophen. When comparing this medication to a sample medication containing oxycodone, which does not contain acetaminophen, OPPAGA found:

... [I]t takes approximately 31 pills of 30 mg. oxycodone to reach the threshold of 4 grams since this type of oxycodone is a smaller pill and does not include acetaminophen. Thus, it takes more oxycodone pills than hydrocodone pills to trigger a minimum mandatory sentence, even though oxycodone is more potent and likely to lead to adverse outcomes, such as addiction and overdose.<sup>17</sup>

Based upon this oxycodone medication, OPPAGA found that 108 pills would meet the 14 gram threshold (15-year mandatory minimum term) and 215 pills would meet the 28 gram threshold (25-year mandatory minimum term).<sup>18</sup>

### **OPPAGA Report: Sample Information Regarding Prescription Drug Trafficking Offenders**

OPPAGA analyzed arrest reports of a sample of 194 offenders admitted to prison in Fiscal Year 2010-11 for opioid trafficking and determined that “almost all (93%) were convicted of trafficking in prescription painkillers... [A]rrests most commonly involved oxycodone (73%) or hydrocodone (28%). In comparison, 6% of the offenders were convicted of trafficking in heroin.”<sup>19</sup> OPPAGA provided the following information regarding how most of these arrests occurred:

Most offenders in our sample (62%) were arrested for selling prescription painkillers to an undercover law enforcement officer or confidential informant... In these cases, officers worked undercover to buy drugs from known dealers or monitored confidential informants during meetings they arranged to make purchases. In other cases, offenders were arrested for trafficking after a traffic stop or other law enforcement contact, or after being reported by a pharmacist for possible prescription fraud.<sup>20</sup>

The majority of the offenders in OPPAGA’s sample illegally possessed or sold 30 to 90 pills:

For most of the offenders convicted of trafficking in oxycodone or hydrocodone, their convictions were based on the illegal possession or sale of the number of pills equivalent to one or two prescriptions. For those offenders sentenced for trafficking in hydrocodone, 50% were arrested for possessing or selling fewer than 30 pills and 25% were arrested for fewer than 15 pills. For offenders sentenced for trafficking in oxycodone, offenders possessed or sold a median number of 91 pills at the time of their arrests.

Following accepted medical practice, physicians may prescribe 30 or more prescription painkillers for patients with chronic pain or recovering from surgery. For example, a patient recovering from surgery may receive a one-time prescription of 30 to 60 hydrocodone or oxycodone pills, often in forms that also contain acetaminophen. Illegal possession of such an amount could trigger a minimum mandatory sentence.<sup>21</sup>

Most of the offenders in the OPPAGA sample did not have a prior drug trafficking record and were determined by prison staff to need substance abuse treatment:

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 3.

<sup>20</sup> *Id.*

<sup>21</sup> OPPAGA Report, at 4. In a footnote (n. 7, at p. 4) at the end of the second paragraph of this quote, OPPAGA noted: “Law enforcement and other stakeholders reported that pain clinics they would consider as being ‘pill mills’ routinely prescribe much higher amounts of prescription painkillers, such as 180 oxycodone pills per month.”

Our analysis of Department of Corrections data on the 1,200 offenders admitted to prison for opioid trafficking in Fiscal Year 2010-11 found that 74% had not previously been admitted to prison... Half had either never been on probation or had been on probation solely for drug possession, and 81% did not have a prior history of offenses involving selling or trafficking drugs. Most (84%) had no current or past violent offenses. These offenders tended to have substance abuse problems and were at low risk for recidivism. Prison staff assessments determined that 65% of these offenders needed substance abuse treatment and 61% were at low risk for recidivism.<sup>22</sup>

### Minimum Mandatory Sentences

The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998.<sup>23</sup> Criminal offenses are ranked in the “offense severity ranking chart” from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the legislature.<sup>24</sup> If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.<sup>25</sup>

A defendant’s sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant’s prior record and other aggravating factors.<sup>26</sup> The points are added in order to determine the “lowest permissible sentence” for the offense.<sup>27</sup> A judge cannot impose a sentence below the lowest permissible sentence unless the judge makes written findings that there are mitigating “circumstances or factors that reasonably justify the downward departure.”<sup>28</sup> The permissible sentence (absent downward departure) for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense. The statutory maximum sentence for a first degree felony is 30 years, for a second degree felony is 15 years and for a third degree felony is 5 years.<sup>29</sup>

Rule 3.704(c)(26) of the Florida Rules of Criminal Procedure specifies that if the lowest permissible sentence is less than a mandatory minimum sentence, the mandatory minimum sentence takes precedence. If the lowest permissible sentence exceeds the mandatory sentence, the lowest permissible sentence takes precedence.<sup>30</sup>

With few exceptions, the sentencing court must impose the mandatory minimum term – there is no judicial discretion. There are only two circumstances in which a sentencing court is authorized by law to impose a sentence below the mandatory minimum term: when the court sentences a defendant as a youthful offender,<sup>31</sup> and when the state attorney waives the mandatory minimum sentence.<sup>32</sup>

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<sup>22</sup> *Id.* In a footnote (n. 8, at p. 4) at the end of the second paragraph of this quote, the OPPAGA noted: “Prison staff assessed offenders’ risk of recidivism using the risk assessment instrument developed by the Department of Corrections (DOC). Recidivism is defined as return to prison within three years of release.”

<sup>23</sup> Section 921.002, F.S.

<sup>24</sup> Section 921.0022, F.S.

<sup>25</sup> Section 921.0023, F.S.

<sup>26</sup> Section 921.0024, F.S.

<sup>27</sup> *Id.*

<sup>28</sup> Section 921.0026, F.S.

<sup>29</sup> Section 775.082, F.S.

<sup>30</sup> Rule 3.704(c)(26), Florida Rules of Criminal Procedure. A trafficking mandatory minimum term is a minimum sentencing “floor” for the court and there is no prohibition on earning gain-time. If the court only sentences the defendant to the mandatory term specified by statute, DOC establishes an 85% minimum service date on the term and the offender is subject to s. 944.275(4)(b)3., F.S., which does not allow release prior to serving a minimum of 85% of the sentence. If the court imposes a sentence that exceeds the mandatory term specified by statute, the DOC establishes an 85% minimum service date on the sentence. See *Mastay v. McDonough*, 928 So.2d 512 (Fla. 1st DCA 2006) (Section 893.135, F.S., does not preclude earning gain-time during the mandatory term as long as it does not result in the prisoner’s release prior to serving a minimum of 85% of the sentence).

<sup>31</sup> Section 958.04, F.S. See *Christian v. State*, 84 So.3d 437 (Fla. 5th DCA 2012).



As noted above, the mandatory minimum sentence applicable to a drug trafficking offense depends on the type and quantity of drug trafficked. As shown in the following chart, a person need only possess 4 grams of an illegal substance (prescription drug) to reach the “trafficking in illegal drugs” threshold, while a person must possess a much greater amount of other drugs (cocaine, etc.) to reach the trafficking thresholds.

| Trafficking Provision   | First Weight Range                                       | Second Weight Range   | Third Weight Range  |
|---|--|---|---|
| Trafficking in illegal drugs (includes prescription opioids) (s. 893.135(1)(c)1., F.S.) | 3-year mandatory minimum term (4 to 14 grams)            | 15-year mandatory minimum term (14 to 28 grams)                       | 25-year mandatory minimum term (28 grams to 30 kilograms)   |
| Trafficking in cocaine (s. 893.135(1)(b)1., F.S.)                                       | 3-year mandatory minimum term (28 to 200 grams)          | 7-year mandatory minimum term (200 to 400 grams)                      | 15-year mandatory minimum term (400 grams to 150 kilograms) |
| Trafficking in phencyclidine (s. 893.135(1)(d)1., F.S.)                                 | 3-year mandatory minimum term (28 to 200 grams)          | 7-year mandatory minimum term (200 to 400 grams)                      | 15-year mandatory minimum term (400 grams or more)          |
| Trafficking in methaqualone (s. 893.135(1)(e)1., F.S.)                                  | 3-year mandatory minimum term (200 grams to 5 kilograms) | 7-year mandatory minimum term (5 kilograms to less than 25 kilograms) | 15-year mandatory minimum term (25 kilograms or more)       |
| Trafficking in amphetamine or methamphetamine (s. 893.135(1)(f)1., F.S.)                | 3-year mandatory minimum term (14 to 28 grams)           | 7-year mandatory minimum term (28 to 200 grams)                       | 15-year mandatory minimum term (200 grams or more)          |

### Effect of the Bill

The bill removes oxycodone and hydrocodone from the “trafficking in illegal drugs” provisions of s. 893.135(1)(c), F.S., and creates two new offenses entitled “trafficking in hydrocodone” and “trafficking in oxycodone.” The first new offense specifically addresses trafficking in hydrocodone or any mixture containing any such substances, and provides:

A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of hydrocodone, or 14 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as “trafficking in hydrocodone.”

The bill provides that a person who commits “trafficking in hydrocodone” and the quantity involved:

- a. Is 14 grams or more, but less than 28 grams, must be sentenced to a mandatory minimum term of imprisonment of 3 years and ordered to pay a fine of \$50,000.
- b. Is 28 grams or more, but less than 50 grams, must be sentenced to a mandatory minimum term of imprisonment of 7 years and ordered to pay a fine of \$100,000.
- c. Is 50 grams or more, but less than 200 grams, must be sentenced to a mandatory minimum term of 15 years and ordered to pay a fine of \$500,000.
- d. Is 200 grams or more, must be sentenced to a mandatory minimum term of imprisonment of 25 years and pay a fine of \$750,000.

<sup>32</sup> 16 Fla. Prac., Sentencing s. 6:69 (2012-2013 ed.). The state attorney may also move to reduce or suspend a sentence based upon substantial assistance rendered by the defendant. Section 893.135(4), F.S.

The second newly created offense specifically addresses trafficking in oxycodone or any mixture containing any such substances, and provides:

A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 7 grams or more of oxycodone, or 7 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in oxycodone."

The bill provides that a person who commits "trafficking in oxycodone" and the quantity involved:

- a. Is 7 grams or more, but less than 28 grams, must be sentenced to a mandatory minimum term of imprisonment of 3 years and ordered to pay a fine of \$50,000.
- b. Is 28 grams or more, but less than 50 grams, must be sentenced to a mandatory minimum term of imprisonment of 7 years and ordered to pay a fine of \$100,000.
- c. Is 50 grams or more, but less than 200 grams, must be sentenced to a mandatory minimum term of 15 years and ordered to pay a fine of \$500,000.<sup>33</sup>
- d. Is 200 grams or more, must be sentenced to a mandatory minimum term of imprisonment of 25 years and pay a fine of \$750,000.

The bill increases the fine from \$500,000 to \$750,000 for any offense of trafficking in hydrocodone or trafficking in oxycodone that involves a quantity over 30 kilograms.

The bill ranks the new offenses of trafficking in hydrocodone and oxycodone in the offense severity ranking chart as follows:

- Sub-subparagraphs a. and b. are ranked in Level 7 (56 sentencing points);
- Sub-subparagraph c. is ranked in Level 8 (74 sentencing points); and
- Sub-subparagraph d. is ranked in Level 9 (92 sentencing points).

According to OPPAGA, it will take 22 pills of 10 mg. hydrocodone to reach the weight threshold for trafficking in hydrocodone and 54 pills<sup>34</sup> of 30 mg. oxycodone to reach the weight threshold for trafficking in oxycodone.<sup>35</sup>

## B. SECTION DIRECTORY:

Section 1. Amends s. 893.135, F.S., relating to trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.

Section 2. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offenses severity ranking chart.

Section 3. Reenacts s. 775.087, F.S., relating to possession or use of weapon; aggravated battery; felony reclassification; minimum sentence.

Section 4. Reenacts s. 782.04, F.S., relating to murder.

Section 5. Provides an effective date of July 1, 2014.

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<sup>33</sup> A life felony committed on or after July 1, 1995, is punishable by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment. The fine can go up to \$15,000 when the conviction is a life felony. Sections 775.082 and 775.083, F.S.

<sup>34</sup> OPPAGA specifically stated that 108 pills meets the 14 gram threshold.

<sup>35</sup> OPPAGA Report, at 5.

## 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:

On January 30, 2014, the Criminal Justice Impact Conference determined that this bill will have a positive prison bed impact to the Department of Corrections (a reduction of 465 beds over five years). CJIC determined that this will result in a savings of \$16.1 million in operating costs and \$31 million in fixed capital costs for a total savings of \$47.1 million over five years.

| Fiscal Year  | Projected Cumulative Prison Beds Required | Projected Additional Annual Prison Beds Required | FUNDS REQUIRED         |                                   |                       |                        |
|--------------|---|--|------------------------|-----------------------------------|-----------------------|------------------------|
|              |   |  | Annual Operating Costs | Annual Fixed Capital Outlay Costs | TOTAL Annual Funds    | TOTAL Cumulative Funds |
| 2014-2015    | -1  | -1   | (\$8,949)              | (\$2,500,631)                     | (\$2,509,580)         | (\$2,509,580)          |
| 2015-2016    | -41                                       | -40  | (\$382,977)            | (\$9,270,408)                     | (\$9,653,385)         | (\$12,162,965)         |
| 2016-2017    | -188                                      | -147   | (\$2,127,754)          | (\$12,780,768)                    | (\$14,908,522)        | (\$27,071,486)         |
| 2017-2018    | -384                                      | -196   | (\$5,421,130)          | (\$5,435,019)                     | (\$10,856,149)        | (\$37,927,635)         |
| 2018-2019    | -465                                      | -81  | (\$8,207,283)          | (\$960,064)                       | (\$9,167,347)         | (\$47,094,982)         |
| <b>Total</b> | <b>-465</b>                               | <b>-465</b>                                      | <b>(\$16,148,092)</b>  | <b>(\$30,946,890)</b>             | <b>(\$47,094,982)</b> | <b>(\$47,094,982)</b>  |

### 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:

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:

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

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

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 5, 2014, the Criminal Justice Subcommittee adopted one strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Removes hydrocodone and oxycodone from the “trafficking in illegal drugs” offense;
- Creates two new offenses of “trafficking in hydrocodone” and “trafficking in oxycodone;”
- Provides specified weight thresholds and minimum mandatory sentence lengths for each weight threshold;
- Adds the new offenses to the offense severity ranking chart; and
- Reenacts ss. 775.087 and 782.04, F.S., for purposes of incorporating the changes made in the act.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1                                   A bill to be entitled  
 2           An act relating to controlled substances; amending s.  
 3           893.135, F.S.; providing that a person who knowingly  
 4           sells, purchases, manufactures, delivers, or brings  
 5           into this state specified quantities of hydrocodone or  
 6           oxycodone, or who is knowingly in actual or  
 7           constructive possession of specified quantities of  
 8           hydrocodone or oxycodone, commits specified offenses;  
 9           providing criminal penalties; amending s. 921.0022,  
 10          F.S.; ranking the offenses of trafficking in  
 11          hydrocodone and trafficking in oxycodone for purposes  
 12          of the offense severity ranking chart of the Criminal  
 13          Punishment Code; reenacting ss. 775.087(2)(a) and  
 14          (3)(a) and 782.04(3) and (4), F.S., relating to  
 15          mandatory minimum sentences for the possession or use  
 16          of a weapon during the commission of certain offenses  
 17          and murder, respectively, to incorporate the  
 18          amendments made to s. 893.135, F.S., in references  
 19          thereto; providing an effective date.

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

22  
 23           Section 1. Paragraph (c) of subsection (1) of section  
 24   893.135, Florida Statutes, is amended to read:

25           893.135 Trafficking; mandatory sentences; suspension or  
 26   reduction of sentences; conspiracy to engage in trafficking.—

27 (1) Except as authorized in this chapter or in chapter 499  
 28 and notwithstanding the provisions of s. 893.13:

29 (c)1. A ~~Any~~ person who knowingly sells, purchases,  
 30 manufactures, delivers, or brings into this state, or who is  
 31 knowingly in actual or constructive possession of, 4 grams or  
 32 more of any morphine, opium, ~~oxycodone, hydrocodone,~~  
 33 hydromorphone, or any salt, derivative, isomer, or salt of an  
 34 isomer thereof, including heroin, as described in s.  
 35 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more  
 36 of any mixture containing any such substance, but less than 30  
 37 kilograms of such substance or mixture, commits a felony of the  
 38 first degree, which felony shall be known as "trafficking in  
 39 illegal drugs," punishable as provided in s. 775.082, s.  
 40 775.083, or s. 775.084. If the quantity involved:

41 a. Is 4 grams or more, but less than 14 grams, such person  
 42 shall be sentenced to a mandatory minimum term of imprisonment  
 43 of 3 years~~7~~, and ~~the defendant shall be ordered to pay a fine of~~  
 44 \$50,000.

45 b. Is 14 grams or more, but less than 28 grams, such  
 46 person shall be sentenced to a mandatory minimum term of  
 47 imprisonment of 15 years~~7~~, and ~~the defendant shall be ordered to~~  
 48 pay a fine of \$100,000.

49 c. Is 28 grams or more, but less than 30 kilograms, such  
 50 person shall be sentenced to a mandatory minimum term of  
 51 imprisonment of 25 ~~calendar~~ years and shall be ordered to pay a  
 52 fine of \$500,000.

53 2. A person who knowingly sells, purchases, manufactures,  
 54 delivers, or brings into this state, or who is knowingly in  
 55 actual or constructive possession, of 14 grams or more of  
 56 hydrocodone, or 14 grams or more of any mixture containing any  
 57 such substance, commits a felony of the first degree, which  
 58 felony shall be known as "trafficking in hydrocodone,"  
 59 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

60 If the quantity involved:

61 a. Is 14 grams or more, but less than 28 grams, such  
 62 person shall be sentenced to a mandatory minimum term of  
 63 imprisonment of 3 years and shall be ordered to pay a fine of  
 64 \$50,000.

65 b. Is 28 grams or more, but less than 50 grams, such  
 66 person shall be sentenced to a mandatory minimum term of  
 67 imprisonment of 7 years and shall be ordered to pay a fine of  
 68 \$100,000.

69 c. Is 50 grams or more, but less than 200 grams, such  
 70 person shall be sentenced to a mandatory minimum term of  
 71 imprisonment of 15 years and shall be ordered to pay a fine of  
 72 \$500,000.

73 d. Is 200 grams or more, but less than 30 kilograms, such  
 74 person shall be sentenced to a mandatory minimum term of  
 75 imprisonment of 25 years and shall be ordered to pay a fine of  
 76 \$750,000.

77 e. Is 30 kilograms or more, such person shall be punished  
 78 by life imprisonment and is ineligible for any form of

79 discretionary early release except pardon, executive clemency,  
 80 or conditional medical release under s. 947.149. However, if the  
 81 court determines that, in addition to committing any act  
 82 specified in this paragraph:

83 (I) The person intentionally killed an individual or  
 84 counseled, commanded, induced, procured, or caused the  
 85 intentional killing of an individual and such killing was the  
 86 result; or

87 (II) The person's conduct in committing that act led to a  
 88 natural, though not inevitable, lethal result,

89  
 90 such person commits the capital felony of trafficking in  
 91 hydrocodone, punishable as provided in ss. 775.082 and 921.142.  
 92 A person sentenced under this sub-subparagraph shall also be  
 93 sentenced to pay the maximum fine provided under this  
 94 subparagraph.

95 f. A person who knowingly brings into this state 60  
 96 kilograms or more and who knows that the probable result of such  
 97 importation would be the death of a person, commits capital  
 98 importation of hydrocodone, a capital felony punishable as  
 99 provided in ss. 775.082 and 921.142. A person sentenced for a  
 100 capital felony under this sub-subparagraph shall also be  
 101 sentenced to pay the maximum fine provided under this  
 102 subparagraph.

103 3. A person who knowingly sells, purchases, manufactures,  
 104 delivers, or brings into this state, or who is knowingly in



105 actual or constructive possession of, 7 grams or more of  
 106 oxycodone, or 7 grams or more of any mixture containing any such  
 107 substance, commits a felony of the first degree, which felony  
 108 shall be known as "trafficking in oxycodone," punishable as  
 109 provided in s. 775.082, s. 775.083, or s. 775.084. If the  
 110 quantity involved:

111 a. Is 7 grams or more, but less than 14 grams, such person  
 112 shall be sentenced to a mandatory minimum term of imprisonment  
 113 of 3 years and shall be ordered to pay a fine of \$50,000.

114 b. Is 14 grams or more, but less than 25 grams, such  
 115 person shall be sentenced to a mandatory minimum term of  
 116 imprisonment of 7 years and shall be ordered to pay a fine of  
 117 \$100,000.

118 c. Is 25 grams or more, but less than 100 grams, such  
 119 person shall be sentenced to a mandatory minimum term of  
 120 imprisonment of 15 years and shall be ordered to pay a fine of  
 121 \$500,000.

122 d. Is 100 grams or more, but less than 30 kilograms, such  
 123 person shall be sentenced to a mandatory minimum term of  
 124 imprisonment of 25 years and shall be ordered to pay a fine of  
 125 \$750,000.

126 e. Is 30 kilograms or more, such person shall be punished  
 127 by life imprisonment and is ineligible for any form of  
 128 discretionary early release except pardon, executive clemency,  
 129 or conditional medical release under s. 947.149. However, if the  
 130 court determines that, in addition to committing any act

131 specified in this paragraph:

132 (I) The person intentionally killed an individual or  
 133 counseled, commanded, induced, procured, or caused the  
 134 intentional killing of an individual and such killing was the  
 135 result; or

136 (II) The person's conduct in committing that act led to a  
 137 natural, though not inevitable, lethal result,

138  
 139 such person commits the capital felony of trafficking in  
 140 oxycodone, punishable as provided in ss. 775.082 and 921.142. A  
 141 person sentenced under this sub-subparagraph shall also be  
 142 sentenced to pay the maximum fine provided under this  
 143 subparagraph.

144 f. A person who knowingly brings into this state 60  
 145 kilograms or more and who knows that the probable result of such  
 146 importation would be the death of a person, commits capital  
 147 importation of oxycodone, a capital felony punishable as  
 148 provided in ss. 775.082 and 921.142. A person sentenced for a  
 149 capital felony under this sub-subparagraph shall also be  
 150 sentenced to pay the maximum fine provided under this  
 151 subparagraph.

152 4. A ~~2.~~ Any person who knowingly sells, purchases,  
 153 manufactures, delivers, or brings into this state, or who is  
 154 knowingly in actual or constructive possession of, 30 kilograms  
 155 or more of any morphine, opium, ~~oxycodone, hydrocodone,~~  
 156 hydromorphone, or any salt, derivative, isomer, or salt of an

157 isomer thereof, including heroin, as described in s.  
 158 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or  
 159 more of any mixture containing any such substance, commits the  
 160 first degree felony of trafficking in illegal drugs. A person  
 161 who has been convicted of the first degree felony of trafficking  
 162 in illegal drugs under this subparagraph shall be punished by  
 163 life imprisonment and is ineligible for any form of  
 164 discretionary early release except pardon or executive clemency  
 165 or conditional medical release under s. 947.149. However, if the  
 166 court determines that, in addition to committing any act  
 167 specified in this paragraph:

168 a. The person intentionally killed an individual or  
 169 counseled, commanded, induced, procured, or caused the  
 170 intentional killing of an individual and such killing was the  
 171 result; or

172 b. The person's conduct in committing that act led to a  
 173 natural, though not inevitable, lethal result,

174  
 175 such person commits the capital felony of trafficking in illegal  
 176 drugs, punishable as provided in ss. 775.082 and 921.142. A ~~Any~~  
 177 person sentenced for a capital felony under this paragraph shall  
 178 also be sentenced to pay the maximum fine provided under  
 179 subparagraph 1.

180 5. ~~A 3.~~ ~~Any~~ person who knowingly brings into this state  
 181 60 kilograms or more of any morphine, opium, ~~oxycodone,~~  
 182 ~~hydrocodone,~~ hydromorphone, or any salt, derivative, isomer, or

183 salt of an isomer thereof, including heroin, as described in s.  
 184 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or  
 185 more of any mixture containing any such substance, and who knows  
 186 that the probable result of such importation would be the death  
 187 of a ~~any~~ person, commits capital importation of illegal drugs, a  
 188 capital felony punishable as provided in ss. 775.082 and  
 189 921.142. A ~~Any~~ person sentenced for a capital felony under this  
 190 paragraph shall also be sentenced to pay the maximum fine  
 191 provided under subparagraph 1.

192 Section 2. Paragraphs (g), (h), and (i) of subsection (3)  
 193 of section 921.0022, Florida Statutes, are amended to read:

194 921.0022 Criminal Punishment Code; offense severity  
 195 ranking chart.—

196 (3) OFFENSE SEVERITY RANKING CHART

197 (g) LEVEL 7

| Florida Statute | Felony Degree | Description   |
|-----------------|---------------|---|
| 316.027(1)(b)   | 1st           | Accident involving death, failure to stop; leaving scene. |
| 316.193(3)(c)2. | 3rd           | DUI resulting in serious bodily injury.                   |

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|-----|-----------------------|-----|--|
| 202 | 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. |
| 203 | 327.35(3)(c)2.        | 3rd | Vessel BUI resulting in serious bodily injury.   |
| 204 | 402.319(2)            | 2nd | Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.   |
| 205 | 409.920<br>(2)(b)1.a. | 3rd | Medicaid provider fraud; \$10,000 or less.   |
| 206 | 409.920<br>(2)(b)1.b. | 2nd | Medicaid provider fraud; more than \$10,000, but less than \$50,000.   |

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|-----|------------|-----|---|
| 207 | 456.065(2) | 3rd | Practicing a health care profession without a license.  |
| 208 | 456.065(2) | 2nd | Practicing a health care profession without a license which results in serious bodily injury. |
| 209 | 458.327(1) | 3rd | Practicing medicine without a license.  |
| 210 | 459.013(1) | 3rd | Practicing osteopathic medicine without a license.  |
| 211 | 460.411(1) | 3rd | Practicing chiropractic medicine without a license.   |
| 212 | 461.012(1) | 3rd | Practicing podiatric medicine without a license.  |
| 213 | 462.17     | 3rd | Practicing naturopathy without a license.   |
| 214 | 463.015(1) | 3rd | Practicing optometry without a license.   |

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| 215 | 464.016(1)    | 3rd | Practicing nursing without a license.                           |
| 216 | 465.015(2)    | 3rd | Practicing pharmacy without a license.                          |
| 217 | 466.026(1)    | 3rd | Practicing dentistry or dental hygiene without a license.       |
| 218 | 467.201       | 3rd | Practicing midwifery without a license.                         |
| 219 | 468.366       | 3rd | Delivering respiratory care services without a license.         |
| 220 | 483.828(1)    | 3rd | Practicing as clinical laboratory personnel without a license.  |
| 221 | 483.901(9)    | 3rd | Practicing medical physics without a license.                   |
| 222 | 484.013(1)(c) | 3rd | Preparing or dispensing optical devices without a prescription. |

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| 223 | 484.053         | 3rd | Dispensing hearing aids without a license.   |
| 224 | 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. |
| 225 | 560.123(8)(b)1. | 3rd | Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.   |
| 226 | 560.125(5)(a)   | 3rd | Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.  |
| 227 | 655.50(10)(b)1. | 3rd | Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.  |



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| 228 | 775.21(10)(a) | 3rd | Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations. |
| 229 | 775.21(10)(b) | 3rd | Sexual predator working where children regularly congregate.   |
| 230 | 775.21(10)(g) | 3rd | Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.                 |
| 231 | 782.051(3)    | 2nd | Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.          |
| 232 | 782.07(1)     | 2nd | Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).                            |

|     |                    |     |   |
|-----|--------------------|-----|---|
| 233 | 782.071            | 2nd | Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide). |
| 234 | 782.072            | 2nd | Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).                           |
| 235 | 784.045 (1) (a) 1. | 2nd | Aggravated battery; intentionally causing great bodily harm or disfigurement.   |
| 236 | 784.045 (1) (a) 2. | 2nd | Aggravated battery; using deadly weapon.  |
| 237 | 784.045 (1) (b)    | 2nd | Aggravated battery; perpetrator aware victim pregnant.  |
| 238 | 784.048 (4)        | 3rd | Aggravated stalking; violation of injunction or court order.  |
|     | 784.048 (7)        | 3rd | Aggravated stalking; violation  |

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|     |               |     |   |
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|     |               |     | of court order.   |
| 239 | 784.07(2)(d)  | 1st | Aggravated battery on law enforcement officer.                      |
| 240 | 784.074(1)(a) | 1st | Aggravated battery on sexually violent predators facility staff.    |
| 241 | 784.08(2)(a)  | 1st | Aggravated battery on a person 65 years of age or older.            |
| 242 | 784.081(1)    | 1st | Aggravated battery on specified official or employee.               |
| 243 | 784.082(1)    | 1st | Aggravated battery by detained person on visitor or other detainee. |
| 244 | 784.083(1)    | 1st | Aggravated battery on code inspector.                               |
| 245 | 787.06(3)(a)  | 1st | Human trafficking using coercion for labor and services.            |
| 246 |               |     |   |

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| 247 | 787.06(3)(e) | 1st | Human trafficking using coercion for labor and services by the transfer or transport of any individual from outside Florida to within the state. |
| 248 | 790.07(4)    | 1st | Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).  |
| 249 | 790.16(1)    | 1st | Discharge of a machine gun under specified circumstances.  |
| 250 | 790.165(2)   | 2nd | Manufacture, sell, possess, or deliver hoax bomb.  |
| 251 | 790.165(3)   | 2nd | Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.                                   |
| 252 | 790.166(3)   | 2nd | Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.  |

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| 253 | 790.166(4)     | 2nd      | Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.     |
| 254 | 790.23         | 1st, PBL | Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.                              |
| 255 | 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. |
| 256 | 796.03         | 2nd      | Procuring any person under 16 years for prostitution.  |
| 257 | 800.04(5)(c)1. | 2nd      | Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.   |

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| 258 | 800.04 (5) (c) 2.  | 2nd | Lewd or lascivious molestation;<br>victim 12 years of age or older<br>but less than 16 years;<br>offender 18 years or older. |
| 259 | 806.01 (2)         | 2nd | Maliciously damage structure by<br>fire or explosive.  |
| 260 | 810.02 (3) (a)     | 2nd | Burglary of occupied dwelling;<br>unarmed; no assault or battery.  |
| 261 | 810.02 (3) (b)     | 2nd | Burglary of unoccupied<br>dwelling; unarmed; no assault<br>or battery.   |
| 262 | 810.02 (3) (d)     | 2nd | Burglary of occupied<br>conveyance; unarmed; no assault<br>or battery.   |
| 263 | 810.02 (3) (e)     | 2nd | Burglary of authorized<br>emergency vehicle.   |
|     | 812.014 (2) (a) 1. | 1st | Property stolen, valued at<br>\$100,000 or more or a<br>semitrailer deployed by a law  |

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|     |                 |     | enforcement officer; property stolen while causing other property damage; 1st degree grand theft.          |
| 264 | 812.014(2)(b)2. | 2nd | Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.                            |
| 265 | 812.014(2)(b)3. | 2nd | Property stolen, emergency medical equipment; 2nd degree grand theft.                                      |
| 266 | 812.014(2)(b)4. | 2nd | Property stolen, law enforcement equipment from authorized emergency vehicle.                              |
| 267 | 812.0145(2)(a)  | 1st | Theft from person 65 years of age or older; \$50,000 or more.  |
| 268 | 812.019(2)      | 1st | Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property. |
| 269 |                 |     |  |

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| 270 | 812.131(2)(a)                  | 2nd | Robbery by sudden snatching.  |
| 271 | 812.133(2)(b)                  | 1st | Carjacking; no firearm, deadly weapon, or other weapon.   |
| 272 | 817.034(4)(a)1.                | 1st | Communications fraud, value greater than \$50,000.  |
| 273 | 817.234(8)(a)                  | 2nd | Solicitation of motor vehicle accident victims with intent to defraud.  |
| 274 | 817.234(9)                     | 2nd | Organizing, planning, or participating in an intentional motor vehicle collision.   |
| 275 | 817.234(11)(c)                 | 1st | Insurance fraud; property value \$100,000 or more.  |
|     | 817.2341<br>(2)(b) &<br>(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.  |
| 276 | 817.535(2)(a) | 3rd | Filing false lien or other unauthorized document.   |
| 277 | 825.102(3)(b) | 2nd | Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.             |
| 278 | 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. |
| 279 | 827.03(2)(b)  | 2nd | Neglect of a child causing great bodily harm, disability, or disfigurement.   |
| 280 | 827.04(3)     | 3rd | Impregnation of a child under 16 years of age by person 21 years of age or older.                                   |
| 281 | 837.05(2)     | 3rd | Giving false information about alleged capital felony to a law  |

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|     |               |     | enforcement officer.  |
| 282 | 838.015       | 2nd | Bribery.  |
| 283 | 838.016       | 2nd | Unlawful compensation or reward<br>for official behavior.                             |
| 284 | 838.021(3)(a) | 2nd | Unlawful harm to a public<br>servant.   |
| 285 | 838.22        | 2nd | Bid tampering.  |
| 286 | 843.0855(2)   | 3rd | Impersonation of a public<br>officer or employee.                                     |
| 287 | 843.0855(3)   | 3rd | Unlawful simulation of legal<br>process.  |
| 288 | 843.0855(4)   | 3rd | Intimidation of a public<br>officer or employee.                                      |
| 289 | 847.0135(3)   | 3rd | Solicitation of a child, via a<br>computer service, to commit an<br>unlawful sex act. |
| 290 |               |     |   |

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| 291 | 847.0135(4)    | 2nd      | Traveling to meet a minor to<br>commit an unlawful sex act.   |
| 292 | 872.06         | 2nd      | Abuse of a dead human body.   |
| 293 | 874.05(2)(b)   | 1st      | Encouraging or recruiting<br>person under 13 to join a<br>criminal gang; second or<br>subsequent offense.   |
| 294 | 874.10         | 1st, PBL | Knowingly initiates, organizes,<br>plans, finances, directs,<br>manages, or supervises criminal<br>gang-related activity.   |
|     | 893.13(1)(c)1. | 1st      | Sell, manufacture, or deliver<br>cocaine (or other drug<br>prohibited under s.<br>893.03(1)(a), (1)(b), (1)(d),<br>(2)(a), (2)(b), or (2)(c)4.)<br>within 1,000 feet of a child<br>care facility, school, or<br>state, county, or municipal<br>park or publicly owned<br>recreational facility or |

|     |                       |     |  |
|-----|-----------------------|-----|--|
|     |                       |     | community center.  |
| 295 | 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. |
| 296 | 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).  |
| 297 | 893.135(1)(a)1.       | 1st | Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.   |
| 298 | 893.135<br>(1)(b)1.a. | 1st | Trafficking in cocaine, more than 28 grams, less than 200 grams.   |
| 299 | 893.135               | 1st | Trafficking in illegal drugs,  |

|     |                                     |            |  |
|-----|-------------------------------------|------------|--|
|     | (1)(c)1.a.                          |            | more than 4 grams, less than 14 grams.                                   |
| 300 | <u>893.135</u><br><u>(1)(c)2.a.</u> | <u>1st</u> | <u>Trafficking in hydrocodone, 14 grams or more, less than 28 grams.</u> |
| 301 | <u>893.135</u><br><u>(1)(c)2.b.</u> | <u>1st</u> | <u>Trafficking in hydrocodone, 28 grams or more, less than 50 grams.</u> |
| 302 | <u>893.135</u><br><u>(1)(c)3.a.</u> | <u>1st</u> | <u>Trafficking in oxycodone, 7 grams or more, less than 14 grams.</u>    |
| 303 | <u>893.135</u><br><u>(1)(c)3.b.</u> | <u>1st</u> | <u>Trafficking in oxycodone, 14 grams or more, less than 25 grams.</u>   |
| 304 | 893.135(1)(d)1.                     | 1st        | Trafficking in phencyclidine, more than 28 grams, less than 200 grams.   |
| 305 | 893.135(1)(e)1.                     | 1st        | Trafficking in methaqualone, more than 200 grams, less than              |

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|     |                       |     | 5 kilograms.   |
| 306 | 893.135(1)(f)1.       | 1st | Trafficking in amphetamine,<br>more than 14 grams, less than<br>28 grams.                            |
| 307 | 893.135<br>(1)(g)1.a. | 1st | Trafficking in flunitrazepam, 4<br>grams or more, less than 14<br>grams.                             |
| 308 | 893.135<br>(1)(h)1.a. | 1st | Trafficking in gamma-<br>hydroxybutyric acid (GHB), 1<br>kilogram or more, less than 5<br>kilograms. |
| 309 | 893.135<br>(1)(j)1.a. | 1st | Trafficking in 1,4-Butanediol,<br>1 kilogram or more, less than 5<br>kilograms.                      |
| 310 | 893.135<br>(1)(k)2.a. | 1st | Trafficking in Phenethylamines,<br>10 grams or more, less than 200<br>grams.                         |
| 311 | 893.1351(2)           | 2nd | Possession of place for<br>trafficking in or manufacturing   |

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| 312 |                 |     | of controlled substance.   |
|     | 896.101(5)(a)   | 3rd | Money laundering, financial transactions exceeding \$300 but less than \$20,000.   |
| 313 |                 |     |  |
|     | 896.104(4)(a)1. | 3rd | Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000. |
| 314 |                 |     |  |
|     | 943.0435(4)(c)  | 2nd | Sexual offender vacating permanent residence; failure to comply with reporting requirements.   |
| 315 |                 |     |  |
|     | 943.0435(8)     | 2nd | Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.                       |
| 316 |                 |     |  |
|     | 943.0435(9)(a)  | 3rd | Sexual offender; failure to comply with reporting requirements.  |
| 317 |                 |     |  |

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| 318 | 943.0435(13)   | 3rd | Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender. |
| 319 | 943.0435(14)   | 3rd | Sexual offender; failure to report and reregister; failure to respond to address verification.                 |
| 320 | 944.607(9)     | 3rd | Sexual offender; failure to comply with reporting requirements.  |
| 321 | 944.607(10)(a) | 3rd | Sexual offender; failure to submit to the taking of a digitized photograph.                                    |
| 322 | 944.607(12)    | 3rd | Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender. |
|     | 944.607(13)    | 3rd | Sexual offender; failure to report and reregister; failure   |



|     |              |        |  |
|-----|--------------|--------|--|
|     |              |        | to respond to address verification.  |
| 323 | 985.4815(10) | 3rd    | Sexual offender; failure to submit to the taking of a digitized photograph.                                    |
| 324 | 985.4815(12) | 3rd    | Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender. |
| 325 | 985.4815(13) | 3rd    | Sexual offender; failure to report and reregister; failure to respond to address verification.                 |
| 326 |              |        |  |
| 327 | (h) LEVEL 8  |        |  |
| 328 |              |        |  |
|     | Florida      | Felony |  |
|     | Statute      | Degree | Description  |
| 329 | 316.193      | 2nd    | DUI manslaughter.  |
|     | (3) (c) 3.a. |        |  |
| 330 |              |        |  |

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|-----|-----------------|-----|---|
| 331 | 316.1935(4)(b)  | 1st | Aggravated fleeing or attempted eluding with serious bodily injury or death.  |
| 332 | 327.35(3)(c)3.  | 2nd | Vessel BUI manslaughter.  |
| 333 | 499.0051(7)     | 1st | Knowing trafficking in contraband prescription drugs.   |
| 334 | 499.0051(8)     | 1st | Knowing forgery of prescription labels or prescription drug labels.   |
| 335 | 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.             |
| 336 | 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. |

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|-----|-----------------|-----|---|
| 337 | 655.50(10)(b)2. | 2nd | Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.   |
| 338 | 777.03(2)(a)    | 1st | Accessory after the fact, capital felony.   |
| 339 | 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, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb. |
| 340 | 782.051(2)      | 1st | Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).   |
|     | 782.071(1)(b)   | 1st | Committing vehicular homicide   |

|     |              |     |   |
|-----|--------------|-----|---|
|     |              |     | and failing to render aid or<br>give information.   |
| 341 | 782.072(2)   | 1st | Committing vessel homicide and<br>failing to render aid or give<br>information.   |
| 342 | 787.06(3)(b) | 1st | Human trafficking using<br>coercion for commercial sexual<br>activity.  |
| 343 | 787.06(3)(c) | 1st | Human trafficking using<br>coercion for labor and services<br>of an unauthorized alien.   |
| 344 | 787.06(3)(f) | 1st | Human trafficking using<br>coercion for commercial sexual<br>activity by the transfer or<br>transport of any individual<br>from outside Florida to within<br>the state. |
| 345 | 790.161(3)   | 1st | Discharging a destructive<br>device which results in bodily<br>harm or property damage.   |
| 346 |              |     |   |

|     |              |          |   |
|-----|--------------|----------|---|
| 347 | 794.011(5)   | 2nd      | Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury. |
| 348 | 794.08(3)    | 2nd      | Female genital mutilation, removal of a victim younger than 18 years of age from this state.                  |
| 349 | 800.04(4)    | 2nd      | Lewd or lascivious battery.   |
| 350 | 806.01(1)    | 1st      | Maliciously damage dwelling or structure by fire or explosive, believing person in structure.                 |
| 351 | 810.02(2)(a) | 1st, PBL | Burglary with assault or battery.   |
| 352 | 810.02(2)(b) | 1st, PBL | Burglary; armed with explosives or dangerous weapon.  |
|     | 810.02(2)(c) | 1st      | Burglary of a dwelling or structure causing structural damage or \$1,000 or more                              |

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|-----|-----------------|-----|---|
|     |                 |     | property damage.  |
| 353 | 812.014(2)(a)2. | 1st | Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.                     |
| 354 | 812.13(2)(b)    | 1st | Robbery with a weapon.  |
| 355 | 812.135(2)(c)   | 1st | Home-invasion robbery, no firearm, deadly weapon, or other weapon.                                |
| 356 | 817.535(2)(b)   | 2nd | Filing false lien or other unauthorized document; second or subsequent offense.                   |
| 357 | 817.535(3)(a)   | 2nd | Filing false lien or other unauthorized document; property owner is a public officer or employee. |
| 358 | 817.535(4)(a)1. | 2nd | Filing false lien or other unauthorized document; defendant is incarcerated or under supervision. |
| 359 |                 |     |   |

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|-----|---------------|-----|--|
| 360 | 817.535(5)(a) | 2nd | Filing false lien or other unauthorized document; owner of the property incurs financial loss as a result of the false instrument. |
| 361 | 817.568(6)    | 2nd | Fraudulent use of personal identification information of an individual under the age of 18.  |
| 362 | 825.102(2)    | 1st | Aggravated abuse of an elderly person or disabled adult.   |
| 363 | 825.1025(2)   | 2nd | Lewd or lascivious battery upon an elderly person or disabled adult.   |
| 364 | 825.103(2)(a) | 1st | Exploiting an elderly person or disabled adult and property is valued at \$100,000 or more.  |
| 365 | 837.02(2)     | 2nd | Perjury in official proceedings relating to prosecution of a capital felony.   |

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|-----|---------------|-----|---|
| 366 | 837.021(2)    | 2nd | Making contradictory statements<br>in official proceedings<br>relating to prosecution of a<br>capital felony. |
| 367 | 860.121(2)(c) | 1st | Shooting at or throwing any<br>object in path of railroad<br>vehicle resulting in great<br>bodily harm.       |
| 368 | 860.16        | 1st | Aircraft piracy.  |
| 369 | 893.13(1)(b)  | 1st | Sell or deliver in excess of 10<br>grams of any substance<br>specified in s. 893.03(1)(a) or<br>(b).          |
| 370 | 893.13(2)(b)  | 1st | Purchase in excess of 10 grams<br>of any substance specified in<br>s. 893.03(1)(a) or (b).                    |
| 371 | 893.13(6)(c)  | 1st | Possess in excess of 10 grams<br>of any substance specified in<br>s. 893.03(1)(a) or (b).                     |



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|-----|-------------------------------------|------------|---|
| 372 | 893.135(1)(a)2.                     | 1st        | Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.      |
| 373 | 893.135<br>(1)(b)1.b.               | 1st        | Trafficking in cocaine, more than 200 grams, less than 400 grams.         |
| 374 | 893.135<br>(1)(c)1.b.               | 1st        | Trafficking in illegal drugs, more than 14 grams, less than 28 grams.     |
| 375 | <u>893.135</u><br><u>(1)(c)2.c.</u> | <u>1st</u> | <u>Trafficking in hydrocodone, 50 grams or more, less than 200 grams.</u> |
| 376 | <u>893.135</u><br><u>(1)(c)3.c.</u> | <u>1st</u> | <u>Trafficking in oxycodone, 25 grams or more, less than 100 grams.</u>   |
| 377 | 893.135<br>(1)(d)1.b.               | 1st        | Trafficking in phencyclidine, more than 200 grams, less than 400 grams.   |
|     | 893.135                             | 1st        | Trafficking in methaqualone,  |

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|     |                         |     |  |
|-----|-------------------------|-----|--|
| 378 | (1) (e) 1.b.            | 1st | more than 5 kilograms, less than 25 kilograms.   |
| 379 | 893.135<br>(1) (f) 1.b. | 1st | Trafficking in amphetamine, more than 28 grams, less than 200 grams.                         |
| 380 | 893.135<br>(1) (g) 1.b. | 1st | Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.                          |
| 381 | 893.135<br>(1) (h) 1.b. | 1st | Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms. |
| 382 | 893.135<br>(1) (j) 1.b. | 1st | Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.                  |
| 383 | 893.135<br>(1) (k) 2.b. | 1st | Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.                      |
|     | 893.1351(3)             | 1st | Possession of a place used to  |

|     |                 |     |  |
|-----|-----------------|-----|--|
|     |                 |     | manufacture controlled substance when minor is present or resides there.   |
| 384 | 895.03(1)       | 1st | Use or invest proceeds derived from pattern of racketeering activity.  |
| 385 | 895.03(2)       | 1st | Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property. |
| 386 | 895.03(3)       | 1st | Conduct or participate in any enterprise through pattern of racketeering activity.                               |
| 387 | 896.101(5)(b)   | 2nd | Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.                |
| 388 | 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.

389

390 (i) LEVEL 9

391

|                    |                  |             |
|--------------------|------------------|-------------|
| Florida<br>Statute | Felony<br>Degree | Description |
|--------------------|------------------|-------------|

392

|                         |     |   |
|-------------------------|-----|---|
| 316.193<br>(3) (c) 3.b. | 1st | DUI manslaughter; failing to<br>render aid or give information. |
|-------------------------|-----|---|

393

|                    |     |   |
|--------------------|-----|---|
| 327.35(3) (c) 3.b. | 1st | BUI manslaughter; failing to<br>render aid or give information. |
|--------------------|-----|---|

394

|                         |     |   |
|-------------------------|-----|---|
| 409.920<br>(2) (b) 1.c. | 1st | Medicaid provider fraud;<br>\$50,000 or more. |
|-------------------------|-----|---|

395

|             |     |   |
|-------------|-----|---|
| 499.0051(9) | 1st | Knowing sale or purchase of<br>contraband prescription drugs<br>resulting in great bodily harm. |
|-------------|-----|---|

396

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

|     |                 |          |  |
|-----|-----------------|----------|--|
|     |                 |          | transmitter.   |
| 397 | 560.125(5)(c)   | 1st      | Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.   |
| 398 | 655.50(10)(b)3. | 1st      | Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.   |
| 399 | 775.0844        | 1st      | Aggravated white collar crime.   |
| 400 | 782.04(1)       | 1st      | Attempt, conspire, or solicit to commit premeditated murder.   |
| 401 | 782.04(3)       | 1st, PBL | Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies. |
| 402 |                 |          |  |

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|-----|----------------|----------|--|
| 403 | 782.051(1)     | 1st      | Attempted felony murder while<br>perpetrating or attempting to<br>perpetrate a felony enumerated<br>in s. 782.04(3). |
| 404 | 782.07(2)      | 1st      | Aggravated manslaughter of an<br>elderly person or disabled<br>adult.  |
| 405 | 787.01(1)(a)1. | 1st, PBL | Kidnapping; hold for ransom or<br>reward or as a shield or<br>hostage.   |
| 406 | 787.01(1)(a)2. | 1st, PBL | Kidnapping with intent to<br>commit or facilitate commission<br>of any felony.                                       |
| 407 | 787.01(1)(a)4. | 1st, PBL | Kidnapping with intent to<br>interfere with performance of<br>any governmental or political<br>function.             |
|     | 787.02(3)(a)   | 1st      | False imprisonment; child under<br>age 13; perpetrator also<br>commits aggravated child abuse,                       |

|     |              |         |   |
|-----|--------------|---------|---|
|     |              |         | sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.       |
| 408 | 787.06(3)(d) | 1st     | Human trafficking using coercion for commercial sexual activity of an unauthorized alien. |
| 409 | 787.06(3)(g) | 1st,PBL | Human trafficking for commercial sexual activity of a child under the age of 18.          |
| 410 | 787.06(4)    | 1st     | Selling or buying of minors into human trafficking.                                       |
| 411 | 790.161      | 1st     | Attempted capital destructive device offense.   |
| 412 | 790.166(2)   | 1st,PBL | Possessing, selling, using, or attempting to use a weapon of mass destruction.            |
| 413 | 794.011(2)   | 1st     | Attempted sexual battery;   |

|     |               |      |  |
|-----|---------------|------|--|
|     |               |      | victim less than 12 years of age.  |
| 414 | 794.011(2)    | Life | Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.        |
| 415 | 794.011(4)    | 1st  | Sexual battery; victim 12 years or older, certain circumstances.   |
| 416 | 794.011(8)(b) | 1st  | Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority. |
| 417 | 794.08(2)     | 1st  | Female genital mutilation; victim younger than 18 years of age.  |
| 418 | 796.035       | 1st  | Selling or buying of minors into prostitution.   |
| 419 | 800.04(5)(b)  | Life | Lewd or lascivious molestation;  |



victim less than 12 years;  
offender 18 years or older.

420

812.13(2)(a) 1st, PBL Robbery with firearm or other  
deadly weapon.

421

812.133(2)(a) 1st, PBL Carjacking; firearm or other  
deadly weapon.

422

812.135(2)(b) 1st Home-invasion robbery with  
weapon.

423

817.535(3)(b) 1st Filing false lien or other  
unauthorized document; second  
or subsequent offense; property  
owner is a public officer or  
employee.

424

817.535(4)(a)2. 1st Filing false claim or other  
unauthorized document;  
defendant is incarcerated or  
under supervision.

425

817.535(5)(b) 1st Filing false lien or other  
unauthorized document; second

|     |              |             |  |
|-----|--------------|-------------|--|
|     |              |             | or subsequent offense; owner of the property incurs financial loss as a result of the false instrument.  |
| 426 | 817.568(7)   | 2nd,<br>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. |
| 427 | 827.03(2)(a) | 1st         | Aggravated child abuse.  |
| 428 | 847.0145(1)  | 1st         | Selling, or otherwise transferring custody or control, of a minor.   |
| 429 | 847.0145(2)  | 1st         | Purchasing, or otherwise obtaining custody or control, of a minor.   |
| 430 | 859.01       | 1st         | Poisoning or introducing bacteria, radioactive materials, viruses, or chemical   |

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|     |                                     |            |   |
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|     |                                     |            | compounds into food, drink,<br>medicine, or water with intent<br>to kill or injure another<br>person. |
| 431 | 893.135                             | 1st        | Attempted capital trafficking<br>offense.   |
| 432 | 893.135(1)(a)3.                     | 1st        | Trafficking in cannabis, more<br>than 10,000 lbs.   |
| 433 | 893.135<br>(1)(b)1.c.               | 1st        | Trafficking in cocaine, more<br>than 400 grams, less than 150<br>kilograms.                           |
| 434 | 893.135<br>(1)(c)1.c.               | 1st        | Trafficking in illegal drugs,<br>more than 28 grams, less than<br>30 kilograms.                       |
| 435 | <u>893.135</u><br><u>(1)(c)2.d.</u> | <u>1st</u> | <u>Trafficking in hydrocodone, 200</u><br><u>grams or more, less than 30</u><br><u>kilograms.</u>     |
| 436 | <u>893.135</u><br><u>(1)(c)3.d.</u> | <u>1st</u> | <u>Trafficking in oxycodone, 100</u><br><u>grams or more, less than 30</u>                            |

|     |                         |     |  |
|-----|-------------------------|-----|--|
|     |                         |     | <u>kilograms</u>   |
| 437 | 893.135<br>(1) (d) 1.c. | 1st | Trafficking in phencyclidine,<br>more than 400 grams.                          |
| 438 | 893.135<br>(1) (e) 1.c. | 1st | Trafficking in methaqualone,<br>more than 25 kilograms.                        |
| 439 | 893.135<br>(1) (f) 1.c. | 1st | Trafficking in amphetamine,<br>more than 200 grams.                            |
| 440 | 893.135<br>(1) (h) 1.c. | 1st | Trafficking in gamma-<br>hydroxybutyric acid (GHB), 10<br>kilograms or more.   |
| 441 | 893.135<br>(1) (j) 1.c. | 1st | Trafficking in 1,4-Butanediol,<br>10 kilograms or more.                        |
| 442 | 893.135<br>(1) (k) 2.c. | 1st | Trafficking in Phenethylamines,<br>400 grams or more.                          |
| 443 | 896.101 (5) (c)         | 1st | Money laundering, financial<br>instruments totaling or<br>exceeding \$100,000. |
| 444 |                         |     |  |

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

445

446 Section 3. For the purpose of incorporating the amendment  
 447 made by this act to section 893.135, Florida Statutes, in  
 448 references thereto, paragraph (a) of subsection (2) and  
 449 paragraph (a) of subsection (3) of section 775.087, Florida  
 450 Statutes, are reenacted to read:

451 775.087 Possession or use of weapon; aggravated battery;  
 452 felony reclassification; minimum sentence.—

453 (2)(a)1. Any person who is convicted of a felony or an  
 454 attempt to commit a felony, regardless of whether the use of a  
 455 weapon is an element of the felony, and the conviction was for:

- 456 a. Murder;
- 457 b. Sexual battery;
- 458 c. Robbery;
- 459 d. Burglary;
- 460 e. Arson;
- 461 f. Aggravated assault;
- 462 g. Aggravated battery;
- 463 h. Kidnapping;
- 464 i. Escape;
- 465 j. Aircraft piracy;

466 k. Aggravated child abuse;  
 467 l. Aggravated abuse of an elderly person or disabled  
 468 adult;  
 469 m. Unlawful throwing, placing, or discharging of a  
 470 destructive device or bomb;  
 471 n. Carjacking;  
 472 o. Home-invasion robbery;  
 473 p. Aggravated stalking;  
 474 q. Trafficking in cannabis, trafficking in cocaine,  
 475 capital importation of cocaine, trafficking in illegal drugs,  
 476 capital importation of illegal drugs, trafficking in  
 477 phencyclidine, capital importation of phencyclidine, trafficking  
 478 in methaqualone, capital importation of methaqualone,  
 479 trafficking in amphetamine, capital importation of amphetamine,  
 480 trafficking in flunitrazepam, trafficking in gamma-  
 481 hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,  
 482 trafficking in Phenethylamines, or other violation of s.  
 483 893.135(1); or  
 484 r. Possession of a firearm by a felon  
 485  
 486 and during the commission of the offense, such person actually  
 487 possessed a "firearm" or "destructive device" as those terms are  
 488 defined in s. 790.001, shall be sentenced to a minimum term of  
 489 imprisonment of 10 years, except that a person who is convicted  
 490 for aggravated assault, possession of a firearm by a felon, or  
 491 burglary of a conveyance shall be sentenced to a minimum term of

492 imprisonment of 3 years if such person possessed a "firearm" or  
 493 "destructive device" during the commission of the offense.  
 494 However, if an offender who is convicted of the offense of  
 495 possession of a firearm by a felon has a previous conviction of  
 496 committing or attempting to commit a felony listed in s.  
 497 775.084(1)(b)1. and actually possessed a firearm or destructive  
 498 device during the commission of the prior felony, the offender  
 499 shall be sentenced to a minimum term of imprisonment of 10  
 500 years.

501 2. Any person who is convicted of a felony or an attempt  
 502 to commit a felony listed in sub-subparagraphs (a)1.a.-q.,  
 503 regardless of whether the use of a weapon is an element of the  
 504 felony, and during the course of the commission of the felony  
 505 such person discharged a "firearm" or "destructive device" as  
 506 defined in s. 790.001 shall be sentenced to a minimum term of  
 507 imprisonment of 20 years.

508 3. Any person who is convicted of a felony or an attempt  
 509 to commit a felony listed in sub-subparagraphs (a)1.a.-q.,  
 510 regardless of whether the use of a weapon is an element of the  
 511 felony, and during the course of the commission of the felony  
 512 such person discharged a "firearm" or "destructive device" as  
 513 defined in s. 790.001 and, as the result of the discharge, death  
 514 or great bodily harm was inflicted upon any person, the  
 515 convicted person shall be sentenced to a minimum term of  
 516 imprisonment of not less than 25 years and not more than a term  
 517 of imprisonment of life in prison.

518 (3)(a)1. Any person who is convicted of a felony or an  
 519 attempt to commit a felony, regardless of whether the use of a  
 520 firearm is an element of the felony, and the conviction was for:

- 521 a. Murder;
- 522 b. Sexual battery;
- 523 c. Robbery;
- 524 d. Burglary;
- 525 e. Arson;
- 526 f. Aggravated assault;
- 527 g. Aggravated battery;
- 528 h. Kidnapping;
- 529 i. Escape;
- 530 j. Sale, manufacture, delivery, or intent to sell,  
 531 manufacture, or deliver any controlled substance;
- 532 k. Aircraft piracy;
- 533 l. Aggravated child abuse;
- 534 m. Aggravated abuse of an elderly person or disabled  
 535 adult;
- 536 n. Unlawful throwing, placing, or discharging of a  
 537 destructive device or bomb;
- 538 o. Carjacking;
- 539 p. Home-invasion robbery;
- 540 q. Aggravated stalking; or
- 541 r. Trafficking in cannabis, trafficking in cocaine,  
 542 capital importation of cocaine, trafficking in illegal drugs,  
 543 capital importation of illegal drugs, trafficking in



544 phencyclidine, capital importation of phencyclidine, trafficking  
 545 in methaqualone, capital importation of methaqualone,  
 546 trafficking in amphetamine, capital importation of amphetamine,  
 547 trafficking in flunitrazepam, trafficking in gamma-  
 548 hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,  
 549 trafficking in Phenethylamines, or other violation of s.  
 550 893.135(1);

551  
 552 and during the commission of the offense, such person possessed  
 553 a semiautomatic firearm and its high-capacity detachable box  
 554 magazine or a machine gun as defined in s. 790.001, shall be  
 555 sentenced to a minimum term of imprisonment of 15 years.

556 2. Any person who is convicted of a felony or an attempt  
 557 to commit a felony listed in subparagraph (a)1., regardless of  
 558 whether the use of a weapon is an element of the felony, and  
 559 during the course of the commission of the felony such person  
 560 discharged a semiautomatic firearm and its high-capacity box  
 561 magazine or a "machine gun" as defined in s. 790.001 shall be  
 562 sentenced to a minimum term of imprisonment of 20 years.

563 3. Any person who is convicted of a felony or an attempt  
 564 to commit a felony listed in subparagraph (a)1., regardless of  
 565 whether the use of a weapon is an element of the felony, and  
 566 during the course of the commission of the felony such person  
 567 discharged a semiautomatic firearm and its high-capacity box  
 568 magazine or a "machine gun" as defined in s. 790.001 and, as the  
 569 result of the discharge, death or great bodily harm was

570 | inflicted upon any person, the convicted person shall be  
 571 | sentenced to a minimum term of imprisonment of not less than 25  
 572 | years and not more than a term of imprisonment of life in  
 573 | prison.

574 |         Section 4. For the purpose of incorporating the amendment  
 575 | made by this act to section 893.135, Florida Statutes, in  
 576 | references thereto, paragraph (a) of subsection (1) and  
 577 | subsections (3) and (4) of section 782.04, Florida Statutes, are  
 578 | reenacted to read:

579 |         782.04 Murder.—

580 |         (1)(a) The unlawful killing of a human being:

581 |             1. When perpetrated from a premeditated design to effect  
 582 | the death of the person killed or any human being;

583 |             2. When committed by a person engaged in the perpetration  
 584 | of, or in the attempt to perpetrate, any:

585 |                 a. Trafficking offense prohibited by s. 893.135(1),

586 |                 b. Arson,

587 |                 c. Sexual battery,

588 |                 d. Robbery,

589 |                 e. Burglary,

590 |                 f. Kidnapping,

591 |                 g. Escape,

592 |                 h. Aggravated child abuse,

593 |                 i. Aggravated abuse of an elderly person or disabled

594 | adult,

595 |                 j. Aircraft piracy,

- 596 k. Unlawful throwing, placing, or discharging of a  
 597 destructive device or bomb,
- 598 l. Carjacking,
- 599 m. Home-invasion robbery,
- 600 n. Aggravated stalking,
- 601 o. Murder of another human being,
- 602 p. Resisting an officer with violence to his or her  
 603 person,
- 604 q. Aggravated fleeing or eluding with serious bodily  
 605 injury or death,
- 606 r. Felony that is an act of terrorism or is in furtherance  
 607 of an act of terrorism; or
- 608 3. Which resulted from the unlawful distribution of any  
 609 substance controlled under s. 893.03(1), cocaine as described in  
 610 s. 893.03(2)(a)4., opium or any synthetic or natural salt,  
 611 compound, derivative, or preparation of opium, or methadone by a  
 612 person 18 years of age or older, when such drug is proven to be  
 613 the proximate cause of the death of the user,  
 614  
 615 is murder in the first degree and constitutes a capital felony,  
 616 punishable as provided in s. 775.082.
- 617 (3) When a human being is killed during the perpetration  
 618 of, or during the attempt to perpetrate, any:
- 619 (a) Trafficking offense prohibited by s. 893.135(1),  
 620 (b) Arson,  
 621 (c) Sexual battery,

622 (d) Robbery,  
 623 (e) Burglary,  
 624 (f) Kidnapping,  
 625 (g) Escape,  
 626 (h) Aggravated child abuse,  
 627 (i) Aggravated abuse of an elderly person or disabled  
 628 adult,  
 629 (j) Aircraft piracy,  
 630 (k) Unlawful throwing, placing, or discharging of a  
 631 destructive device or bomb,  
 632 (l) Carjacking,  
 633 (m) Home-invasion robbery,  
 634 (n) Aggravated stalking,  
 635 (o) Murder of another human being,  
 636 (p) Aggravated fleeing or eluding with serious bodily  
 637 injury or death,  
 638 (q) Resisting an officer with violence to his or her  
 639 person, or  
 640 (r) Felony that is an act of terrorism or is in  
 641 furtherance of an act of terrorism,  
 642  
 643 by a person other than the person engaged in the perpetration of  
 644 or in the attempt to perpetrate such felony, the person  
 645 perpetrating or attempting to perpetrate such felony commits  
 646 murder in the second degree, which constitutes a felony of the  
 647 first degree, punishable by imprisonment for a term of years not

648 exceeding life or as provided in s. 775.082, s. 775.083, or s.  
 649 775.084.

650 (4) The unlawful killing of a human being, when  
 651 perpetrated without any design to effect death, by a person  
 652 engaged in the perpetration of, or in the attempt to perpetrate,  
 653 any felony other than any:

- 654 (a) Trafficking offense prohibited by s. 893.135(1),
- 655 (b) Arson,
- 656 (c) Sexual battery,
- 657 (d) Robbery,
- 658 (e) Burglary,
- 659 (f) Kidnapping,
- 660 (g) Escape,
- 661 (h) Aggravated child abuse,
- 662 (i) Aggravated abuse of an elderly person or disabled  
 663 adult,
- 664 (j) Aircraft piracy,
- 665 (k) Unlawful throwing, placing, or discharging of a  
 666 destructive device or bomb,
- 667 (l) Unlawful distribution of any substance controlled  
 668 under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4.,  
 669 or opium or any synthetic or natural salt, compound, derivative,  
 670 or preparation of opium by a person 18 years of age or older,  
 671 when such drug is proven to be the proximate cause of the death  
 672 of the user,
- 673 (m) Carjacking,

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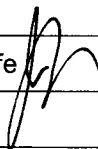

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674           (n) Home-invasion robbery,  
675           (o) Aggravated stalking,  
676           (p) Murder of another human being,  
677           (q) Aggravated fleeing or eluding with serious bodily  
678 injury or death,  
679           (r) Resisting an officer with violence to his or her  
680 person, or  
681           (s) Felony that is an act of terrorism or is in  
682 furtherance of an act of terrorism,  
683  
684 is murder in the third degree and constitutes a felony of the  
685 second degree, punishable as provided in s. 775.082, s. 775.083,  
686 or s. 775.084.  
687           Section 5. This act shall take effect July 1, 2014.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 139 Volunteers for Organized Youth Sports and Recreational Programs  
**SPONSOR(S):** Criminal Justice Subcommittee; Jones, S. and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 358

| REFERENCE                              | ACTION              | ANALYST   | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF  |
|--|---------------------|---|---|
| 1) Criminal Justice Subcommittee       | 12 Y, 0 N, As<br>CS | Thomas  | Cunningham  |
| 2) Justice Appropriations Subcommittee |                     | McAuliffe  | Lloyd  |
| 3) Judiciary Committee                 |                     |   |   |

### SUMMARY ANALYSIS

Section 943.0438, F.S., defines an "independent sanctioning authority" as a private entity that organizes, operates, or coordinates a youth athletic team in this state if the team includes one or more minors and is not affiliated with a private school as defined in s. 1002.01, F.S. Currently, independent sanctioning authorities must conduct a limited background screening on each current or prospective athletic coach for a youth athletic team that:

- Works twenty or more hours within a calendar year, whether as a volunteer or for compensation; and
- Has direct contact with one or more minors on the team.

The independent sanctioning authority must check to see if the coach is listed in the sexual offender and sexual predator registries available on public websites maintained by the Florida Department of Law Enforcement and the United States Department of Justice.

The bill expands the current background screening requirements of s. 943.0438, F.S., to include assistant coaches and referees. In addition, the bill requires the background screening to include a Level 1 background check through the Florida Department of Law Enforcement (FDLE). A Level 1 background check requires the person's name to be run against Florida's criminal history records by FDLE and requires a \$24 fee. A Level 1 check includes a list of disqualifying offenses which would make the applicant ineligible to become a coach or referee – the same offenses that would disqualify a person from working in a child care facility. The bill authorizes the authority to allow certain disqualified persons to coach if the person:

- Has completed their sanctions at least 3 years prior for a felony conviction;
- Has completed their sanctions for a misdemeanor conviction; and
- Is not a career criminal offender, registered sex offender, or sex predator.

The bill prohibits the authority from delegating the screening responsibility to an individual team, and requires that the documentation of the results of each person screened and the written notice provided to any disqualified person be maintained for at least five years.

The bill will increase state revenues through the collection of background check fees and may have a workload impact on FDLE, but should not impact local governments. However, the increased revenues collected should offset any workload issues.

The bill is effective July 1, 2014.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

###### Employee Background Screening

Florida law provides standard procedures for the screening of prospective employees where the Legislature has determined it necessary to conduct criminal history background checks to protect vulnerable persons.<sup>1</sup> These standards include two different levels of screening: "Level 1" employment screening and "Level 2" employment screening. The Florida Department of Law Enforcement (FDLE) provides these criminal history checks to the employer or relevant state agency.

Level 1 screenings<sup>2</sup> are name-based demographic screenings that include statewide criminal record checks through FDLE. Level 2 screenings<sup>3</sup> consist of a fingerprint-based search of FDLE and the Federal Bureau of Investigations databases for state and national criminal arrest records. Level 1 screenings and Level 2 screenings have the same disqualifying offenses.<sup>4</sup> A Level 1 search may be conducted through FDLE via the internet with payment made by the use of a credit card.

###### Background Screening of Youth Athletic Team Coaches

Section 943.0438, F.S., defines an "independent sanctioning authority" as a private entity that organizes, operates, or coordinates a youth athletic team in this state if the team includes one or more minors and is not affiliated with a private school as defined in s. 1002.01, F.S. Currently, independent sanctioning authorities are not required to conduct a Level 1 or Level 2 screening. Instead, these entities must conduct a limited background screening on each current or prospective athletic coach for a "youth athletic team"<sup>5</sup> that:

- Works twenty or more hours within a calendar year, whether as a volunteer or for compensation; and
- Has direct contact with one or more minors on the team.<sup>6</sup>

The independent sanctioning authority must check to see if the coach is listed in the sexual offender and sexual predator registries available on public websites maintained by FDLE<sup>7</sup> and the United States Department of Justice (DOJ)<sup>8,9</sup>

The sanctioning authority must disqualify any applicant from acting as an athletic coach if the applicant appears in either registry.<sup>10</sup> The sanctioning authority must provide, within seven days of the screening, written notification to a disqualified person advising him or her of the results.<sup>11</sup> The sanctioning authority must maintain documentation of the results of each person screened and the written notice provided to any disqualified person. The statute is silent as to how long that documentation must be kept.<sup>12</sup>

<sup>1</sup> Chapter 435, F.S.

<sup>2</sup> Level 1 screenings are outlined in s. 435.03, F.S.

<sup>3</sup> Level 2 screenings are outlined in s. 435.04, F.S.

<sup>4</sup> Sections 435.03(2) and 435.04(2), F.S.

<sup>5</sup> The term "youth athletic team" is not defined in statute.

<sup>6</sup> Section 943.0438(1)(a) and (2)(a), F.S.

<sup>7</sup> <http://offender.fdle.state.fl.us/offender/Search.jsp> (last visited January 28, 2014).

<sup>8</sup> <http://www.nsopr.gov/?AspxAutoDetectCookieSupport=1> (last visited January 28, 2014).

<sup>9</sup> Section 943.0438(2)(a)1., F.S. Alternatively, the independent sanctioning authority may use a commercial consumer reporting agency that is in compliance with the federal Fair Credit Reporting Act to perform the required screening provided the agency searches the same sexual offender and sexual predator registries. Section 943.0438(2)(a)2., F.S.

<sup>10</sup> Section 943.0438(2)(b), F.S.

<sup>11</sup> Section 943.0438(2)(c), F.S.

<sup>12</sup> Section 943.0438(2)(d), F.S.

Current law further provides that, in any civil action brought for damages caused by the intentional tort of a coach that relates to sexual misconduct committed by the coach, there is a rebuttable presumption that the sanctioning authority was not negligent in using the coach if the sanctioning authority complied with the required background screening and disqualification requirements.<sup>13</sup>

Florida law does not currently require a sanctioning authority to background screen volunteers (other than coaches for independent youth athletic teams), nor is there a law that requires a sanctioning authority to screen volunteers for private organized youth recreational programs that are not athletic programs. In contrast, Florida law does require volunteers at certain locations to have a background screening,<sup>14</sup> and in certain instances, prohibits or limits a sexual offender's contact with minors altogether.<sup>15</sup>

### **Proposed Changes**

The bill expands the current background screening requirements of s. 943.0438, F.S., to include assistant coaches and referees that:

- Work twenty or more hours within a calendar year, whether as a volunteer or for compensation; and
- Have direct contact with one or more minors on the team.

The bill provides that the required background screening of coaches, assistant coaches, and referees must include a Level 1 background check through FDLE, as well as a search of the sexual offender and sexual predator registries available on public websites maintained by FDLE and DOJ. The applicable disqualifying offenses for a Level 1 screening are the same as those for employees of child care facilities.<sup>16</sup> The bill authorizes the independent sanctioning authority to allow certain disqualified persons to act coach, assistant coach, or referee if the person qualifies for an exemption from disqualification as provided in s. 435.07, F.S. To qualify for the exemption from disqualification, the applicant must:

- Have completed all sanctions at least 3 years prior for a felony conviction;
- Have completed all sanctions for a misdemeanor conviction; and
- Not be a career criminal offender, registered sex offender, or sex predator.

The bill prohibits the authority from delegating the screening responsibility to an individual team. The bill requires that the documentation of the results of each person screened and the written notice provided to any disqualified person be maintained for at least five years.

## **B. SECTION DIRECTORY:**

Section 1. Amends s. 943.0438, F.S., relating to athletic coaches for independent sanctioning authorities.

Section 2. Provides an effective date of July 1, 2014.

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<sup>13</sup> Section 943.0438(3), F.S.

<sup>14</sup> Section 943.04351, F.S., requires a state agency or governmental subdivision, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, to conduct a search of that person through the registration information regarding sexual predators and sexual offenders maintained by DOJ.

<sup>15</sup> Section 775.21(10)(b), F.S., makes it a third-degree felony for a registered sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any specified sexual offense wherein the victim was a minor and the offender is not the parent or guardian of the victim, to work or volunteer at any business, school, daycare center, park, playground, or other place where children regularly congregate.

<sup>16</sup> Section 402.305(2), F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill will increase revenues to the state. Each Level 1 background check requires the payment of a \$24 fee, which is deposited into the FDLE Operating Trust Fund. It is unknown how many background checks will be done under the provisions of the bill. For purposes of discussion, if 10,000 background checks are done in a fiscal year, then the revenue collected will be \$240,000.

#### 2. Expenditures:

This bill may have some impact on FDLE's workload. Level 1 background checks can be done through the internet with the use of a credit card. If the checks required by the bill are done through the internet, then the workload impact on FDLE should be minimal. If the checks are done through the mail, the impact will be more significant. However, the increased revenues collected should offset any workload issues.

### 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 independent sanctioning authorities of youth athletic teams affected by the bill will incur the cost associated with the required background checks of coaches, assistant coaches, and referees. Such expense may be passed on to the coaches or the youth, perhaps through registration fees.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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

The 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:

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

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 5, 2014, the Criminal Justice Subcommittee adopted a strike all amendment and reported the bill favorably as a committee substitute. The strike all amendment revised the bill to:

- Narrow the scope of the bill to only include independent sanctioning authorities of youth athletic teams;
- Expand the current required screening to include assistant coaches and referees; and
- Provide that the screening must include a Level 1 background check.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1                                    A bill to be entitled  
 2                    An act relating to athletic coaches for youth athletic  
 3                    teams; amending s. 943.0438, F.S.; revising the  
 4                    definition of the term "athletic coach"; expanding  
 5                    provisions relating to athletic coaches for  
 6                    independent sanctioning authorities to require such  
 7                    authorities to conduct specified background screening  
 8                    of certain coaches of youth athletic teams; providing  
 9                    that the duty may not be delegated; providing for  
 10                    disqualification; providing for exemption from  
 11                    disqualification; requiring that specified  
 12                    documentation be maintained for a specified period by  
 13                    such authorities; providing an effective date.

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

16  
 17                    Section 1. Subsection (1) and paragraphs (a), (b), (c),  
 18                    and (d) of subsection (2) of section 943.0438, Florida Statutes,  
 19                    are amended to read:

20                    943.0438 Athletic coaches for independent sanctioning  
 21                    authorities.—

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

23                    (a) "Athletic coach" means a person who:

24                    1. Is authorized by an independent sanctioning authority  
 25                    to work as a coach, assistant coach, or referee for 20 or more  
 26                    hours within a calendar year, whether for compensation or as a

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27 volunteer, for a youth athletic team based in this state; and  
 28 2. Has direct contact with one or more minors on the youth  
 29 athletic team.

30 (b) "Independent sanctioning authority" means a private,  
 31 nongovernmental entity that organizes, operates, or coordinates  
 32 a youth athletic team in this state if the team includes one or  
 33 more minors and is not affiliated with a private school as  
 34 defined in s. 1002.01.

35 (2) An independent sanctioning authority shall:

36 (a)1. Conduct a level 1 background screening pursuant to  
 37 s. 435.03 of each current and prospective athletic coach. The  
 38 authority may not delegate this responsibility to an individual  
 39 team and may not authorize any ~~No person shall be authorized by~~  
 40 ~~the independent sanctioning authority~~ to act as an athletic  
 41 coach unless a level 1 background screening is ~~has been~~  
 42 conducted and does ~~did~~ not result in disqualification under  
 43 paragraph (b). Level 1 background screenings shall be conducted  
 44 annually for each athletic coach. For purposes of this section,  
 45 a background screening shall include ~~be conducted with~~ a search  
 46 of the athletic coach's name or other identifying information  
 47 against state and federal registries of sexual predators and  
 48 sexual offenders, which are available to the public on Internet  
 49 sites provided by:

- 50 a. The Department of Law Enforcement under s. 943.043; and
- 51 b. The Attorney General of the United States under 42
- 52 U.S.C. s. 16920.

53 |           2. For purposes of this section, a background screening  
 54 | conducted by a commercial consumer reporting agency in  
 55 | compliance with the federal Fair Credit Reporting Act using the  
 56 | identifying information referenced in subparagraph 1. ~~and~~ that  
 57 | includes a level 1 background screening and a search of  
 58 | ~~searching~~ that information against the sexual predator and  
 59 | sexual offender Internet sites listed in sub-subparagraphs 1.a.  
 60 | and b. shall be deemed to satisfy ~~in compliance with~~ the  
 61 | requirements of this paragraph ~~section~~.

62 |           (b) Disqualify any person from acting as an athletic coach  
 63 | as provided in s. 435.03 or if he or she is identified on a  
 64 | registry described in paragraph (a). The authority may allow a  
 65 | person disqualified under this paragraph to act as an athletic  
 66 | coach if it determines that the person meets the requirements  
 67 | for an exemption from disqualification under s. 435.07.

68 |           (c) Provide, within 7 business days following the  
 69 | background screening under paragraph (a), written notice to a  
 70 | person disqualified under this section advising the person of  
 71 | the results and of his or her disqualification.

72 |           (d) Maintain for at least 5 years documentation of:

73 |           1. The results for each person screened under paragraph  
 74 | (a); and

75 |           2. The written notice of disqualification provided to each  
 76 | person under paragraph (c).

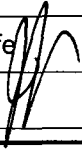

77 |           Section 2. This act shall take effect July 1, 2014.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 627 Service of Process  
**SPONSOR(S):** Pilon  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 620

| REFERENCE                              | ACTION    | ANALYST   | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF  |
|--|-----------|---|---|
| 1) Civil Justice Subcommittee          | 11 Y, 0 N | Ward  | Bond  |
| 2) Justice Appropriations Subcommittee |           | McAuliffe  | Lloyd  |
| 3) Judiciary Committee                 |           |   |   |

### SUMMARY ANALYSIS

The duties of a sheriff include service of process and execution of money judgments. Service of process is the means by which official notice of an action is delivered to a defendant or respondent. Service of process may also be made by authorized individuals. A "return of service" proving by affidavit that the process was delivered to the proper party is then filed with the court. The bill:

- Provides that a fee of \$40 will be charged by the sheriff for each summons served;
- Provides immunity to a sheriff for wrongful levy or distribution of the proceeds of sale;
- Requires that the party requesting service of process or the process server file the return of service; and
- Adds a noncriminal penalty of up to \$1,000 for an employer who refuses to accommodate service of process on an employee.

The bill appears to have an unknown minimal positive fiscal impact on state and local government revenues. The bill may increase revenues of private process servers, and may increase costs to users of the court system.

The bill has an effective date of July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

###### *Service of Process*

Under Florida Rule of Civil Procedure 1.070(b), any person who is authorized by law to complete service of process may do so in accordance with applicable Florida law for the execution of legal process. Chapter 48, F.S., provides that service of process may be served by the sheriff in the county where the party to be served is located.<sup>1</sup> The sheriff may appoint special process servers who meet specified statutory minimum requirements.<sup>2</sup> The chief judge of the circuit court may establish an approved list of certified process servers.<sup>3</sup>

Authorized process servers serve the complaint or petition on a defendant or a respondent in a civil case so that the court may acquire personal jurisdiction over the person who receives service. Strict compliance with the statutory provisions of service of process is required in order for the court to obtain jurisdiction over a party and to assure that a defendant or respondent receives notice of the proceedings filed.<sup>4</sup> Because strict compliance with all of the statutory requirements for service is required, the failure to comply with the statutory terms renders that service defective, resulting in a failure to acquire jurisdiction over the defendant or respondent.<sup>5</sup>

Service of original process and most witness subpoenas is made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of the contents.<sup>6</sup> Each process server must document the service of process by placing the date and time of service and the process server's identification number and initials on the copy served.<sup>7</sup> The person serving process is obligated to file the return of service form with the court to show that service was made.<sup>8</sup>

The sheriffs of all counties of the state must charge fixed, nonrefundable fees for docketing and service of process.<sup>9</sup> The sheriffs must charge \$40 for docketing and serving each summons or writ of execution, except if duplicate process is to be served in the same action on the same person.<sup>10</sup> This may occur, for example, when a defendant is sued both individually and in some representative capacity in the same action. In that event, two summons' are issued and served. Current law precludes the sheriff from charging for service of each in such an event, when both are served at the same time.<sup>11</sup>

Currently, sheriffs may levy upon assets in satisfaction of a judgment, and sell those assets for payment of the judgment when they are provided a writ of execution by the court.<sup>12</sup> There is a

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<sup>1</sup> Section 48.021(1), F.S.

<sup>2</sup> Section 48.021(2), F.S.

<sup>3</sup> Section 48.27, F.S.

<sup>4</sup> *Vidal v. SunTrust Bank*, 41 So.3d 401, 402-03 (Fla. 4th DCA 2010).

<sup>5</sup> See s. 48.031, F.S.; *Vidal*, 41 So.3d at 402-04 (holding that the process server's failure to note the time of service of the bank's complaint on the copy of the complaint that was served on the debtor rendered the service of the complaint defective).

<sup>6</sup> Sections 48.031(1) and 48.031(3), F.S.

<sup>7</sup> Sections 48.29(6) and 48.031(5), F.S.

<sup>8</sup> Section 48.031(5), F.S.

<sup>9</sup> Section 30.231(1), F.S.

<sup>10</sup> Section 30.231(1)(a), F.S.

<sup>11</sup> Section 30.231(1)(a), F.S.

<sup>12</sup> See s. 30.30, F.S.

requirement that the judgment creditor provide an affidavit assuring the sheriff of clear title in the debtor to the asset,<sup>13</sup> but there is no statutory requirement that the parties in interest direct how proceeds of sale are to be paid.

## **Effect of Proposed Changes**

### *Service on an Employee of a Business*

Section 48.031, F.S., provides that an employer "shall permit" service of process on an employee in a private area designated by the employer. The bill creates a noncriminal<sup>14</sup> penalty of up to \$1,000<sup>15</sup> for an employer or an agent who fails to comply with this provision.

### *Sheriff's Fees for Service*

The bill amends s. 30.231, F.S., which currently provides that when serving more than one process regarding the same action at one location, the sheriff is only entitled to one fee. The bill removes this limiting provision, allowing the sheriff to charge \$40 per process served at the same time in the same cause of action. The effect is that the sheriff may be paid multiple times to serve one person who has multiple capacities in one lawsuit.<sup>16</sup>

### *Filing of the Return of Service*

The bill adds that either the person requesting service or the person authorized to serve process may file the return of service with the court.

### *Sheriff Sales in Execution of Judgments*

The bill provides that the sheriff may rely upon the affidavit of clear title provided by the judgment creditor, and that the sheriff is not liable for wrongful distribution of funds which are proceeds of the sale.

The bill adds that a sheriff may apply to the court for instructions for distribution of sale proceeds. Instructions may be requested of the court that entered the judgment or the court in the jurisdiction where the levied property lies. The bill provides that service of the application for instructions and notice of hearing must be given by the sheriff to the parties. Service related to this hearing may be made by certified mail.

The bill takes effect July 1, 2014.

## **B. SECTION DIRECTORY:**

Section 1 amends s. 30.231, F.S., regarding sheriff's fees for service of summons, subpoenas, etc.

Section 2 amends s. 48.031, F.S., regarding service of process generally.

Section 3 amends s. 48.081, F.S., regarding service on corporation.

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<sup>13</sup> See s. 56.27(4), F.S.

<sup>14</sup> A noncriminal violation is any offense punishable by nothing more than a fine, forfeiture, or other civil penalty, and does not constitute a crime. *State v. Knowles*, 625 So.2d 88 (Fla. 5th DCA 1993).

<sup>15</sup> Noncriminal fines are deposited by the clerk of the court in the "fine and forfeiture fund established pursuant to s. 142.01." See s. 775.083(1)(g), F.S.

<sup>16</sup> For example, a corporate debt might be personally guaranteed by an officer of the corporation. Suit may then be brought against the same person in two capacities. Therefore, one person would be served twice with the same complaint - once individually, and once as an officer of the corporation.

Section 4 amends 56.27, F.S., regarding executions and payment of money collected.

Section 5 provides that the bill takes effect July 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The portion of the bill creating a civil penalty may have a minimal positive 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 portion of the bill providing that the sheriff may charge a fee for each process served rather than each address served may have an unknown positive fiscal impact on revenues received by sheriffs. See Fiscal Comments.

#### 2. Expenditures:

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

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

The bill may positively revenues of private process servers and appears to increase costs to users of the civil court system. See Fiscal Comments.

### D. FISCAL COMMENTS:

The fiscal impact of the portion of the bill providing that the sheriff may charge a fee for each process served rather than each address served may have unknown fiscal impacts on governments and the private sector.

While fees charged by the sheriff are fixed in statute, private process servers are free to charge any fee that the competitive market will bear. Some process servers match the sheriff's fees, some advertise lower fees to attract business, and others charge more and compete on service rather than price. In general, however, economic theory suggests that an increase in the statutory price for service of process generally leads to an increase in the private cost of such service. Should this occur, revenues to sheriffs and to private process servers will increase as a result of this bill, and the cost to the private sector litigants for prosecuting civil lawsuits will correspondingly increase.

There is no statistical reporting of how often sheriffs and private process servers currently serve a single individual in multiple capacities, and thus no means to accurately estimate the fiscal impact of the bill.

### **III. COMMENTS**

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

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

The 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:**

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

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

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

1                   A bill to be entitled  
 2           An act relating to service of process; amending s.  
 3           30.231, F.S.; requiring sheriffs to charge a uniform  
 4           fee for service of process; providing that such  
 5           uniform fee does not include the cost of docketing;  
 6           amending s. 48.031, F.S.; requiring an employer to  
 7           allow an authorized individual to make service on an  
 8           employee in a private area designated by the employer;  
 9           providing a civil fine for employers who fail to  
 10          comply with the process; revising provisions relating  
 11          to substitute service if a specified number of  
 12          attempts of service have been made at a business that  
 13          is a sole proprietorship under certain circumstances;  
 14          requiring the person requesting service or the person  
 15          authorized to serve the process to file the return-of-  
 16          service form; amending s. 48.081, F.S.; revising a  
 17          provision related to service on a corporation;  
 18          amending s. 56.27, F.S.; providing that a sheriff may  
 19          rely on the affidavit submitted by the levying  
 20          creditor; authorizing a sheriff to apply for  
 21          instructions from the court regarding the distribution  
 22          of proceeds from the sale of a levied property;  
 23          providing an effective date.

24  
 25   Be It Enacted by the Legislature of the State of Florida:  
 26

27 Section 1. Subsection (1) of section 30.231, Florida  
 28 Statutes, is amended to read:

29 30.231 Sheriffs' fees for service of summons, subpoenas,  
 30 and executions.-

31 (1) The sheriffs of all counties of the state in civil  
 32 cases shall charge fixed, nonrefundable fees for ~~docketing and~~  
 33 service of process, according to the following schedule:

34 (a) All summons or writs except executions: \$40 for each  
 35 summons or writ to be served, ~~except when more than one summons~~  
 36 ~~or writ is issued at the same time out of the same cause of~~  
 37 ~~action to be served upon one person or defendant at the same~~  
 38 ~~time, in which case the sheriff shall be entitled to one fee.~~

39 (b) All writs except executions requiring a levy or  
 40 seizure of property: \$50 in addition to the \$40 fee as stated in  
 41 paragraph (a).

42 (c) Witness subpoenas: \$40 for each witness to be served.

43 (d) Executions:

44 1. Forty dollars for processing each writ of execution,  
 45 regardless of the number of persons involved.

46 2. Fifty dollars for each levy.

47 a. A levy is considered made when any property or any  
 48 portion of the property listed or unlisted in the instructions  
 49 for levy is seized, or upon demand of the sheriff the writ is  
 50 satisfied by the defendant in lieu of seizure. Seizure requires  
 51 that the sheriff take actual possession, if practicable, or,  
 52 alternatively, constructive possession of the property by order

53 of the court.

54 b. When the instructions are for levy upon real property,  
55 a levy fee is required for each parcel described in the  
56 instructions.

57 c. When the instructions are for levy based upon personal  
58 property, one fee is allowed, unless the property is seized at  
59 different locations, conditional upon all of the items being  
60 advertised collectively and the sale being held at a single  
61 location. However, if the property seized cannot be sold at one  
62 location during the same sale as advertised, but requires  
63 separate sales at different locations, the sheriff may ~~is~~ then  
64 ~~authorized to~~ impose a levy fee for the property and sale at  
65 each location.

66 3. Forty dollars for advertisement of sale under process.

67 4. Forty dollars for each sale under process.

68 5. Forty dollars for each deed, bill of sale, or  
69 satisfaction of judgment.

70 Section 2. Paragraph (b) of subsection (1), paragraph (b)  
71 of subsection (2), and subsection (5) of section 48.031, Florida  
72 Statutes, are amended to read:

73 48.031 Service of process generally; service of witness  
74 subpoenas.-

75 (1)

76 (b) An employer ~~Employers~~, when contacted by an individual  
77 authorized to serve ~~make service of~~ process, shall allow ~~permit~~  
78 the authorized individual to serve an employee ~~make service on~~



79 ~~employees~~ in a private area designated by the employer. An  
 80 employer who fails to comply with this paragraph commits a  
 81 noncriminal violation, punishable by a fine of up to \$1,000.

82 (2)

83 (b) Substitute service may be made on an individual doing  
 84 business as a sole proprietorship at his or her place of  
 85 business, during regular business hours, by serving the person  
 86 in charge of the business at the time of service if two ~~or more~~  
 87 attempts to serve the owner have been made at the place of  
 88 business.

89 (5) A person serving process shall place, on the first  
 90 page of at least one of the processes served, the date and time  
 91 of service and his or her identification number and initials for  
 92 all service of process. The person serving process shall list on  
 93 the return-of-service form all initial pleadings delivered and  
 94 served along with the process. The person requesting service or  
 95 the person authorized to serve ~~issuing~~ the process shall file  
 96 the return-of-service form with the court.

97 Section 3. Paragraph (b) of subsection (3) of section  
 98 48.081, Florida Statutes, is amended to read:

99 48.081 Service on corporation.—

100 (3)

101 (b) If the address ~~provided~~ for the registered agent,  
 102 officer, director, or principal place of business is a residence  
 103 or private mailbox, service on the corporation may be made by  
 104 serving the registered agent, officer, or director in accordance

105 with s. 48.031.

106 Section 4. Subsection (5) of section 56.27, Florida  
 107 Statutes, is amended, and subsection (6) is added to that  
 108 section, to read:

109 56.27 Executions; payment of money collected.—

110 (5) A sheriff may rely on the affidavit submitted as  
 111 required under this section, and a sheriff paying money received  
 112 under an execution in accordance with the information contained  
 113 in the affidavit required under subsection (4) is not liable to  
 114 anyone for damages arising from a wrongful levy or wrongful  
 115 distribution of funds.

116 (6) A sheriff who is uncertain as to whom to disburse the  
 117 proceeds from the sale of the levied property may apply for  
 118 instructions from:

119 (a) The court that entered the judgment that is the basis  
 120 of the judgment lien; or

121 (b) The appropriate court where the levied property was  
 122 located at the time of the levy,

123  
 124 if the sheriff serves, by process pursuant to chapter 48, by  
 125 certified mail, or by return receipt requested, a copy of his or  
 126 her application and the notice of hearing on the levying  
 127 creditor, the judgment debtor, and any other parties identified  
 128 in the affidavit.

129 Section 5. This act shall take effect July 1, 2014.