



Justice Appropriations Subcommittee

Meeting Packet

**March 11, 2014
9:30 a.m. – 11:30 a.m.
Morris Hall**



The Florida House of Representatives
APPROPRIATIONS COMMITTEE

Justice Appropriations Subcommittee

Will Weatherford
Speaker

Charles McBurney
Chair

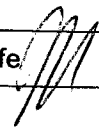

MEETING AGENDA

Morris Hall
March 11, 2014

- I.** Meeting Called To Order
- II.** Opening Remarks by Chair
- III.** Consideration of the following bill(s):
 - CS/HB 265 - Arrest Booking Photographs by Criminal Justice Subcommittee and Rep. Trujillo
 - CS/HB 409 - Offenses Against Vulnerable Persons by Criminal Justice Subcommittee and Rep. Passidomo
 - CS/HB 485 - Sexual Offenses Against Students by Authority Figures by Criminal Justice Committee and Rep. Raburn
 - CS/HB 641 - Computer Crimes by Criminal Justice Subcommittee and Rep. LaRosa
 - CS/HB 697 - Controlled Substances by Criminal Justice Subcommittee and Rep. Ingram
 - HB 7035 - Juvenile Sentencing by Criminal Justice Subcommittee and Rep. Grant
- IV.** Closing Remarks
- V.** Meeting Adjourned

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 265 Arrest Booking Photographs
SPONSOR(S): Criminal Justice Subcommittee; Trujillo and others
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 298

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Westcott	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe 	Lloyd 
3) Judiciary Committee			

SUMMARY ANALYSIS

When a person is arrested, his or her photograph is taken as part of the booking process. In Florida, as in most states, this photograph (often referred to as a "mug shot") is a public record. Many municipal and county law enforcement agencies post these photographs on their own websites. In recent years, a trend has developed where companies scour the public records of a state, including the municipal and county websites, and post mug shots on their own private websites. Because this is often embarrassing, many individuals seek to have this information removed. However, many of the websites charge a fee to remove the photograph from their website. The expense is compounded when the photograph is posted on multiple websites, with each charging their own removal fee.

The bill amends s. 951.23, F.S., to prohibit a county or municipal detention facility from electronically publishing or disseminating arrest booking photographs prior to a conviction. The bill does not prohibit the electronic publication or dissemination of arrest booking photographs between criminal justice agencies, and persons may still obtain such photographs through a public records request.

The term "arrest booking photograph" is defined as a photograph of an arrestee taken for the purpose of recording the arrestee's image as part of the arrest and booking process.

The bill does not appear to have a state fiscal impact, but may have an indeterminate fiscal impact on counties and municipalities.

The bill is effective on October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

When a person is arrested, his or her photograph is taken. In Florida, as in most states, this photograph (often referred to as a "mug shot") is a public record. Most county and municipal law enforcement agencies post the arrest booking photographs on their respective websites. In recent years, a trend has developed where companies scour the public records of a state, including the websites of municipal and county law enforcement agencies, and post the mug shots on their own private websites.¹ The publication of these photographs on the internet can lead to problems and embarrassment for many individuals. For example, if a potential employer conducts an internet search of a potential employee, one of the top results might be a mug shot.²

Generally, private mug shot websites keep a mug shot on their websites even if the person was found not guilty, or even if the charges are dropped.³ Many of these websites will remove the photograph for a fee (often a very expensive one).⁴ There are also third-party websites that offer to remove photographs from private mug shot websites for a fee.⁵ The fees of one of these third party websites range from \$399 to remove one photograph to \$1799 to remove five photographs.⁶ The expense is compounded, however, when a photograph is posted on multiple websites, with each charging their own fee for removal.⁷ There have also been reported incidents of people paying the fees and their photographs not being removed.⁸

Other State Responses

Other states have recently passed laws addressing this problem in various ways. Some have passed laws that say public records cannot be used for commercial purposes.⁹ This strategy could raise First Amendment concerns since the photographs usually involved are obtained legally. Other states have adopted different measures. Oregon, for example, passed a law requiring that a company remove the photograph upon request in instances where the individual can prove that the charges were dismissed or the individual was exonerated.¹⁰ Oregon's bill passed during the summer of 2013,¹¹ so its effectiveness is unclear at this point. An American Bar Association article argues that there is no legal solution to this problem, and instead, the solution is going to be in the private sector.¹² The article states:

¹ David Segal, *Mugged by a Mug Shot Online*, The New York Times, Oct. 5, 2013, http://www.nytimes.com/2013/10/06/business/mugged-by-a-mug-shot-online.html?pagewanted=all&_r=2& (last visited on Jan. 27, 2014).

² *Id.*

³ National Conference of State Legislatures, *Mug Shots and Booking Photo Websites*, Dec. 4, 2013, <http://www.ncsl.org/research/telecommunications-and-information-technology/mug-shots-and-booking-photo-websites.aspx?TabId=27534> (last visited on Jan. 27, 2014).

⁴ Segal, *supra* note 1.

⁵ Laura C. Morel, *Pinellas County Sheriff's Office to stop posting online mug shots*, Tampa Bay Times, Jan. 9, 2014, <http://www.tampabay.com/news/publicsafety/crime/pinellas-county-sheriffs-office-to-remove-online-mugshots/2160316> (last visited on Feb. 13, 2014).

⁶ *Id.*

⁷ Andrew Knapp, *South Carolina attorneys, lawmakers aim to disrupt business of publishing jail mug shots*, The Post and Courier (Charleston, S.C.), Nov. 17, 2013, <http://www.postandcourier.com/article/20131117/PC1610/131119492> (last visited on Jan. 27, 2014).

⁸ *Id.*

⁹ National Conference of State Legislatures, *supra* note 3.

¹⁰ Christian Gaston, *John Kitzhaber to sign Oregon law regulating mug shot web sites*, The Oregonian, July 29, 2013, http://www.oregonlive.com/politics/index.ssf/2013/07/john_kitzhaber_to_sign_oregon.html (last visited on Jan. 27, 2014).

¹¹ *Id.*

¹² Stephanie Francis Ward, *Hoist Your Mug: Websites Will Post Your Name and Photo; Others Will Charge You to Remove Them*, A.B.A. J., Aug. 2012,

The only true solution is that we as consumers will have to get better at evaluating information that is presented to us. We have to accept that people have taken drugs, been at beer parties and gotten arrested. We have to rewire our brains not to overreact to that information, and realize that all of us have transgressed.¹³

Private Sector Responses

The private sector has addressed the issue to some extent. For example, Google has changed its algorithm in an attempt to push the mug shot websites down in the search results page so the mug shot is not the first result when searching for someone's name.¹⁴ Additionally, credit card companies, such as American Express, Discover, Visa, and PayPal, have severed ties with the companies that charge to remove the criminal record information.¹⁵ While the private sector responses make it more difficult for these websites to get paid, it is unclear what the long-term effects will be from these actions.

Florida Law

Currently, Florida law does not impose civil or criminal penalties on entities that publish mug shots of individuals. There are, however, statutes that create civil remedies for similar behavior. For example, s. 540.08, F.S., prohibits a person from publishing, printing, displaying or otherwise publicly using for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent. The victim may bring an action to enjoin the unauthorized use, and to recover damages for any loss or injury.¹⁶ Similarly, a person may bring a civil suit alleging invasion of privacy.¹⁷ However, these causes of action would generally not apply in cases where the publication at issue was a public record.

Recently, a Pinellas County woman sued websites that published her name, photograph, and arrest information online and then charged a fee to remove the information.¹⁸ The published information was from an arrest for domestic battery in which the charges were later dropped.¹⁹ The websites that published her information charged anywhere from \$300-\$1,700 to remove the arrest information.²⁰ The woman sued the websites in federal court alleging a violation of s. 540.08, F.S.,²¹ and common law invasion of privacy.²² The defendants moved to have the Court dismiss the lawsuit for failure to state a cause of action, but the federal district court held that the woman had stated a cause of action for a violation of s. 540.08, F.S.²³ It remains to be determined whether the operator of the websites violated the statute, and if so, what impact such a decision would have on similar suits that might be filed in other federal or state courts.

http://www.abajournal.com/magazine/article/hoist_your_mug_websites_will_post_your_name_and_photo_others_will_charge_yo/ (last visited on Jan. 27, 2014).

¹³ *Id.* at 21.

¹⁴ Segal, *supra* note 1.

¹⁵ *Id.*

¹⁶ Section 540.08(2), F.S.

¹⁷ The Florida Supreme Court first recognized the tort of invasion of privacy in *Cason v. Baskin*, 20 So.2d 243 (1944), a recognition reconfirmed in *Cason v. Baskin*, 30 So.2d 635 (1947). Since then Florida decisions have filled out the contours of this tort right of privacy by accepting the following four general categories recognized by Prosser in his *Law of Torts*, p. 804-14 (4th Ed. 1971): (1) Intrusion, i.e., invading plaintiffs' physical solitude or seclusion; (2) Public Disclosure of Private Facts; (3) False Light in the Public Eye, i.e., a privacy theory analogous to the law of defamation; and (4) Appropriation, i.e., commercial exploitation of the property value of one's name. *Loft v. Fuller*, 408 So.2d 619 (Fla. 4th DCA 1981).

¹⁸ Laura C. Morel, *Lawsuit targets mug shot websites that keep arrests alive*, Tampa Bay Times, Nov.10, 2013,

<http://www.tampabay.com/news/publicsafety/crime/lawsuit-targets-mug-shot-websites-that-keep-arrests-alive/2151818> (last visited on Feb. 7, 2014).

¹⁹ *Id.*

²⁰ *Id.*

²¹ Section 540.08(1), F.S., states "No person shall publish, print, display, or otherwise use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use. . ."

²² Order Denying Motion to Dismiss, *Shannon L. Biotta v. Citizen Information Associates, LLC, et al.*, Case No. 8:13-cv-2811-T-30GW, 2014 WL 105177 (M.D. Fla. Jan. 10, 2014).

²³ *Id.*

Florida Law Enforcement Responses

The Pinellas County Sheriff recently decided to stop posting mug shots on his agency's website.²⁴ The Sheriff cited the private mug shot website's fees for removing photographs as his motivation for this change, saying that charging a fee was "verging on blackmail."²⁵ Public records requests will still be honored by the Pinellas County Sheriff's Office.²⁶

Effect of the Bill

The bill amends s. 951.23, F.S., to prohibit a county or municipal detention facility from electronically publishing or disseminating arrest booking photographs before a conviction is obtained. The bill allows such photographs to be electronically published or disseminated between criminal justice agencies.

The bill provides the following definitions:

- "Arrest booking photograph" means a photograph of an arrestee taken for the purpose of recording the arrestee's image as part of the arrest and booking process; and
- "Criminal justice agency" means a court, the Florida Department of Law Enforcement, the Department of Juvenile Justice, the protective investigations component of the Department of Children and Families, which investigates the crimes of abuse and neglect, and any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice. The term also includes county and municipal detention facilities.

The bill may make it more difficult for private mug shot websites to obtain arrest booking photographs. The photographs may still be obtained through a public records request.

B. SECTION DIRECTORY:

Section 1. Amends s. 951.23, F.S., relating to county and municipal detention facilities; definitions; administration; standards and requirements.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

²⁴ Laura C. Morel, Pinellas County Sheriff's Office to stop posting online mug shots, Tampa Bay Times, Jan. 9, 2014, <http://www.tampabay.com/news/publicsafety/crime/pinellas-county-sheriffs-office-to-remove-online-mugshots/2160316> (last visited on Feb. 13, 2014).

²⁵ *Id.*

²⁶ *Id.*

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may limit the ability of individuals and businesses to electronically obtain mug shots. Those engaged in the business of publishing such photographs may be negatively impacted.

D. FISCAL COMMENTS:

The bill may lead to more public record requests, thus generating fees from those requests while also creating an additional workload for county and municipal detention facilities.

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 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:

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 12, 2014, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment prohibits a county or municipal detention facility from electronically publishing or disseminating arrest booking photographs prior to a conviction.

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 arrest booking photographs;
 3 amending s. 951.23, F.S.; providing definitions;
 4 prohibiting a county or municipal detention facility
 5 from electronically publishing or electronically
 6 disseminating arrest booking photographs of certain
 7 arrestees; providing an exception; providing
 8 construction; providing an effective date.

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

11
 12 Section 1. Subsection (12) is added to section 951.23,
 13 Florida Statutes, to read:

14 951.23 County and municipal detention facilities;
 15 definitions; administration; standards and requirements.-

16 (12) ARREST BOOKING PHOTOGRAPHS.-

17 (a) As used in this subsection, the term:

18 1. "Arrest booking photograph" means a photograph of an
 19 arrestee taken for the purpose of recording the arrestee's image
 20 as part of the arrest and booking process.

21 2. "Criminal justice agency" has the same meaning as
 22 provided in s. 943.045, and includes county and municipal
 23 detention facilities.

24 (b) A county or municipal detention facility may not
 25 electronically publish or electronically disseminate an arrest
 26 booking photograph of an arrestee who is charged with, but not

CS/HB 265

2014

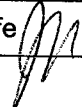
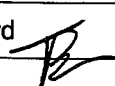
27 | yet convicted of, a criminal offense. This paragraph does not
28 | apply to electronic publication or electronic dissemination of
29 | arrest booking photographs between criminal justice agencies.

30 | (c) This subsection does not restrict public access to
31 | records as provided by s. 119.07.

32 | Section 2. This act shall take effect October 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 409 Offenses Against Vulnerable Persons
SPONSOR(S): Criminal Justice Subcommittee; Passidomo and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 588

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

SUMMARY ANALYSIS

Section 825.103(1), F.S., defines "exploitation of an elderly person or disabled adult," (vulnerable adult) as:

- Knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, a vulnerable adult's property with the intent to temporarily or permanently deprive the adult of the use, benefit, or possession of the property, or to benefit someone other than the vulnerable adult, by a person who stands in a position of trust and confidence with the adult, or has a business relationship with the adult;
- Breaching a fiduciary duty to a vulnerable adult by the person's guardian or agent under a power of attorney which results in an unauthorized appropriation, sale, or transfer of property.

The penalty for violating s. 825.103(1), F.S., depends of the value of the property involved in the exploitation.

The bill deletes the requirement that a person use deception or intimidation to obtain or use a vulnerable adult's funds, assets, or property. The bill specifies that "unauthorized appropriation" occurs when a vulnerable adult does not receive reasonably equivalent financial value in goods or services or when specified fiduciaries violate specified duties.

The bill creates additional instances that constitute "exploitation of an elderly person or disabled adult" by adding the following paragraphs to s. 825.103(1), F.S.:

- Misappropriating, misusing, or transferring without authorization (misuse) money belonging to an elderly person or disabled adult from specified accounts in which the elderly person or disabled adult placed the funds, owned the funds, and was the sole contributor or payee of the funds before the misuse;
- Intentionally or negligently failing to effectively use a vulnerable adult's income and assets for the necessities required for that person's support and maintenance, by a caregiver or a person who stands in a position of trust and confidence with the vulnerable adult.

The bill also amends s. 825.103, F.S., to:

- Decrease the property threshold values for exploitation of vulnerable adults offenses;
- Create a permissive presumption that specified property transfers are the result of exploitation;
- Require the court in specified cases to return the vulnerable adult's property before trial if, after conducting an evidentiary hearing, the court makes certain findings; and
- Limit the admissibility of an out-of-court statement to instances when a vulnerable adult is unavailable.

The bill also enhances penalties for stealing the personal identification information of those 60 or older.

On March 3, 2014, the Criminal Justice Impact Conference determined that CS/HB 409 will have an insignificant negative prison bed impact on the Department of Corrections.

The bill is effective October 1, 2014.

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

STORAGE NAME: h0409b.JUAS.DOCX

DATE: 2/10/2014

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Elderly and Disabled Populations

The 2010 Census recorded the greatest number and proportion of people aged 65 and over in the history of the United States - 40,300,000, or 13% of the total population.¹ In 2010, Florida had the highest proportion of people over the age of 65, making up 17% of the total state population.²

In 2011, there were 11,468,487 people aged 18 to 64 in Florida.³ Of that number of people, 1,131,661, or 9.9%, people had at least one disability.⁴ The number of individuals aged 65 and older in Florida in 2011 totaled 3,296,861.⁵ Of that number of people, 1,136,372, or 34.5%, had at least one disability.⁶

Nationwide, life expectancies of individuals reaching the ages of 65 and 85 are increasing. Individuals who survive to the age of 65 can be expected to live another 19.2 years.⁷ As the population of elderly and disabled persons in Florida increases, so does the pool of potential victims of abuse.

Financial Exploitation of Elderly Persons and Disabled Adults

According to the National Center on Elder Abuse, financial exploitation of the elderly includes “the illegal or improper use of an elder’s funds, property, or assets.”⁸ For example, forging an older person’s signature, misusing or stealing an older person’s money or possessions, coercing or deceiving an older person into signing a document, and improperly using a conservatorship, guardianship, or power of attorney are examples of financial exploitation.⁹ Similar offenses are often committed against disabled adults, who can be equally vulnerable to financial crimes.

Financial exploitation of the elderly and disabled is reported less than other forms of abuse. It is believed that only 1 in 14 cases of financial exploitation against disabled adults are reported and that the yearly number of cases nationwide could exceed 850,000.¹⁰ The “typical” victim of financial exploitation is between 70 and 89 years of age, Caucasian, female, frail, and cognitively impaired.¹¹ It has been estimated that the financial loss to victims as a result of these types of crimes is at least \$2.9 billion nationwide.¹²

¹ Administration on Aging, National Center for Elder Abuse, *America’s Growing Elderly Population*, available at www.ncea.aoa.gov/Library/Data/index.aspx (citing U.S. Department of Commerce, U.S. Census Bureau, *The older population: 2010, 2011, Publication C2010BR-09*) (last visited on February 3, 2014).

² *Id.*

³ U.S. Department of Commerce, U.S. Census Bureau, American FactFinder, *Selected Social Characteristics in the U.S.-Florida-2011 American Community Survey 1 year estimates*, available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_1YR_DP02&prodType=table (last visited on February 3, 2014).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 24.

⁸ The National Center on Elder Abuse, *Types of Abuse- Financial or Material Exploitation*, <http://ncea.aoa.gov/faq/index.aspx> (last visited on February 3, 2014).

⁹ *Id.*

¹⁰ MetLife Mature Market Institute, the National Committee for the Prevention of Elder Abuse, and the Center for Gerontology at Virginia Polytechnic Institute and State University, *Broken Trust: Elders, Family, and Finances, A Study on Elder Financial Abuse Prevention*, March 2009, page 8; see also The National Committee for the Prevention of Elder Abuse and The National Adult Protective Services Association, *The 2004 Survey of State Adult Protective Services: Abuse of Adults 60 Years of Age and Older*, February 2006, page 20.

¹¹ *Id.*

¹² Andrew Jay McClurg, *Preying on the Graying: A Statutory Presumption to Prosecute Elder Financial Exploitation*, *Hastings Law Journal*, Vol. 65, No. 4 at 125 (2014) (on file with the Criminal Justice Subcommittee). This report is further cited as “*Preying on the Graying*.”

Florida Law – “Exploitation of an Elderly Person or Disabled Adult”

Section 825.101, F.S., defines the following terms:

- “Elderly person” means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning to the extent that the ability to provide adequately for his or her own care is impaired; and
- “Disabled adult” means a person 18 years or older who suffers from physical or mental incapacitation due to developmental disability, organic brain damage, or mental illness, or has at least one physical or mental limitation that restricts his or her ability to perform normal activities of daily living.

Section 825.103(1), F.S., defines exploitation of an elderly person or disabled adult (vulnerable adult) as:

- (a) Knowingly, by deception¹³ or intimidation,¹⁴ obtaining or using, or endeavoring to obtain or use, a vulnerable adult’s funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the vulnerable adult, by a person who:
 - Stands in a position of trust and confidence with the vulnerable adult; or
 - Has a business relationship with the vulnerable adult;
- (b) Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use a vulnerable adult’s funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the vulnerable adult, by a person who knows or reasonably should know that the vulnerable adult lacks the capacity to consent,¹⁵ or
- (c) Breaching a fiduciary duty to a vulnerable adult by the person’s guardian or agent under a power of attorney which results in an unauthorized appropriation, sale, or transfer of property.

If the funds, assets, or property involved in a violation of the offense are:

- Valued at \$100,000 or more, it is a first degree felony;¹⁶
- Valued at \$20,000 or more but less than \$100,000, it is a second degree felony;¹⁷ and
- Valued at less than \$20,000, it is a third degree felony.¹⁸

The offenses listed above are currently ranked at level 8, level 7, and level 6, respectively, for purposes of the Criminal Punishment Code offense severity ranking chart.¹⁹

¹³ Section 825.101(3), F.S., defines “deception” as misrepresenting or concealing a material fact relating to: services rendered, disposition of property, or use of property, when such services or property are intended to benefit an elderly person or disabled adult; terms of a contract or agreement entered into with an elderly person or disabled adult; or an existing or preexisting condition of any property involved in a contract or agreement entered into with an elderly person or disabled adult; or using any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit an elderly person or disabled adult to enter into a contract or agreement.

¹⁴ Section 825.101(8), F.S., defines “intimidation” as the communication by word or act to an elderly person or disabled adult that the elderly person or disabled adult will be deprived of food, nutrition, clothing, shelter, supervision, medicine, medical services, money, or financial support or will suffer physical violence.

¹⁵ Section 825.101(9), F.S., defines “lacks capacity to consent” as an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause, that causes an elderly person or disabled adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the elderly person’s or disabled adult’s person or property.

¹⁶ 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.

¹⁷ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹⁸ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

¹⁹ The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. 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. If an offense is not listed in the ranking chart, it defaults to a ranking

Effect of the Bill

The bill amends paragraph (a) of the definition of "exploitation of an elderly person or disabled adult" F.S., to delete the requirement that a person use *deception or intimidation* to obtain or use a vulnerable adult's funds, assets, or property.²⁰ This will allow a prosecutor to pursue charges against an individual who exploits a vulnerable adult in a broader range of instances.

The bill amends paragraph (c) of the definition of "exploitation of an elderly person or disabled adult" to specify that an "unauthorized appropriation" occurs when a:

- Vulnerable adult does not receive the reasonably equivalent financial value in goods or services; or
- Fiduciary appointed under chs. 709, 736, and 744, F.S., violates specified duties.

The bill creates additional instances that constitute "exploitation of an elderly person or disabled adult" by adding the following paragraphs:

- (d) Misappropriating, misusing, or transferring without authorization money belonging to an elderly person or disabled adult from an account in which the elderly person or disabled adult placed the funds, owned the funds, and was the sole contributor or payee of the funds before the misappropriation, misuse, or unauthorized transfer. This paragraph only applies to the following types of accounts:
1. Personal accounts;
 2. Joint accounts created with the intent that only the elderly person or disabled adult enjoys all rights, interests, and claims to moneys deposited into such account; or
 3. Convenience accounts created in accordance with s. 655.80, F.S.; or
- (e) Intentionally or negligently failing to effectively use a vulnerable adult's income and assets for the necessities required for that person's support and maintenance, by a caregiver²¹ or a person who stands in a position of trust and confidence with the vulnerable adult.

The bill amends the property threshold amounts applicable to s. 825.103, F.S. If the funds, assets, or property involved in a violation of the offense are:

- Valued at \$50,000 or more, it is a first degree felony;
- Valued at \$10,000 or more but less than \$50,000, it is a second degree felony; and
- Valued at less than \$10,000, it is a third degree felony.

In cases where the taking of or loss of the vulnerable adult's property is valued at more than \$5,000 and the property belonging to the victim is seized from the defendant pursuant to a search warrant, the bill requires the court to:

- Conduct an evidentiary hearing to determine if the defendant unlawfully obtained the victim's property; and
- Order that the property be returned to the victim before trial if the court finds, by a preponderance of the evidence, that the defendant unlawfully obtained the property.

The evidentiary hearing is for restitution purposes only, and the court's finding that the defendant unlawfully obtained the property is inadmissible at trial and does not give rise to any inference that the defendant has committed an offense under s. 825.103, F.S.

The bill makes conforming changes to ss. 775.0844 and 921.0022, F.S., and reenacts s. 772.11, F.S., relating to civil remedy for theft or exploitation, to incorporate changes made by the bill.

based on the degree of the felony. A defendant's sentence is calculated based, in part, on points assigned for the offense severity ranking. The points are added in order to determine the "lowest permissible sentence" for the offense. Section 921.0022, F.S.

²⁰ The bill also deletes the definitions of the terms "deception" and "intimidation" as they are no longer applicable to ch. 825, F.S.

²¹ Section 825.101(2), F.S., defines "caregiver" to mean a person who has been entrusted with or has assumed responsibility for the care or the property of an elderly person or disabled adult. "Caregiver" includes, but is not limited to, relatives, court-appointed or voluntary guardians, adult household members, neighbors, health care providers, and employees and volunteers of facilities as defined in s. 825.101(7), F.S.

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Permissive Presumption for Financial Exploitation of Elderly Persons

Permissive Presumptions

A presumption in a legal proceeding is an assumption of the existence of a fact which is in reality unproven by direct evidence.²² A presumption is derived from another fact or group of facts that has been proven in the action.²³ There are two types of presumptions: conclusive presumptions, which *require* the jury to find the presumed fact if the underlying facts are proved; and permissive presumptions, which *allow*, but do not require, the jury to find the presumed fact if it finds the underlying fact to be true.²⁴

Hundreds of presumptions exist in American jurisprudence.²⁵ There are several premises that support the creation of presumptions in the law, including fairness, the desire to advance substantive policies, and the need for some device to resolve certain issues that could not otherwise be resolved due to a lack of proof.²⁶ The strongest justification for most presumptions is the probabilistic determination that the existence of certain facts can be logically inferred from other facts.²⁷

Prosecutions of Financial Exploitation of Elderly Persons

Prosecutions under s. 825.103, F.S., often face significant roadblocks due to the difficulty in proving that what may superficially look like voluntary gifts or loans is actually exploitation.²⁸ Exploited elders frequently are unable, and sometimes unwilling, to effectively assist prosecutors.²⁹ Prosecutions are further complicated by the fact that the transactions often occur in secret, and that often times the elderly person may not be a good witness as a result of cognitive or other impairments.³⁰

Section 825.103, F.S., does not currently provide any presumptions.

Effect of the Bill

The bill creates a permissive presumption in s. 825.103, F.S., that an inter vivos transfer of money or property by a person 65 or older with the following characteristics was the result of exploitation:

- The property transferred is valued in excess of \$10,000 at the time of the transfer;³¹
- The property is transferred to a nonrelative who knew the elderly person for fewer than 2 years before the first transfer; and
- The elderly person did not receive the reasonably equivalent financial value in goods or services from the transfer.

This presumption applies regardless of whether the transfer or transfers are denoted by the parties as a gift or loan. However, the presumption does not apply to a valid loan *evidenced in writing* that includes definite repayment dates, unless repayment of such loan is in default, in whole or in part, for more than 65 days. The bill provides exemptions from the presumption for:

- Persons who are in the business of making loans; or
- Bona fide charitable donations to nonprofit organizations that qualify for tax exempt status under the Internal Revenue Code.

²² *Ibarrondo v. State*, 1 So.3d 226, 232 (Fla. 5th DCA 2008) (“A presumption permits or requires a fact finder to assume the existence of a presumed or ultimate fact after certain basic or preliminary facts have already been established.”); *Hack v. Janes*, 878 So.2d 440 (Fla. 5th DCA 2004).

²³ *Id.*

²⁴ *Marcolini v. State*, 673 So.2d 3, 5 (Fla. 1996); *see also State v. Rygwelski*, 899 So.2d 498, 501 (Fla. 2d DCA 2005) and *Ibarrondo*, at 232.

²⁵ *Preying on the Graying*, at 125.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 106.

³¹ The bill provides that it does not matter whether the transfer was made in a single transaction or multiple transactions.

The bill also requires the court to instruct the jury that:

- They may, but are not required to, draw an inference of exploitation upon proof beyond a reasonable doubt of the facts listed in this subsection; and
- The presumption imposes no burden of proof on the defendant.

This presumption does not apply to disabled adults.

Personal Identification Information

Section 817.568, F.S., contains a variety of provisions criminalizing the fraudulent use of a person's personal identification information.³² For example, the statute makes it a third degree felony for a person to willfully and without authorization fraudulently use, or possess with intent to fraudulently use, personal identification information concerning an individual without first obtaining that individual's consent. The statute provides enhanced penalties if the pecuniary benefit exceeds a specified amount, if the person fraudulently uses the information of more than a certain number of people, or if the person commits the offense for purposes of harassment.

Subsections (6) and (7) of the statute makes it a second degree felony for a person:

- To willfully and without authorization fraudulently use personal identification information concerning an individual who is less than 18 years of age without first obtaining the consent of that individual or of his or her legal guardian.
- Who is in the relationship of parent or legal guardian, or who otherwise exercises custodial authority over an individual who is 60 years of age or older, to willfully and fraudulently uses personal identification information of that individual.

Effect of the Bill

The bill amends s. 817.568(6) and (7), F.S., providing it is a second degree felony for any person:

- To willfully and without authorization fraudulently use personal identification information concerning an individual who is 60 years of age or older, without first obtaining the consent of that individual or of his or her legal guardian; or
- Who is in the relationship of parent or legal guardian, or who otherwise exercises custodial authority over an individual who is 60 years of age or older, to willfully and fraudulently uses personal identification information of that individual.

Hearsay Exception for Vulnerable Adults

Hearsay in Criminal Cases

"Hearsay" is a statement,³³ other than one made by the declarant³⁴ while testifying at trial or a hearing,³⁵ offered in evidence to prove the truth of the matter asserted.³⁶ Currently, hearsay statements are not admissible at trial unless a statutory exception applies.³⁷

³² Section 817.568, F.S., defines "personal identification information" as any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:

- Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
- Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
- Unique electronic identification number, address, or routing code;
- Medical records;
- Telecommunication identifying information or access device; or
- Other number or information that can be used to access a person's financial resources.

³³ A "statement" is either an oral or written assertion or nonverbal conduct of a person if it is intended by the person as an assertion; see s. 90.801(1)(a), F.S.

³⁴ The "declarant" is the person who made the statement; see s. 90.801(1)(b), F.S.

³⁵ Often referred to simply as an "out-of-court statement."

³⁶ Section 90.801(1)(c), F.S.

Section 90.803(24), F.S., creates a hearsay exception specifically relating to vulnerable adults. The statute specifies that unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by a vulnerable adult describing any act of abuse or neglect, any act of exploitation, the offense of battery or aggravated battery or assault or aggravated assault or sexual battery, or any other violent act on the declarant vulnerable adult, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if:

- The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability;³⁸ and
- The vulnerable adult either:
 - Testifies; or
 - Is unavailable as a witness, provided that there is corroborative evidence of the abuse or offense. Unavailability must include a finding by the court that the vulnerable adult's participation in the trial or proceeding would result in a substantial likelihood of severe emotional, mental, or physical harm, in addition to findings pursuant to s. 90.804(1), F.S.³⁹

The party seeking to introduce a hearsay statement under the exception at s. 90.803, F.S., bears the burden of establishing that the declarant is unavailable as a witness at a pretrial hearing.⁴⁰

Confrontation Clause and the Admissibility of Hearsay Statements

In the time since the hearsay exception for vulnerable adults was enacted,⁴¹ the United States Supreme Court (Court) has held the admission of certain out-of-court statements violates the Confrontation Clause of the Sixth Amendment.^{42,43} In *Crawford*, the Court held that before an out-of-court statement that is testimonial in nature⁴⁴ can be admissible in a criminal proceeding the Confrontation Clause requires the:

³⁷ Section 90.802, F.S.

³⁸ In making its determination, the court may consider the mental and physical age and maturity of the elderly person or disabled adult, the nature and duration of the abuse or offense, the relationship of the victim to the offender, the reliability of the assertion, the reliability of the elderly person or disabled adult, and any other factor deemed appropriate.

³⁹ Section 90.804(1), F.S., specifies that "unavailability as a witness" means that the declarant:

- Is exempted by a ruling of a court on the ground of privilege from testifying concerning the subject matter of the declarant's statement;
- Persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so;
- Has suffered a lack of memory of the subject matter of his or her statement so as to destroy the declarant's effectiveness as a witness during the trial;
- Is unable to be present or to testify at the hearing because of death or because of then-existing physical or mental illness or infirmity; or
- Is absent from the hearing, and the proponent of a statement has been unable to procure the declarant's attendance or testimony by process or other reasonable means.

⁴⁰ See *Jones v. State*, 678 So.2d 309, 314 (Fla. 1996).

⁴¹ The hearsay exception in s. 90.803(24), F.S., was enacted by the Legislature in 1995. *Conner v. State*, 748 So.2d 950, 957 (Fla. 1999).

⁴² *Crawford v. Washington*, 124 S.Ct. 1354 (2004).

⁴³ The Sixth Amendment of the U.S. Constitution provides, in part: "In all criminal prosecutions...the accused shall enjoy the right to...be confronted with the witnesses against him."

⁴⁴ The Court held that "testimonial evidence" includes at a minimum "prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and to police interrogations." *Crawford*, at 1374. The Court also cited to other opinions it has rendered about what constitutes "testimonial evidence," including affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pretrial statements that declarants would reasonably expect to be used prosecutorially; or extrajudicial

statements { "pageset": "S9a" ... contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions. *Crawford*, at 1364.

- Declarant to be unavailable;⁴⁵ and
- Defendant to have had a prior opportunity to cross-examine such declarant.

The Court later held that the distinction of whether evidence is testimonial or nontestimonial in nature rests on the primary purpose of the statement, specifically:

Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.⁴⁶

Further, in *State v. Hosty*, the Florida Supreme Court has examined s. 90.803(24), F.S., in light of *Crawford* and held that the Confrontation Clause requires the declarant to be unavailable for testimonial hearsay statements to be admissible.⁴⁷

The statute is not currently in conformance with these ruling since it states certain hearsay statements may be admitted even if the declarant testifies.

Effect of the Bill

The bill amends s. 90.803(24), F.S., deleting the language that allows a testimonial hearsay statement to be admissible even if the declarant testifies, thus conforming this exception to the holding in *Crawford* and *Hosty*.

Even though not stated in the statute, the requirement that the accused must have a prior opportunity to cross examine still applies to the admission of these types of statements through case law.

B. SECTION DIRECTORY:

Section 1. Amends s. 90.803, F.S., relating to hearsay exceptions; availability of declarant immaterial.

Section 2. Amends s. 817.568, F.S., relating to criminal use of personal identification information.

Section 3. Amends s. 825.101, F.S., relating to definitions.

Section 4. Amends s. 825.103, F.S., relating to exploitation of an elderly person or disabled adult; penalties.

Section 5. Amends s. 775.0844, F.S., relating to White Collar Crime Victim Protection Act.

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

Section 7. Reenacts s. 772.11, F.S., relating to civil remedy for theft or exploitation.

Section 8. Provides an effective date of October 1, 2014.

⁴⁵ The Florida Supreme Court has held that “in order for a witness to be unavailable for confrontation purposes, the State must make a good faith showing of attempting to secure the witness. This includes going to reasonable lengths to procure the witness.” *State v. Johnson*, 982 So.2d 672 (Fla. 2008), citing *Ohio v. Roberts*, 100 S.Ct. 2531 (1980).

⁴⁶ *Davis v. Washington*, 126 S.Ct. 2266 (2006).

⁴⁷ 944 So.2d 255 (Fla. 2006).

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 March 3, 2014, the Criminal Justice Impact Conference determined that CS/HB 409 will have an insignificant negative prison bed impact on the Department of Corrections.

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.

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides a mechanism in specified instances for the court to return a vulnerable person's stolen property prior to trial. As a result, the victims of these crimes could be made whole at a much earlier stage in the litigation process than otherwise possible.

C. 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:

The Due Process Clauses of the United States and Florida Constitutions require the State to prove every element of a criminal offense beyond a reasonable doubt.⁴⁸ Conclusive presumptions that shift the burden of persuasion as to a statutorily defined element of the offense to the defendant are impermissible under the Due Process Clause.⁴⁹ Permissive presumptions can be constitutional, but only if they do not shift the burden of persuasion to the defendant.⁵⁰

When reviewing a permissive presumption, the United States Supreme Court requires the challenging party challenging to demonstrate its invalidity as applied.⁵¹ Since a permissive

⁴⁸ *Burttram v. State*, 780 So.2d 224 (Fla. 2d DCA 2001).

⁴⁹ *Francis v. Franklin*, 105 S.Ct. 1965, 1971 (1985); *Sandstrom v. Montana*, 99 S.Ct. 2450, 2459 (1979); *State v. Rolle*, 560 So.2d 1154, 1159 (Fla. 1990); and *Tatum v. State*, 857 So.2d 331 (Fla. 2d DCA 2003).

⁵⁰ *County Court of Ulster County, N. Y. v. Allen*, 99 S.Ct. 2213 (1979).

⁵¹ *U.S. v. Gainey*, 85 S.Ct. 754, 757 (1965); *Turner v. U.S.*, 90 S.Ct. 642, 653 (1970); *Barnes v. U.S.*, 93 S.Ct. 2357, 2362 (1793)

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presumption allows the trier of fact free to accept or reject the inference and does not shift the burden of proof, the only instance that affects the application of the "beyond a reasonable doubt" standard is if, under the facts of the case, there is no rational way the trier could make the connection permitted by the inference.⁵² This is the only situation where any risk that an explanation of the permissible inference to a jury, or its use by a jury, has caused the presumptively rational fact finder to make an erroneous factual determination.⁵³

For a permissive inference to withstand constitutional challenge, a rational connection must exist between the facts in the record and the ultimate fact to be presumed.⁵⁴ A permissive presumption will be upheld if it can be said with substantial assurance that the presumed fact is more likely to flow from the proved fact on which it is made to depend.⁵⁵

The bill creates a permissive presumption of exploitation if the State proves the occurrence of an inter vivos transfer in excess of \$10,000 by an elderly person to someone the elderly person knew less than two years, which did not result in receipt of reciprocal value in goods or services. To the extent that the bill relieves the State of their obligation to prove the elements of a specified instance of exploitation of an elderly person beyond a reasonable doubt, the presumption could be challenged as being unconstitutional.

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 two amendments and reported the bill favorably as a committee substitute. The amendments:

- Correct terminology to provide consistency;
- Clarify that exploitation of the vulnerable person results from a fiduciary violating specified duties, rather than the vulnerable adult;
- Clarify terminology; and
- Provide enhanced penalties for stealing the personal identification information of those 60 or older.

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

⁵² *Allen*, at 2225.

⁵³ *Id.*

⁵⁴ *Id.*; See also *Marcolini v. State*, 673 So.2d 3 (Fla. 1996).

⁵⁵ *State v. Brake*, 796 So.2d 522 (Fla. 2001).

1 A bill to be entitled
 2 An act relating to offenses against vulnerable
 3 persons; amending s. 90.803, F.S.; revising when an
 4 out of court statement by an elderly person or
 5 disabled adult is admissible in certain proceedings;
 6 amending s. 817.568, F.S.; expanding applicability of
 7 prohibition on the fraudulent use of personal
 8 identification information of specified victims
 9 without consent to include persons 60 years of age or
 10 older; amending s. 825.101, F.S.; revising and
 11 deleting definitions; amending s. 825.103, F.S.;
 12 deleting a requirement that property of an elderly
 13 person or disabled adult be obtained by deception or
 14 intimidation in order to constitute exploitation of
 15 such a person; specifying additional circumstances
 16 that constitute a breach of a fiduciary duty and
 17 specifying when an unauthorized appropriation occurs;
 18 creating a presumption that certain inter vivos
 19 transfers are a result of exploitation; providing
 20 exceptions; providing for jury instructions concerning
 21 the presumption; revising the valuation of funds,
 22 assets, or property involved for various degrees of
 23 offenses of exploitation of an elderly person or
 24 disabled adult; providing for return of property
 25 seized from a defendant to the victim before trial in
 26 certain circumstances; amending ss. 775.0844 and

27 | 921.0022, F.S.; conforming provisions to changes made
 28 | by the act; reenacting s. 772.11(1), F.S., relating to
 29 | a civil remedy for theft or exploitation, to
 30 | incorporate the amendments made by the act to s.
 31 | 825.103, F.S., in a reference thereto; providing an
 32 | effective date.

33 |

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

35 |

36 | Section 1. Paragraph (a) of subsection (24) of section
 37 | 90.803, Florida Statutes, is amended to read:

38 | 90.803 Hearsay exceptions; availability of declarant
 39 | immaterial.—The provision of s. 90.802 to the contrary
 40 | notwithstanding, the following are not inadmissible as evidence,
 41 | even though the declarant is available as a witness:

42 | (24) HEARSAY EXCEPTION; STATEMENT OF ELDERLY PERSON OR
 43 | DISABLED ADULT.—

44 | (a) Unless the source of information or the method or
 45 | circumstances by which the statement is reported indicates a
 46 | lack of trustworthiness, an out-of-court statement made by an
 47 | elderly person or disabled adult, as defined in s. 825.101,
 48 | describing any act of abuse or neglect, any act of exploitation,
 49 | the offense of battery or aggravated battery or assault or
 50 | aggravated assault or sexual battery, or any other violent act
 51 | on the declarant elderly person or disabled adult, not otherwise
 52 | admissible, is admissible in evidence in any civil or criminal

53 proceeding if:

54 1. The court finds in a hearing conducted outside the
 55 presence of the jury that the time, content, and circumstances
 56 of the statement provide sufficient safeguards of reliability.
 57 In making its determination, the court may consider the mental
 58 and physical age and maturity of the elderly person or disabled
 59 adult, the nature and duration of the abuse or offense, the
 60 relationship of the victim to the offender, the reliability of
 61 the assertion, the reliability of the elderly person or disabled
 62 adult, and any other factor deemed appropriate; and

63 2. The elderly person or disabled adult ~~either:~~

64 ~~a. Testifies; or~~

65 ~~b.~~ is unavailable as a witness, provided that there is
 66 corroborative evidence of the abuse or offense. Unavailability
 67 shall include a finding by the court that the elderly person's
 68 or disabled adult's participation in the trial or proceeding
 69 would result in a substantial likelihood of severe emotional,
 70 mental, or physical harm, in addition to findings pursuant to s.
 71 90.804(1).

72 Section 2. Subsections (6) and (7) of section 817.568,
 73 Florida Statutes, are amended to read:

74 817.568 Criminal use of personal identification
 75 information.—

76 (6) Any person who willfully and without authorization
 77 fraudulently uses personal identification information concerning
 78 an individual who is younger ~~less~~ than 18 years of age or 60

79 | years of age or older without first obtaining the consent of
 80 | that individual or of his or her legal guardian commits a felony
 81 | of the second degree, punishable as provided in s. 775.082, s.
 82 | 775.083, or s. 775.084.

83 | (7) Any person who is in the relationship of parent or
 84 | legal guardian, or who otherwise exercises custodial authority
 85 | over an individual who is younger ~~less~~ than 18 years of age or
 86 | 60 years of age or older, who willfully and fraudulently uses
 87 | personal identification information of that individual commits a
 88 | felony of the second degree, punishable as provided in s.
 89 | 775.082, s. 775.083, or s. 775.084.

90 | Section 3. Subsections (2), (3), and (8) of section
 91 | 825.101, Florida Statutes, are amended to read:

92 | 825.101 Definitions.—As used in this chapter:

93 | (2) "Caregiver" means a person who has been entrusted with
 94 | or has assumed responsibility for the care or the property of an
 95 | elderly person or disabled adult. "Caregiver" includes, but is
 96 | not limited to, relatives, court-appointed or voluntary
 97 | guardians, adult household members, neighbors, health care
 98 | providers, and employees and volunteers of facilities as defined
 99 | in subsection (6)~~(7)~~.

100 | ~~(3) "Deception" means:~~

101 | ~~(a) Misrepresenting or concealing a material fact relating~~
 102 | ~~to:~~

103 | ~~1. Services rendered, disposition of property, or use of~~
 104 | ~~property, when such services or property are intended to benefit~~

105 | ~~an elderly person or disabled adult;~~

106 | ~~2. Terms of a contract or agreement entered into with an~~
 107 | ~~elderly person or disabled adult; or~~

108 | ~~3. An existing or preexisting condition of any property~~
 109 | ~~involved in a contract or agreement entered into with an elderly~~
 110 | ~~person or disabled adult; or~~

111 | ~~(b) Using any misrepresentation, false pretense, or false~~
 112 | ~~promise in order to induce, encourage, or solicit an elderly~~
 113 | ~~person or disabled adult to enter into a contract or agreement.~~

114 | ~~(8) "Intimidation" means the communication by word or act~~
 115 | ~~to an elderly person or disabled adult that the elderly person~~
 116 | ~~or disabled adult will be deprived of food, nutrition, clothing,~~
 117 | ~~shelter, supervision, medicine, medical services, money, or~~
 118 | ~~financial support or will suffer physical violence.~~

119 | Section 4. Section 825.103, Florida Statutes, is amended
 120 | to read:

121 | 825.103 Exploitation of an elderly person or disabled
 122 | adult; penalties.—

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

125 | (a) ~~Knowingly, by deception or intimidation,~~ obtaining or
 126 | using, or endeavoring to obtain or use, an elderly person's or
 127 | disabled adult's funds, assets, or property with the intent to
 128 | temporarily or permanently deprive the elderly person or
 129 | disabled adult of the use, benefit, or possession of the funds,
 130 | assets, or property, or to benefit someone other than the

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131 elderly person or disabled adult, by a person who:

132 1. Stands in a position of trust and confidence with the
133 elderly person or disabled adult; or

134 2. Has a business relationship with the elderly person or
135 disabled adult;

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

145 (c) Breach of a fiduciary duty to an elderly person or
146 disabled adult by the person's guardian or agent under a power
147 of attorney which results in an unauthorized appropriation,
148 sale, or transfer of property. An unauthorized appropriation
149 under this paragraph occurs when the elderly person or disabled
150 adult does not receive the reasonably equivalent financial value
151 in goods or services, or when the fiduciary violates any of
152 these duties:

- 153 1. For agents appointed under chapter 709:
154 a. Committing fraud in obtaining their appointments;
155 b. Abusing their powers;
156 c. Wasting, embezzling, or intentionally mismanaging the

157 assets of the ward or beneficiary of the trust; or
 158 d. Acting contrary to the principal's sole benefit or best
 159 interest.
 160 2. For guardians and trustees appointed under chapter 736
 161 or chapter 744:
 162 a. Committing fraud in obtaining their appointments;
 163 b. Abusing their powers; or
 164 c. Wasting, embezzling, or intentionally mismanaging the
 165 assets of the ward or beneficiary of the trust.
 166 (d) Misappropriating, misusing, or transferring without
 167 authorization money belonging to an elderly person or disabled
 168 adult from an account in which the elderly person or disabled
 169 adult placed the funds, owned the funds, and was the sole
 170 contributor or payee of the funds before the misappropriation,
 171 misuse, or unauthorized transfer. This paragraph only applies to
 172 the following types of accounts:
 173 1. Personal accounts;
 174 2. Joint accounts created with the intent that only the
 175 elderly person or disabled adult enjoys all rights, interests,
 176 and claims to moneys deposited into such account; or
 177 3. Convenience accounts created in accordance with s.
 178 655.80.
 179 (e) Intentionally or negligently failing to effectively
 180 use an elderly person's or disabled adult's income and assets
 181 for the necessities required for that person's support and
 182 maintenance, by a caregiver or a person who stands in a position

183 | of trust and confidence with the elderly person or disabled
 184 | adult.

185 | (2) Any inter vivos transfer of money or property valued
 186 | in excess of \$10,000 at the time of the transfer, whether in a
 187 | single transaction or multiple transactions, by a person age 65
 188 | or older to a nonrelative whom the transferor knew for fewer
 189 | than 2 years before the first transfer and for which the
 190 | transferor did not receive the reasonably equivalent financial
 191 | value in goods or services creates a permissive presumption that
 192 | the transfer was the result of exploitation.

193 | (a) This subsection applies regardless of whether the
 194 | transfer or transfers are denoted by the parties as a gift or
 195 | loan, except that it does not apply to a valid loan evidenced in
 196 | writing that includes definite repayment dates. However, if
 197 | repayment of any such loan is in default, in whole or in part,
 198 | for more than 65 days, the presumption of this subsection
 199 | applies.

200 | (b) This subsection does not apply to:

201 | 1. Persons who are in the business of making loans.

202 | 2. Bona fide charitable donations to nonprofit
 203 | organizations that qualify for tax exempt status under the
 204 | Internal Revenue Code.

205 | (c) In a criminal case to which this subsection applies,
 206 | if the trial is by jury, jurors shall be instructed that they
 207 | may, but are not required to, draw an inference of exploitation
 208 | upon proof beyond a reasonable doubt of the facts listed in this

209 subsection. The presumption of this subsection imposes no burden
 210 of proof on the defendant.

211 (3)-(2)(a) If the funds, assets, or property involved in
 212 the exploitation of the elderly person or disabled adult is
 213 valued at \$50,000 ~~\$100,000~~ or more, the offender commits a
 214 felony of the first degree, punishable as provided in s.
 215 775.082, s. 775.083, or s. 775.084.

216 (b) If the funds, assets, or property involved in the
 217 exploitation of the elderly person or disabled adult is valued
 218 at \$10,000 ~~\$20,000~~ or more, but less than \$50,000 ~~\$100,000~~, the
 219 offender commits a felony of the second degree, punishable as
 220 provided in s. 775.082, s. 775.083, or s. 775.084.

221 (c) If the funds, assets, or property involved in the
 222 exploitation of an elderly person or disabled adult is valued at
 223 less than \$10,000 ~~\$20,000~~, the offender commits a felony of the
 224 third degree, punishable as provided in s. 775.082, s. 775.083,
 225 or s. 775.084.

226 (4) If a person is charged with financial exploitation of
 227 an elderly person or disabled adult that involves the taking of
 228 or loss of property valued at more than \$5,000 and property
 229 belonging to a victim is seized from the defendant pursuant to a
 230 search warrant, the court shall hold an evidentiary hearing and
 231 determine, by a preponderance of the evidence, whether the
 232 defendant unlawfully obtained the victim's property. If the
 233 court finds that the property was unlawfully obtained, the court
 234 may order it returned to the victim for restitution purposes

235 | before trial on the charge. This determination is inadmissible
236 | in evidence at trial on the charge and does not give rise to any
237 | inference that the defendant has committed an offense under this
238 | section.

239 | Section 5. Paragraph (a) of subsection (5) of section
240 | 775.0844, Florida Statutes, is amended to read:

241 | 775.0844 White Collar Crime Victim Protection Act.-

242 | (5) Any person who commits an aggravated white collar
243 | crime as defined in this section and in so doing either:

244 | (a) Victimizes 10 or more elderly persons, as defined in
245 | s. 825.101~~(5)~~;

246 |

247 | and thereby obtains or attempts to obtain \$50,000 or more,
248 | commits a felony of the first degree, punishable as provided in
249 | s. 775.082, s. 775.083, or s. 775.084.

250 | Section 6. Paragraphs (f), (g), and (h) of subsection (3)
251 | of section 921.0022, Florida Statutes, are amended to read:

252 | 921.0022 Criminal Punishment Code; offense severity
253 | ranking chart.-

254 | (3) OFFENSE SEVERITY RANKING CHART

255 | (f) LEVEL 6

256 |

Florida	Felony	
Statute	Degree	Description

257 |

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258	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
259	499.0051(3)	2nd	Knowing forgery of pedigree papers.
260	499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
261	499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
262	775.0875(1)	3rd	Taking firearm from law enforcement officer.
263	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
264	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
265	784.041	3rd	Felony battery; domestic battery by strangulation.

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266	784.048(3)	3rd	Aggravated stalking; credible threat.
267	784.048(5)	3rd	Aggravated stalking of person under 16.
268	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
269	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
270	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
271	784.081(2)	2nd	Aggravated assault on specified official or employee.
272	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
273	784.083(2)	2nd	Aggravated assault on code inspector.

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274	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
275	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
276	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
277	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
278	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
279	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.

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280	794.05 (1)	2nd	Unlawful sexual activity with specified minor.
281	800.04 (5) (d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.
282	800.04 (6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
283	806.031 (2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
284	810.02 (3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
285	810.145 (8) (b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
	812.014 (2) (b) 1.	2nd	Property stolen \$20,000 or more, but less than \$100,000,

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286			grand theft in 2nd degree.
	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
287			
	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
288			
	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
289			
	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
290			
	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
291			
	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
292			
	825.102(3)(c)	3rd	Neglect of an elderly person or

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293			disabled adult.
	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
294	<u>825.103(3)(c)</u> 825.103(2)(e)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than <u>\$10,000</u> \$20,000 .
295	827.03(2)(c)	3rd	Abuse of a child.
296	827.03(2)(d)	3rd	Neglect of a child.
297	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
298	836.05	2nd	Threats; extortion.
299	836.10	2nd	Written threats to kill or do bodily injury.
300	843.12	3rd	Aids or assists person to

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301			escape.
	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
302			
	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
303			
	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
304			
	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
305			
	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
306			

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307	944.40	2nd	Escapes.
308	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
309	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
310	951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.
311	(g) LEVEL 7		
312	Florida Statute	Felony Degree	Description
313	316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
314	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
315	316.1935(3)(b)	1st	Causing serious bodily injury

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

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316	327.35(3)(c)2.	3rd	<p>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.</p>
317	402.319(2)	2nd	<p>Vessel BUI resulting in serious bodily injury.</p> <p>Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.</p>
318	409.920 (2)(b)1.a.	3rd	<p>Medicaid provider fraud; \$10,000 or less.</p>
319	409.920 (2)(b)1.b.	2nd	<p>Medicaid provider fraud; more than \$10,000, but less than \$50,000.</p>
320	456.065(2)	3rd	<p>Practicing a health care</p>

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321			profession without a license.
	456.065 (2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
322			
	458.327 (1)	3rd	Practicing medicine without a license.
323			
	459.013 (1)	3rd	Practicing osteopathic medicine without a license.
324			
	460.411 (1)	3rd	Practicing chiropractic medicine without a license.
325			
	461.012 (1)	3rd	Practicing podiatric medicine without a license.
326			
	462.17	3rd	Practicing naturopathy without a license.
327			
	463.015 (1)	3rd	Practicing optometry without a license.
328			

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329	464.016(1)	3rd	Practicing nursing without a license.
330	465.015(2)	3rd	Practicing pharmacy without a license.
331	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
332	467.201	3rd	Practicing midwifery without a license.
333	468.366	3rd	Delivering respiratory care services without a license.
334	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
335	483.901(9)	3rd	Practicing medical physics without a license.
336	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.

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337	484.053	3rd	Dispensing hearing aids without a license.
338	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.
339	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.
340	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
341	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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342	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
343	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
344	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
345	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
346	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).

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347	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
348	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
349	784.045 (1) (a) 1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
350	784.045 (1) (a) 2.	2nd	Aggravated battery; using deadly weapon.
351	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
352	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
	784.048 (7)	3rd	Aggravated stalking; violation

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353			of court order.
	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
354			
	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
355			
	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
356			
	784.081(1)	1st	Aggravated battery on specified official or employee.
357			
	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
358			
	784.083(1)	1st	Aggravated battery on code inspector.
359			
	787.06(3)(a)	1st	Human trafficking using coercion for labor and services.
360			

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361	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.
362	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
363	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
364	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
365	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
366	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.

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367	790.166 (4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
368	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
369	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.
370	796.03	2nd	Procuring any person under 16 years for prostitution.
371	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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372	800.04 (5) (c) 2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
373	806.01 (2)	2nd	Maliciously damage structure by fire or explosive.
374	810.02 (3) (a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
375	810.02 (3) (b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
376	810.02 (3) (d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
377	810.02 (3) (e)	2nd	Burglary of authorized emergency vehicle.
	812.014 (2) (a) 1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law

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378	812.014(2)(b)2.	2nd	enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
379	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
380	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
381	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
382	812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
383	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.

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384	812.131(2)(a)	2nd	Robbery by sudden snatching.
385	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
386	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
387	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
388	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
389	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
	817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the

390			insolvency of that entity.
391	817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
392	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
393	<u>825.103(3)(b)</u> 825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at <u>\$10,000</u> \$20,000 or more, but less than <u>\$50,000</u> \$100,000 .
394	827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
395	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
	837.05(2)	3rd	Giving false information about

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396			alleged capital felony to a law enforcement officer.
397	838.015	2nd	Bribery.
398	838.016	2nd	Unlawful compensation or reward for official behavior.
399	838.021(3)(a)	2nd	Unlawful harm to a public servant.
400	838.22	2nd	Bid tampering.
401	843.0855(2)	3rd	Impersonation of a public officer or employee.
402	843.0855(3)	3rd	Unlawful simulation of legal process.
403	843.0855(4)	3rd	Intimidation of a public officer or employee.
404	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.

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405	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
406	872.06	2nd	Abuse of a dead human body.
407	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
408	874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or

409			community center.
	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.
410	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).
411	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
412	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
413	893.135	1st	Trafficking in illegal drugs,

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414	(1)(c)1.a.		more than 4 grams, less than 14 grams.
415	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
416	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
417	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
418	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
419	893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
	893.135	1st	Trafficking in 1,4-Butanediol,

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420	(1) (j) 1.a.		1 kilogram or more, less than 5 kilograms.
	893.135	1st	Trafficking in Phenethylamines,
	(1) (k) 2.a.		10 grams or more, less than 200 grams.
421			
	893.1351 (2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
422			
	896.101 (5) (a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
423			
	896.104 (4) (a) 1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
424			
	943.0435 (4) (c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
425			

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426	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
427	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
428	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
429	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
430	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a

431			digitized photograph.
	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
432			
	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
433			
	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
434			
	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
435			
	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
436			

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437 (h) LEVEL 8

438

Florida	Felony	
Statute	Degree	Description

439

316.193 (3) (c) 3.a.	2nd	DUI manslaughter.
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440

316.1935 (4) (b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
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441

327.35 (3) (c) 3.	2nd	Vessel BUI manslaughter.
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442

499.0051 (7)	1st	Knowing trafficking in contraband prescription drugs.
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443

499.0051 (8)	1st	Knowing forgery of prescription labels or prescription drug labels.
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444

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
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445	560.125(5)(b)	2nd	<p>transmitter.</p> <p>Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.</p>
446	655.50(10)(b)2.	2nd	<p>Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.</p>
447	777.03(2)(a)	1st	<p>Accessory after the fact, capital felony.</p>
448	782.04(4)	2nd	<p>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</p>

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449			unlawfully discharging bomb.
	782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
450			
	782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
451			
	782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
452			
	787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity.
453			
	787.06(3)(c)	1st	Human trafficking using coercion for labor and services of an unauthorized alien.
454			
	787.06(3)(f)	1st	Human trafficking using coercion for commercial sexual

			activity by the transfer or transport of any individual from outside Florida to within the state.
455	790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
456	794.011(5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.
457	794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
458	800.04(4)	2nd	Lewd or lascivious battery.
459	806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
460			

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461	810.02(2)(a)	1st, PBL	Burglary with assault or battery.
462	810.02(2)(b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.
463	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
464	812.014(2)(a)2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
465	812.13(2)(b)	1st	Robbery with a weapon.
466	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
467	817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.

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468	817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
469	817.535(4)(a)1.	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.
470	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.
471	817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
472	825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.
	825.1025(2)	2nd	Lewd or lascivious battery upon

473			an elderly person or disabled adult.
	<u>825.103(3)(a)</u>	1st	Exploiting an elderly person or disabled adult and property is valued at <u>\$50,000</u> \$100,000 or more.
	825.103(2)(a)		
474	837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
475	837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
476	860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
477	860.16	1st	Aircraft piracy.
478	893.13(1)(b)	1st	Sell or deliver in excess of 10

			grams of any substance specified in s. 893.03(1)(a) or (b).
479	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
480	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
481	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
482	893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
483	893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
484	893.135	1st	Trafficking in phencyclidine,

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485	(1) (d) 1.b.		more than 200 grams, less than 400 grams.
	893.135	1st	Trafficking in methaqualone,
	(1) (e) 1.b.		more than 5 kilograms, less than 25 kilograms.
486			
	893.135	1st	Trafficking in amphetamine,
	(1) (f) 1.b.		more than 28 grams, less than 200 grams.
487			
	893.135	1st	Trafficking in flunitrazepam,
	(1) (g) 1.b.		14 grams or more, less than 28 grams.
488			
	893.135	1st	Trafficking in gamma-
	(1) (h) 1.b.		hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
489			
	893.135	1st	Trafficking in 1,4-Butanediol,
	(1) (j) 1.b.		5 kilograms or more, less than 10 kilograms.
490			
	893.135	1st	Trafficking in Phenethylamines,

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491	(1) (k) 2.b.		200 grams or more, less than 400 grams.
492	893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
493	895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
494	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
495	895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
496	896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.

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.

497

498 Section 7. For the purpose of incorporating the amendment
499 made by this act to section 825.103, Florida Statutes, in a
500 reference thereto, subsection (1) of section 772.11, Florida
501 Statutes, is reenacted to read:

502 772.11 Civil remedy for theft or exploitation.—

503 (1) Any person who proves by clear and convincing evidence
504 that he or she has been injured in any fashion by reason of any
505 violation of ss. 812.012-812.037 or s. 825.103(1) has a cause of
506 action for threefold the actual damages sustained and, in any
507 such action, is entitled to minimum damages in the amount of
508 \$200, and reasonable attorney's fees and court costs in the
509 trial and appellate courts. Before filing an action for damages
510 under this section, the person claiming injury must make a
511 written demand for \$200 or the treble damage amount of the
512 person liable for damages under this section. If the person to
513 whom a written demand is made complies with such demand within
514 30 days after receipt of the demand, that person shall be given
515 a written release from further civil liability for the specific
516 act of theft or exploitation by the person making the written

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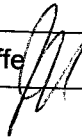

2014

517 demand. Any person who has a cause of action under this section
 518 may recover the damages allowed under this section from the
 519 parents or legal guardian of any unemancipated minor who lives
 520 with his or her parents or legal guardian and who is liable for
 521 damages under this section. Punitive damages may not be awarded
 522 under this section. The defendant is entitled to recover
 523 reasonable attorney's fees and court costs in the trial and
 524 appellate courts upon a finding that the claimant raised a claim
 525 that was without substantial fact or legal support. In awarding
 526 attorney's fees and costs under this section, the court may not
 527 consider the ability of the opposing party to pay such fees and
 528 costs. This section does not limit any right to recover
 529 attorney's fees or costs provided under any other law.

530 Section 8. This act shall take effect October 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 485 Sexual Misconduct with Students by Authority Figures
SPONSOR(S): Criminal Justice Subcommittee; Raburn and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 698

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

SUMMARY ANALYSIS

Section 943.0435, F.S., lists numerous offenses that qualify a person as a sexual offender (e.g., sexual battery, lewd or lascivious offenses, video voyeurism, etc.). These offenses range from third degree felonies to capital felonies, and most are ranked between Levels 6 and Level 9 in the Offense Severity Ranking Chart.

The bill reclassifies the offenses listed in s. 943.0435, F.S., if the offense is committed by an authority figure of a school against a student of the school. The offenses are reclassified as follows:

- Third degree felonies are reclassified as second degree felonies;
- Second degree felonies are reclassified as first degree felonies; and
- First degree felonies are reclassified as life felonies.

The bill also requires a reclassified offense to be ranked one level higher in the Offense Severity Ranking Chart, and provides the following definitions:

- "Authority figure" means a person over the age of 18 employed by, volunteering at, or under contract with a school;
- "School" has the same meaning as provided in s. 1003.01 and includes a private school as defined in s. 1002.01, a voluntary prekindergarten education program as described in s. 1002.53(3), early learning programs, a public school as described in s. 402.3025(1), the Florida School for the Deaf and the Blind, the Florida Virtual School as established under s. 1002.37, and a K-8 Virtual School as established under s. 1002.415, but does not include facilities dedicated exclusively to the education of adults; and
- "Student" means a person under the age of 18 who is enrolled at a school.

On January 30, 2014, the Criminal Justice Impact Conference determined that the bill will have an insignificant negative prison bed impact on the Department of Corrections.

The bill is effective October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Criminal Penalties and the Ranking Chart

Sections 775.082 and 775.083, F.S., establish the following penalties applicable to felony offenses:

- A capital felony must be punished by death if a sentencing proceeding results in findings by the court that the person must be punished by death, otherwise the person must be punished by life imprisonment and is ineligible for parole;
- 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 and a \$15,000 fine;
- A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine;
- A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine; and
- A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine.

The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998.¹ Criminal offenses are ranked in the Offense Severity Ranking Chart from Level 1 (least severe) to Level 10 (most severe), and are assigned points based on the severity of the offense.² If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.³

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.⁴ A defendant's total sentence points are then entered into a mathematical computation that determines the defendant's lowest permissible sentence.⁵ The permissible sentence for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense (the statutory maximum sentences for felonies are described above).⁶

Penalties for Specified Sexual Offenses

Section 943.0435, F.S., contains a list of offenses that qualify a person as a sexual offender. The following chart describes each of these offenses, the felony degree of the offense, and where the offense is ranked in the Offense Severity Ranking Chart.

Offense	Felony Degree	Ranking
Section 787.01(2), F.S. - Kidnapping (minor victim, offender not a parent)	1st	9 or 10
Section 787.01(3), F.S. - Kidnapping (child under 13 w/ sex offense, offender not a parent)	Life	10
Section 787.02(2), F.S. - False Imprisonment (minor victim, offender not a parent)	3rd	6
Section 787.02(3), F.S. - False Imprisonment (child under 13 w/ sex offense, offender not a parent)	1st	9
Section 787.025(2)(c), F.S. - Luring or Enticing a Child (offender 18+ w/ previous sex offense and not a parent, victim under 12)	3rd	NR (defaults to Level 1)

¹ Section 921.002, F.S.

² Section 921.0022, F.S.

³ Section 921.0023, F.S.

⁴ Section 921.0024, F.S.

⁵ *Id.* Section 921.0026, F.S., prohibits a judge from imposing a sentence below the lowest permissible sentence unless the judge makes written findings that there are "circumstances or factors that reasonably justify the downward departure."

⁶ Section 921.0024(2), F.S.

Section 787.06(3)(b), F.S. - Human Trafficking (using coercion for commercial sexual activity)	1st	8
Section 787.06(3)(d), F.S. - Human Trafficking (using coercion for commercial sexual activity of any individual who is an unauthorized alien)	1st	9
Section 787.06(3)(f), F.S. - Human Trafficking (using coercion for commercial sexual activity who does so by the transfer or transport of any individual from outside this state to within the state)	1st	8
Section 787.06(3)(g), F.S. - Human Trafficking (for commercial sexual activity in which any child under 18 is involved)	1st	9
Section 787.06(3)(h), F.S. - Human Trafficking (for commercial sexual activity in which any child under 15 is involved)	Life	10
Section 794.011(2)(a), F.S. - Sexual Battery (offender 18+, victim under 12)	Capital	NR
Section 794.011(2)(b), F.S. - Sexual Battery (offender under 18, victim under 12)	Life	9
Section 794.011(3), F.S. - Sexual Battery (victim 12+, no consent, deadly force)	Life	10
Section 794.011(4), F.S. - Sexual Battery (victim 12+, no consent, special circumstances)	1st	9
Section 794.011(5), F.S. - Sexual Battery (victim 12+, no consent, no deadly force)	2nd	8
Section 794.011(8)(a), F.S. - Sexual Battery (victim under 18, offender in a position of familial or custodial authority and solicits victim to engage in sexual battery)	3rd	6
Section 794.011(8)(b), F.S. - Sexual Battery (victim 12+ but under 18, offender in a position of familial or custodial authority and engages in sexual battery)	1st	9
Section 794.011(8)(c), F.S. - Sexual Battery (victim under 12, offender 18+ in a position of familial or custodial authority and engages in sexual battery)	Capital	NR
Section 794.011(8)(c), F.S. - Sexual Battery (victim under 12, offender under 18 in a position of familial or custodial authority and engages in sexual battery)	Life	NR (defaults to Level 10)
Section 794.05, F.S. - Sexual Activity with Certain Minors (offender 24+ engages in sexual activity with victim 16 or 17)	2nd	6
Section 796.03, F.S. - Procuring person under 18 for prostitution	2nd	7
Section 796.035, F.S. - Selling or buying of minors into sex trafficking or prostitution (by parent, guardian, etc.)	1st	9
Section 800.04(4), F.S. - Lewd or Lascivious Battery	2nd	8
Section 800.04(5)(b), F.S. - Lewd or Lascivious Molestation (offender 18+, victim under 12)	Life	9
Section 800.04(5)(c), F.S. - Lewd or Lascivious Molestation (offender under 18 and victim under 12, offender 18+ and victim age 12-15)	2nd	7
Section 800.04(5)(d), F.S. - Lewd or Lascivious Molestation (offender under 18 and victim age 12-16)	3rd	6
Section 800.04(6)(b), F.S. - Lewd or Lascivious Conduct (offender 18+)	2nd	6
Section 800.04(6)(c), F.S. - Lewd or Lascivious Conduct (offender under 18)	3rd	5
Section 800.04(7)(b), F.S. - Lewd or Lascivious Exhibition (offender 18+)	2nd	5
Section 800.04(7)(c), F.S. - Lewd or Lascivious Exhibition (offender under 18)	3rd	4

Section 810.145(8)(a), F.S. - Video Voyeurism (offender 18+ responsible for welfare of child under 16, offender 18+ employed at a school and victim is a student, offender 24+ and victim under 16)	3rd	NR (defaults to Level 1)
Section 810.145(8)(b), F.S. - Video Voyeurism (w/ pervious voyeurism conviction)	2nd	6
Section 825.1025(2), F.S. - Lewd or Lascivious Battery upon Elderly/Disabled	2nd	8
Section 825.1025(3), F.S. - Lewd or Lascivious Molestation upon Elderly/Disabled	3rd	6
Section 825.1025(4), F.S. - Lewd or Lascivious Exhibition in presence of Elderly/Disabled	3rd	5
Section 827.071(2), F.S. - Using child in a sexual performance, or being a parent, guardian, or custodian of child and consenting to the participation of child in a sexual performance.	2nd	6
Section 827.071(3), F.S. - Promoting a sexual performance by a child	2nd	6
Section 827.071(4), F.S. - Possess with the intent to promote any picture, etc. which includes any sexual conduct by a child	2nd	5
Section 827.071(5), F.S. - Possess any picture, etc. which includes any sexual conduct by a child	3rd	5
Section 847.0133, F.S. - Selling, renting, loaning, giving away, distributing, transmitting, or showing any obscene material to a minor.	3rd	NR (defaults to Level 10)
Section 847.0135(2), F.S. - Computer pornography	3rd	6
Section 847.0135(3), F.S. - Using computer to solicit, lure, entice, etc. a child to commit a sex act or a parent to consent to a child's participation in a sex act	3rd	7
Section 847.0135(3), F.S. - Using computer to solicit, lure, entice, etc. a child to commit a sex act or a parent to consent to a child's participation in a sex act (while misrepresenting one's age)	2nd	7
Section 847.0135(4), F.S. - Traveling to Meet a Minor	2nd	7
Section 847.0135(5), F.S. - Committing certain sex acts live over computer knowing it's being viewed by victim under 16 (offender 18+)	2nd	5
Section 847.0135(5), F.S. - Committing certain sex acts live over computer knowing it's being viewed by victim under 16 (offender under 18)	3rd	4
Section 847.0137, F.S. - Transmitting Child Pornography	3rd	5
Section 847.0138, F.S. - Transmitting Material Harmful to Minors	3rd	5
Section 847.0145, F.S. - Selling or Buying of Minors	1st	9
Section 985.701(1), F.S. - Sexual Misconduct with a Juvenile Offender	2nd	NR (defaults to Level 4)

Effect of the Bill

The bill reclassifies the offenses listed in the above chart if the offense is committed by an authority figure of a school against a student of the school. The offenses are reclassified as follows:

- Third degree felonies are reclassified as second degree felonies;
- Second degree felonies are reclassified as first degree felonies; and
- First degree felonies are reclassified as life felonies.

The bill also requires a reclassified offense to be ranked one level higher in the Offense Severity Ranking Chart.

The bill provides the following definitions:

- "Authority figure" means a person over the age of 18 employed by, volunteering at, or under contract with a school;
- "School" has the same meaning as provided in s. 1003.01 and includes a private school as defined in s. 1002.01, a voluntary prekindergarten education program as described in s. 1002.53(3), early learning programs, a public school as described in s. 402.3025(1), the Florida School for the Deaf and the Blind, the Florida Virtual School as established under s. 1002.37, and a K-8 Virtual School as established under s. 1002.415, but does not include facilities dedicated exclusively to the education of adults; and
- "Student" means a person under the age of 18 who is enrolled at a school.

B. SECTION DIRECTORY:

Section 1. Cites the act as the "Stop Harassing Underage Teens Act."

Section 2. Creates s. 775.0862, F.S., relating to sexual offenses against students by authority figures; reclassification.

Section 3. Amends s. 921.0022, F.S., relating to criminal punishment code; offense severity ranking chart.

Section 4. Provides an effective date of October 1, 2014.

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 the bill will have an insignificant prison bed impact on the Department of Corrections.

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:

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 12, 2014, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed an unnecessary reference to s. 775.21(40(a)1., F.S., clarified the definitions in the bill, and removed a video voyeurism offense from the list of offenses the bill's enhanced penalties apply to.

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 sexual offenses against students by
 3 authority figures; providing a short title; creating s.
 4 775.0862, F.S.; providing definitions; providing for
 5 reclassification of specified sexual offenses committed
 6 against students by an authority figure of the school;
 7 providing for severity ranking of offenses; amending s.
 8 921.0022, F.S.; providing for application of the severity
 9 ranking chart of the Criminal Punishment Code; providing
 10 an effective date.

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

13
 14 Section 1. This act may be cited as the "Stop Harassing
 15 Underage Teens Act."

16 Section 2. Section 775.0862, Florida Statutes, is created
 17 to read:

18 775.0862 Sexual offenses against students by authority
 19 figures; reclassification.--

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

21 (a) "Authority figure" means a person 18 years of age or
 22 older who is employed by, volunteering at, or under contract
 23 with a school.

24 (b) "School" has the same meaning as provided in s.
 25 1003.01 and includes a private school as defined in s. 1002.01,
 26 a voluntary prekindergarten education program as described in s.

27 1002.53(3), early learning programs, a public school as
 28 described in s. 402.3025(1), the Florida School for the Deaf and
 29 the Blind, the Florida Virtual School established under s.
 30 1002.37, and a K-8 Virtual School established under s. 1002.415.
 31 The term does not include facilities dedicated exclusively to
 32 the education of adults.

33 (c) "Student" means a person younger than 18 years of age
 34 who is enrolled at a school.

35 (2) The felony degree of a violation of an offense listed
 36 in s. 943.0435(1)(a)1.a, unless the offense is a violation of s.
 37 794.011(4)(g) or s. 810.145(8)(a)2., shall be reclassified as
 38 provided in this section if the offense is committed by an
 39 authority figure of a school against a student of the school.

40 (3)(a) In the case of a felony of the third degree, the
 41 offense is reclassified to a felony of the second degree.

42 (b) In the case of a felony of the second degree, the
 43 offense is reclassified to a felony of the first degree.

44 (c) In the case of a felony of the first degree, the
 45 offense is reclassified to a life felony.

46
 47 For purposes of sentencing under chapter 921 and determining
 48 incentive gain-time eligibility under chapter 944, a felony
 49 offense that is reclassified under this subsection is ranked one
 50 level above the ranking under s. 921.0022 or s. 921.0023 of the
 51 offense committed.

52 Section 3. Subsection (2) of section 921.0022, Florida
 53 Statutes, is amended to read:

54 921.0022 Criminal Punishment Code; offense severity
 55 ranking chart.-

56 (2) The offense severity ranking chart has 10 offense
 57 levels, ranked from least severe, which are level 1 offenses, to
 58 most severe, which are level 10 offenses, and each felony
 59 offense is assigned to a level according to the severity of the
 60 offense. For purposes of determining which felony offenses are
 61 specifically listed in the offense severity ranking chart and
 62 which severity level has been assigned to each of these
 63 offenses, the numerical statutory references in the left column
 64 of the chart and the felony degree designations in the middle
 65 column of the chart are controlling; the language in the right
 66 column of the chart is provided solely for descriptive purposes.
 67 Reclassification of the degree of the felony through the
 68 application of s. 775.0845, s. 775.0861, s. 775.0862, s.
 69 775.087, s. 775.0875, s. 794.023, or any other law that provides
 70 an enhanced penalty for a felony offense, to any offense listed
 71 in the offense severity ranking chart in this section shall not
 72 cause the offense to become unlisted and is not subject to the
 73 provisions of s. 921.0023.

74 Section 4. This act shall take effect October 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 641 Computer Crimes
SPONSOR(S): Criminal Justice Subcommittee; La Rosa
TIED BILLS: CS/HB 643 **IDEN./SIM. BILLS:** CS/SB 364

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Jones	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe	Lloyd
3) Judiciary Committee			

SUMMARY ANALYSIS

Chapter 815, F.S., entitled the "Florida Computer Crimes Act," was created in 1978 in recognition of growing computer-related crime. The chapter establishes legislative intent, and a variety of computer-related offenses and definitions.

The bill adds legislative intent language that recognizes that the proliferation of new technologies impact computer-related crimes. To this end, the bill amends the definition of computer network and creates a definition of the term *electronic device*, which means "a device that is capable of communicating across a computer network with other computers or devices for the purpose of transmitting, receiving, or storing data."

The bill also:

- Creates new computer-related offenses and expands the application of various existing computer-related crimes to include electronic devices;
- Creates an exception to computer-related offenses by specifying they do not apply to persons who act pursuant to a search warrant, an exception to a search warrant, or when acting within the scope of his or her employment;
- Expands the entities that can bring a civil action against persons convicted of computer-related offenses by including owners and lessees of electronic devices; and
- Adds electronic devices to the list of items subject to forfeiture if used in computer-related offenses.

The bill also creates new second and third degree felony offenses relating to public utilities.

On March 3, 2014, the Criminal Justice Impact Conference determined that CS/HB 641, will have an insignificant negative prison bed impact on the Department of Corrections.

The bill is effective October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Florida Computer Crime Act

Chapter 815, F.S., entitled the "Florida Computer Crimes Act," was created in 1978¹ in recognition of growing computer-related crime. The chapter establishes legislative intent, and a variety of computer-related offenses and definitions.

Legislative Intent

Currently, s. 815.02, F.S., provides that the Legislature finds and declares that:

- Computer-related crime is a growing problem in government as well as in the private sector;
- Computer-related crime occurs at great cost to the public since losses for each incident of computer crime tend to be far greater than the losses associated with each incident of other white collar crime;
- The opportunities for computer-related crimes in financial institutions, government programs, government records, and other business enterprises through the introduction of fraudulent records into a computer system, the unauthorized use of computer facilities, the alteration or destruction of computerized information or files, and the stealing of financial instruments, data, and other assets are great; and
- While various forms of computer crime might possibly be the subject of criminal charges based on other provisions of law, it is appropriate and desirable that a supplemental and additional statute be provided which proscribes various forms of computer abuse.

Effect of the Bill

The bill amends s. 815.02, F.S., to add additional legislative intent language, which states that:

- The proliferation of new technology has led to the integration of computer systems in most sectors of the marketplace through the creation of computer networks, greatly extending the reach of computer crime.

Definitions

Section 815.03, F.S., provides numerous definitions that apply to ch. 815, F.S. For example, s. 815.03(4), F.S., defines *computer network* to mean "any system that provides communications between one or more computer systems and its input or output devices, including, but not limited to, display terminals and printers that are connected by telecommunication facilities."

Effect of the Bill

The bill amends the definition of *computer network* to mean "a system that provides a medium for communication between one or more computer systems or electronic devices, including communication with an input or output device such as a display terminal, printer, or other electronic equipment that is connected to the computer systems or electronic devices by physical or wireless telecommunication facilities."

The bill creates a definition of the term *electronic device*, which means "a device that is capable of communicating across a computer network with other computers or devices for the purpose of transmitting, receiving, or storing data."

Offenses Against Intellectual Property

Section 815.04, F.S., makes it a third degree felony² for a person to:

- Willfully, knowingly, and without authorization modify data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, or computer network;
- Willfully, knowingly, and without authorization destroy data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, or computer network; or
- Willfully, knowingly, and without authorization discloses or takes data, programs, or supporting documentation which is a trade secret³ or is confidential that is residing or existing internal or external to a computer, computer system, or computer network.

It is a second degree felony⁴ if any of the above offenses are committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property.

Effect of the Bill

The bill expands the application of s. 815.04, F.S., by prohibiting a person from:

- Modifying or destroying data, etc. located on a computer, computer system, computer network, or an *electronic device*; and
- Disclosing or taking data, programs, or supporting documents which is a trade secret or is confidential that is residing or existing internal or external to a computer, computer system, computer network, or an *electronic device*.

Offenses Against Computer Users

Criminal Penalties

Section 815.06(1), F.S., makes it a third degree felony for a person to willfully, knowingly, and without authorization:

- (a) Access or cause to be accessed any computer, computer system, or computer network;
- (b) Disrupt or deny or cause the denial of computer system services to an authorized user of a computer system services, which, in whole or part, is owned by, under contract to, or operated for, on behalf of, or in conjunction with another;
- (c) Destroy, take, injure, or damage equipment or supplies used or intended to be used in a computer, computer system, or computer network;
- (d) Destroy, injure, or damage any computer, computer system, or computer network; or
- (e) Introduce any computer contaminant into any computer, computer system, or computer network.

It is a second degree felony if a person violates subsection (1) and the person:

- Damages a computer, computer equipment, computer supplies, a computer system, or a computer network, and the monetary damage or loss incurred as a result of the violation is \$5,000 or greater;

² A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

³ Section 812.081, F.S., defines a "trade secret" as the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be: a Secret; Of value; For use or in use by the business; and Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it.

Section 119.011, F.S., defines a "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

⁴ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

- Commits the offense for the purpose of devising or executing any scheme or artifice to defraud or obtain property; or
- Interrupts or impairs a governmental operation or public communication, transportation, or supply of water, gas, or other public service.⁵

It is a first degree felony⁶ if a person violates subsection (1) and the violation endangers human life.⁷

Section 815.06(3), F.S., makes it a first degree misdemeanor⁸ for a person to willfully, knowingly, and without authorization modify equipment or supplies used or intended to be used in a computer, computer system, or computer network.

None of the criminal penalties apply to a person who accesses his or her employer's computer system, computer network, computer program, or computer data when acting within the scope of his or her lawful employment.⁹

Civil Remedies and Forfeiture

Currently, the owner or lessee of the computer, computer system, computer network, computer program, computer equipment, computer supplies, or computer data is authorized to bring a civil action against any person convicted under s. 815.06, F.S., for compensatory damages.¹⁰ In such actions, the court may award reasonable attorney's fees to the prevailing party.¹¹

For purpose of determining where a civil (or criminal) action may be brought, s. 816.06(7), F.S., specifies that in instances where a person causes the access to a computer, computer system, or computer network in one jurisdiction from another jurisdiction, the person is deemed to have personally accessed the computer, computer system, or computer network in both jurisdictions.

Additionally, any computer, computer system, computer network, computer software, or computer data owned by a defendant which is used during the commission of any violation s. 815.06, F.S., or any computer owned by a defendant which is used as a repository for the storage of software or data obtained in violation of s. 815.06, F.S., is subject to forfeiture as provided under ss. 932.701-932.704, F.S.¹²

Effect of the Bill

Criminal Penalties

The bill rennumbers s. 815.06(1), F.S., to s. 815.06(2), F.S., and expands the application of the statute to include electronic devices and to include additional prohibited acts. Specifically, the bill:

- Amends paragraph (a) to prohibit a person from accessing, or causing to be accessed, any computer, computer system, computer network, or *electronic device*, with knowledge that the access is unauthorized;
- Amends paragraph (b) to prohibit a person from disrupting or denying or causing the denial of *the ability to transmit data to or from* an authorized user of a computer system or computer network services;
- Amends paragraphs (c) and (d) to include *electronic devices* in the list of property a person is prohibited from destroying, taking, injuring, or damaging;
- Amends paragraph (e) to include *electronic devices* in the list of property a person is prohibited from introducing contaminants into; and

⁵ Section 815.06(2)(b), F.S.

⁶ 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.

⁷ Section 815.06(2)(c), F.S.

⁸ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁹ Section 815.06(6), F.S.

¹⁰ Section 815.06(4), F.S.

¹¹ *Id.*

¹² Section 815.06(5), F.S.

- Creates paragraph (f) which prohibits a person from willfully, knowingly, and without authorization engaging in audio or video surveillance of an individual without that individual's knowledge by accessing any inherent feature or component of a computer, computer system, computer network, or electronic device, including accessing the data or information of a computer, computer system, computer network, or electronic device that is stored by a third party.

The bill also expands the instances in which the penalty for violating s. 815.06, F.S., is increased to a second degree felony. Specifically, the bill makes it a second degree felony if a person commits any of the above-described acts and the person:

- Intentionally interrupts the transmittal of data to or from, or gains unauthorized access to, a computer, computer system, computer network, or electronic device belonging to any mode of public or private transit, as defined in s. 341.031, F.S.

The bill also adds another instance in which the penalty for violating s. 815.06, F.S., is increased to a first degree felony. Specifically, the bill makes it a first degree felony if a person commits any of the above-described acts and the violation disrupts a computer, computer system, computer network, or electronic device that affects medical equipment used in the direct administration of medical care or treatment to a person.

The bill broadens the application of the misdemeanor offense by prohibiting persons from modifying equipment or supplies used or intended to be used in a computer, computer system, computer network, or *electronic device*.

The bill broadens the current exception by specifying that the offenses in s. 815.06, F.S., do not apply to a person who accesses his or her employer's computer system, computer network, computer program, computer data, or *electronic device* when acting within the scope of his or her lawful employment. The bill also creates an additional exception for persons who act pursuant to a search warrant, an exception to a search warrant, or when acting within the scope of his or her employment.

The bill defines the term person as:

- An individual;
- A partnership, corporation, association, or other entity doing business in this state, or an officer, agent, or employee of such an entity; or
- An officer, employee, or agent of the state or a county, municipality, special district, or other political subdivision whether executive, judicial, or legislative, including, but not limited to, a department, division, bureau, commission, authority, district, or agency thereof.

Civil Remedies and Forfeiture

The bill expands the entities that can bring a civil action against persons convicted of s. 815.06, F.S., by including owners and lessees of *electronic devices*.

For purpose of determining where a civil (or criminal) action may be brought, the bill specifies that in instances where a person causes the access to a computer, computer system, computer network, or *electronic device* in one jurisdiction from another jurisdiction, the person is deemed to have personally accessed the computer, computer system, computer network, or *electronic device* in both jurisdictions.

The bill adds *electronic devices* to the list of items subject to forfeiture if used in a violation of s. 815.06, F.S.

The bill makes conforming changes to the offense severity ranking chart in s. 921.0022, F.S.

Offenses Against Public Utilities

Currently, ch. 815, F.S., does not include any offenses relating to public utilities.

Effect of the Bill

The bill creates s. 815.061, F.S., to make it a third degree felony for a person to willfully, knowingly, and without authorization gain access to a computer, computer system, computer network, or electronic device owned, operated, or used by a public utility while knowing that such access is unauthorized.

The bill makes it a second degree felony for a person to physically tamper with, insert software into, or otherwise transmit commands or electronic communications to a computer, computer system, computer network, or electronic device which cause a disruption in any service delivered by a public utility.

The bill defines term *public utility*, to include:

- A public utility or electric utility as defined in s. 366.02, F.S.;
- A utility as defined in s. 367.021, F.S.;
- A natural gas transmission company as defined in s. 368.103, F.S.;
- A person, corporation, partnership, association, public agency, municipality, cooperative, gas district, or other legal entity and their lessees, trustees, or receivers, now or hereafter owning, operating, managing, or controlling gas transmission or distribution facilities or any other facility supplying or storing natural or manufactured gas or liquefied gas with air admixture or any similar gaseous substances by pipeline to or for the public within this state; and
- A separate legal entity created under s. 163.01, F.S., and composed of any of the entities described in this subsection for the purpose of providing utility services in this state, including wholesale power and electric transmission services.

B. SECTION DIRECTORY:

Section 1. Amends s. 721.071, F.S., relating to trade secrets.

Section 1. Amends s. 815.02, F.S., relating to legislative intent.

Section 2. Amends s. 815.03, F.S., relating to definitions.

Section 3. Amends s. 815.04, F.S., relating to offenses against intellectual property; public records exemption.

Section 4. Amends s. 815.06, F.S., relating to offenses against computer users.

Section 5. Creates s. 815.061, F.S., relating to offenses against public utilities.

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

Section 7. Provides an effective date of October 1, 2014.

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 March 3, 2014, the Criminal Justice Impact Conference determined that CS/HB 641, will have an insignificant negative prison bed impact on the Department of Corrections.

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 may have a negative jail bed impact in that it broadens the application of the first degree misdemeanor offense in s. 815.06, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 12, 2014, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorable as a committee substitute. The amendment:

- Corrected terminology;
- Expanded the application of s. 815.04(3), F.S., by prohibiting a person from disclosing or taking certain data located on an *electronic device*.
- Expanded the definition of the term "public utility; and
- Amended the Criminal Punishment Code severity ranking chart for purposes of incorporating the changes made to s. 815.04, F.S.

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 computer crimes; amending s.
3 721.071, F.S.; conforming a cross-reference; amending
4 s. 815.02, F.S.; revising legislative findings;
5 amending s. 815.03, F.S.; revising and providing
6 definitions; amending s. 815.04, F.S.; providing that
7 a person who willfully, knowingly, and without
8 authorization modifies or destroys data, programs, or
9 supporting documentation residing or existing internal
10 or external to an electronic device commits an offense
11 against intellectual property; providing that a person
12 who willfully, knowingly, and without authorization
13 discloses or takes data, programs, or supporting
14 documentation that is a trade secret or is
15 confidential as provided by law residing or existing
16 internal or external to an electronic device commits
17 an offense against intellectual property; providing
18 criminal penalties; amending s. 815.06, F.S.; defining
19 the term "person"; providing that a person who
20 willfully, knowingly, and without authorization
21 accesses an electronic device, disrupts the ability to
22 transmit data to or from a user of computer network
23 services, damages an electronic device or equipment or
24 supplies used by an electronic device, introduces a
25 computer contaminant into an electronic device, or
26 engages in the audio or video surveillance of an

27 individual without the individual's knowledge by
 28 accessing a computer, computer system, computer
 29 network, or electronic device commits an offense
 30 against the users of computer networks and electronic
 31 devices; providing criminal penalties; providing
 32 exceptions; creating s. 815.061, F.S.; defining the
 33 term "public utility"; prohibiting a person from
 34 willfully, knowingly, and without authorization
 35 engaging in specified activities against a computer,
 36 computer system, computer network, or electronic
 37 device owned, operated, or used by a public utility;
 38 providing criminal penalties; amending s. 921.0022,
 39 F.S.; conforming provisions of the offense severity
 40 ranking chart to changes made by the act; providing an
 41 effective date.

42
 43 Be It Enacted by the Legislature of the State of Florida:

44
 45 Section 1. Subsection (1) of section 721.071, Florida
 46 Statutes, is amended to read:

47 721.071 Trade secrets.—

48 (1) If a developer or any other person filing material
 49 with the division pursuant to this chapter expects the division
 50 to keep the material confidential on grounds that the material
 51 constitutes a trade secret, as that term is defined in s.
 52 812.081, the developer or other person shall file the material

53 together with an affidavit of confidentiality. "Filed material"
 54 for purposes of this section shall mean material that is filed
 55 with the division with the expectation that the material will be
 56 kept confidential and that is accompanied by an affidavit of
 57 confidentiality. Filed material that is trade secret information
 58 includes, but is not limited to, service contracts relating to
 59 the operation of reservation systems and those items and matters
 60 described in s. 815.04(3) ~~815.04(3)(a)~~.

61 Section 2. Present subsection (4) of section 815.02,
 62 Florida Statutes, is redesignated as subsection (5), and a new
 63 subsection (4) is added to that section, to read:

64 815.02 Legislative intent.—The Legislature finds and
 65 declares that:

66 (4) The proliferation of new technology has led to the
 67 integration of computer systems in most sectors of the
 68 marketplace through the creation of computer networks, greatly
 69 extending the reach of computer crime.

70 Section 3. Section 815.03, Florida Statutes, is amended to
 71 read:

72 815.03 Definitions.—As used in this chapter, unless the
 73 context clearly indicates otherwise:

74 (1) "Access" means to approach, instruct, communicate
 75 with, store data in, retrieve data from, or otherwise make use
 76 of any resources of a computer, computer system, or computer
 77 network.

78 (2) "Computer" means an internally programmed, automatic

79 | device that performs data processing.

80 | (3) "Computer contaminant" means any set of computer
 81 | instructions designed to modify, damage, destroy, record, or
 82 | transmit information within a computer, computer system, or
 83 | computer network without the intent or permission of the owner
 84 | of the information. The term includes, but is not limited to, a
 85 | group of computer instructions, commonly called viruses or
 86 | worms, which are self-replicating or self-propagating and which
 87 | are designed to contaminate other computer programs or computer
 88 | data; consume computer resources; modify, destroy, record, or
 89 | transmit data; or in some other fashion usurp the normal
 90 | operation of the computer, computer system, or computer network.

91 | (4) "Computer network" means a system that provides a
 92 | medium for communication between one or more computer systems or
 93 | electronic devices, including communication with an input or
 94 | output device such as a display terminal, printer, or other
 95 | electronic equipment that is connected to the computer systems
 96 | or electronic devices by physical or wireless telecommunication
 97 | facilities ~~any system that provides communications between one~~
 98 | ~~or more computer systems and its input or output devices,~~
 99 | ~~including, but not limited to, display terminals and printers~~
 100 | ~~that are connected by telecommunication facilities.~~

101 | (5) "Computer program or computer software" means a set of
 102 | instructions or statements and related data which, when executed
 103 | in actual or modified form, cause a computer, computer system,
 104 | or computer network to perform specified functions.

105 (6) "Computer services" include, but are not limited to,
 106 computer time; data processing or storage functions; or other
 107 uses of a computer, computer system, or computer network.

108 (7) "Computer system" means a device or collection of
 109 devices, including support devices, one or more of which contain
 110 computer programs, electronic instructions, or input data and
 111 output data, and which perform functions, including, but not
 112 limited to, logic, arithmetic, data storage, retrieval,
 113 communication, or control. The term does not include calculators
 114 that are not programmable and that are not capable of being used
 115 in conjunction with external files.

116 (8) "Data" means a representation of information,
 117 knowledge, facts, concepts, computer software, computer
 118 programs, or instructions. Data may be in any form, in storage
 119 media or stored in the memory of the computer, or in transit or
 120 presented on a display device.

121 (9) "Electronic device" means a device that is capable of
 122 communicating across a computer network with other computers or
 123 devices for the purpose of transmitting, receiving, or storing
 124 data.

125 ~~(10)(9)~~ "Financial instrument" means any check, draft,
 126 money order, certificate of deposit, letter of credit, bill of
 127 exchange, credit card, or marketable security.

128 ~~(11)(10)~~ "Intellectual property" means data, including
 129 programs.

130 ~~(12)(11)~~ "Property" means anything of value as defined in

131 s. 812.012 and includes, but is not limited to, financial
 132 instruments, information, including electronically produced data
 133 and computer software and programs in ~~either~~ machine-readable or
 134 human-readable form, and any other tangible or intangible item
 135 of value.

136 Section 4. Section 815.04, Florida Statutes, is amended to
 137 read:

138 815.04 Offenses against intellectual property; public
 139 records exemption.—

140 (1) A person who ~~Whoever~~ willfully, knowingly, and without
 141 authorization modifies data, programs, or supporting
 142 documentation residing or existing internal or external to a
 143 computer, computer system, ~~or~~ computer network, or electronic
 144 device commits an offense against intellectual property.

145 (2) A person who ~~Whoever~~ willfully, knowingly, and without
 146 authorization destroys data, programs, or supporting
 147 documentation residing or existing internal or external to a
 148 computer, computer system, ~~or~~ computer network, or electronic
 149 device commits an offense against intellectual property.

150 (3) ~~(a)~~ Data, programs, or supporting documentation which
 151 is a trade secret as defined in s. 812.081 which resides or
 152 exists internal or external to a computer, computer system, or
 153 computer network which is held by an agency as defined in
 154 chapter 119 is confidential and exempt from the provisions of s.
 155 119.07(1) and s. 24(a), Art. I of the State Constitution.

156 (4) ~~(b)~~ A person who ~~Whoever~~ willfully, knowingly, and

157 without authorization discloses or takes data, programs, or
 158 supporting documentation that ~~which~~ is a trade secret as defined
 159 in s. 812.081 or is confidential as provided by law residing or
 160 existing internal or external to a computer, computer system, ~~or~~
 161 computer network, or electronic device commits an offense
 162 against intellectual property.

163 (5)-(4)(a) Except as otherwise provided in this subsection,
 164 an offense against intellectual property is a felony of the
 165 third degree, punishable as provided in s. 775.082, s. 775.083,
 166 or s. 775.084.

167 (b) If the offense is committed for the purpose of
 168 devising or executing any scheme or artifice to defraud or to
 169 obtain any property, ~~then~~ the person commits ~~offender is guilty~~
 170 ~~of~~ a felony of the second degree, punishable as provided in s.
 171 775.082, s. 775.083, or s. 775.084.

172 Section 5. Section 815.06, Florida Statutes, is amended to
 173 read:

174 815.06 Offenses against ~~computer~~ users of computer
 175 networks and electronic devices.-

176 (1) As used in this section, the term "person" means:

177 (a) An individual;

178 (b) A partnership, corporation, association, or other
 179 entity doing business in this state, or an officer, agent, or
 180 employee of such an entity; or

181 (c) An officer, employee, or agent of the state or a
 182 county, municipality, special district, or other political

183 subdivision whether executive, judicial, or legislative,
 184 including, but not limited to, a department, division, bureau,
 185 commission, authority, district, or agency thereof.

186 (2) A person commits an offense against users of computer
 187 networks or electronic devices if he or she ~~whoever~~ willfully,
 188 knowingly, and without authorization:

189 (a) Accesses or causes to be accessed any computer,
 190 computer system, ~~or~~ computer network, or electronic device with
 191 knowledge that such access is unauthorized;

192 (b) Disrupts or denies or causes the denial of the ability
 193 to transmit data ~~computer system services~~ to or from an
 194 authorized user of a ~~such~~ computer system or computer network
 195 services, which, in whole or in part, is owned by, under
 196 contract to, or operated for, on behalf of, or in conjunction
 197 with another;

198 (c) Destroys, takes, injures, or damages equipment or
 199 supplies used or intended to be used in a computer, computer
 200 system, ~~or~~ computer network, or electronic device;

201 (d) Destroys, injures, or damages any computer, computer
 202 system, ~~or~~ computer network, or electronic device; ~~or~~

203 (e) Introduces any computer contaminant into any computer,
 204 computer system, ~~or~~ computer network, or electronic device; or

205 (f) Engages in audio or video surveillance of an
 206 individual without that individual's knowledge by accessing any
 207 inherent feature or component of a computer, computer system,
 208 computer network, or electronic device, including accessing the

209 data or information of a computer, computer system, computer
 210 network, or electronic device that is stored by a third party
 211 ~~commits an offense against computer users.~~

212 ~~(3)-(2)~~(a) Except as provided in paragraphs (b) and (c), a
 213 person who ~~whoever~~ violates subsection (2) ~~(1)~~ commits a felony
 214 of the third degree, punishable as provided in s. 775.082, s.
 215 775.083, or s. 775.084.

216 (b) A person commits a felony of the second degree,
 217 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 218 if he or she ~~whoever~~ violates subsection (2) ~~(1)~~ and:

219 1. Damages a computer, computer equipment or supplies,
 220 ~~computer supplies,~~ a computer system, or a computer network, and
 221 the ~~monetary~~ damage or loss ~~incurred as a result of the~~
 222 ~~violation~~ is at least \$5,000 ~~or greater;~~

223 2. Commits the offense for the purpose of devising or
 224 executing any scheme or artifice to defraud or obtain property;
 225 ~~or~~

226 3. Interrupts or impairs a governmental operation or
 227 public communication, transportation, or supply of water, gas,
 228 or other public service; or

229 4. Intentionally interrupts the transmittal of data to or
 230 from, or gains unauthorized access to, a computer, computer
 231 system, computer network, or electronic device belonging to any
 232 mode of public or private transit, as defined in s. 341.031,
 233 ~~commits a felony of the second degree, punishable as provided in~~
 234 ~~s. 775.082, s. 775.083, or s. 775.084.~~

235 (c) A person who ~~Whoever~~ violates subsection (2) ~~(1)~~ and
 236 ~~the violation endangers human life~~ commits a felony of the first
 237 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 238 775.084, if the violation:

- 239 1. Endangers human life; or
- 240 2. Disrupts a computer, computer system, computer network,
 241 or electronic device that affects medical equipment used in the
 242 direct administration of medical care or treatment to a person.

243 ~~(4)(3)~~ A person who ~~Whoever~~ willfully, knowingly, and
 244 without authorization modifies equipment or supplies used or
 245 intended to be used in a computer, computer system, ~~or~~ computer
 246 network, or electronic device commits a misdemeanor of the first
 247 degree, punishable as provided in s. 775.082 or s. 775.083.

248 ~~(5)(4)~~(a) In addition to any other civil remedy available,
 249 the owner or lessee of the computer, computer system, computer
 250 network, computer program, computer equipment or supplies,
 251 electronic device, computer supplies, or computer data may bring
 252 a civil action against a any person convicted under this section
 253 for compensatory damages.

254 (b) In an any action brought under this subsection, the
 255 court may award reasonable attorney ~~attorney's~~ fees to the
 256 prevailing party.

257 ~~(6)(5)~~ A Any computer, computer system, computer network,
 258 computer software, ~~or~~ computer data, or electronic device owned
 259 by a defendant that ~~which~~ is used during the commission of a any
 260 violation of this section or a any computer or electronic device

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261 | owned by the defendant that ~~which~~ is used as a repository for
 262 | the storage of software or data obtained in violation of this
 263 | section is subject to forfeiture as provided under ss. 932.701-
 264 | 932.704.

265 | ~~(7)(6)~~ This section does not apply to a any person who:

266 | (a) Accesses his or her employer's computer system,
 267 | computer network, computer program, ~~or~~ computer data, or
 268 | electronic device when acting within the scope of his or her
 269 | lawful employment; or

270 | (b) Has acted pursuant to a search warrant or to an
 271 | exception to a search warrant authorized by law or when acting
 272 | within the scope of his or her lawful employment.

273 | ~~(8)(7)~~ For purposes of bringing a civil or criminal action
 274 | under this section, a person who causes, by any means, the
 275 | access to a computer, computer system, ~~or~~ computer network, or
 276 | electronic device in one jurisdiction from another jurisdiction
 277 | is deemed to have personally accessed the computer, computer
 278 | system, ~~or~~ computer network, or electronic device in both
 279 | jurisdictions.

280 | Section 6. Section 815.061, Florida Statutes, is created
 281 | to read:

282 | 815.061 Offenses against public utilities.-

283 | (1) As used in this section, the term "public utility"
 284 | includes:

285 | (a) A public utility or electric utility as defined in s.
 286 | 366.02.

287 (b) A utility as defined in s. 367.021.

288 (c) A natural gas transmission company as defined in s.
 289 368.103.

290 (d) A person, corporation, partnership, association,
 291 public agency, municipality, cooperative, gas district, or other
 292 legal entity and their lessees, trustees, or receivers, now or
 293 hereafter owning, operating, managing, or controlling gas
 294 transmission or distribution facilities or any other facility
 295 supplying or storing natural or manufactured gas or liquefied
 296 gas with air admixture or any similar gaseous substances by
 297 pipeline to or for the public within this state.

298 (e) A separate legal entity created under s. 163.01 and
 299 composed of any of the entities described in this subsection for
 300 the purpose of providing utility services in this state,
 301 including wholesale power and electric transmission services.

302 (2) A person may not willfully, knowingly, and without
 303 authorization:

304 (a) Gain access to a computer, computer system, computer
 305 network, or electronic device owned, operated, or used by a
 306 public utility while knowing that such access is unauthorized.

307 (b) Physically tamper with, insert software into, or
 308 otherwise transmit commands or electronic communications to a
 309 computer, computer system, computer network, or electronic
 310 device that causes a disruption in any service delivered by a
 311 public utility.

312 (3) (a) A person who violates paragraph (2) (a) commits a

313 felony of the third degree, punishable as provided in s.
 314 775.082, s. 775.083, or s. 775.084.

315 (b) A person who violates paragraph (2) (b) commits a
 316 felony of the second degree, punishable as provided in s.
 317 775.082, s. 775.083, or s. 775.084.

318 Section 7. Paragraphs (a) and (c) of subsection (3) of
 319 section 921.0022, Florida Statutes, are amended to read:

320 921.0022 Criminal Punishment Code; offense severity
 321 ranking chart.-

322 (3) OFFENSE SEVERITY RANKING CHART

323 (a) LEVEL 1

324

Florida Statute	Felony Degree	Description
24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than \$300 but less than \$20,000.

328

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329	316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
330	319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
331	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
332	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
333	322.212 (1)(a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver's license; possession of simulated identification.
334	322.212(4)	3rd	Supply or aid in supplying unauthorized driver's license or identification card.
	322.212(5)(a)	3rd	False application for driver's

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335			license or identification card.
	414.39(2)	3rd	Unauthorized use, possession, forgery, or alteration of food assistance program, Medicaid ID, value greater than \$200.
336			
	414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
337			
	443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
338			
	509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.
339			
	517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
340			

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341	562.27(1)	3rd	Possess still or still apparatus.
342	713.69	3rd	Tenant removes property upon which lien has accrued, value more than \$50.
343	812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
344	812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
345	815.04 <u>(5)</u> (4) (a)	3rd	Offense against intellectual property (i.e., computer programs, data).
346	817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
	817.569(2)	3rd	Use of public record or public records information to facilitate commission of a

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			felony.
347			
	826.01	3rd	Bigamy.
348			
	828.122(3)	3rd	Fighting or baiting animals.
349			
	831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
350			
	831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
351			
	832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.
352			
	832.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
353			

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354	838.15 (2)	3rd	Commercial bribe receiving.
355	838.16	3rd	Commercial bribery.
356	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
357	847.011 (1) (a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
358	849.01	3rd	Keeping gambling house.
359	849.09 (1) (a) - (d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.
360	849.23	3rd	Gambling-related machines; "common offender" as to property rights.
361	849.25 (2)	3rd	Engaging in bookmaking.

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362	860.08	3rd	Interfere with a railroad signal.
363	860.13(1)(a)	3rd	Operate aircraft while under the influence.
364	893.13(2)(a)2.	3rd	Purchase of cannabis.
365	893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
366	934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.
367	(c) LEVEL 3		
368	Florida	Felony	
369	Statute	Degree	Description
370	119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
	316.066	3rd	Unlawfully obtaining or using

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371	(3) (b) - (d)		confidential crash reports.
372	316.193 (2) (b)	3rd	Felony DUI, 3rd conviction.
373	316.1935 (2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
374	319.30 (4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
375	319.33 (1) (a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
376	319.33 (1) (c)	3rd	Procure or pass title on stolen vehicle.
377	319.33 (4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.

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378	327.35(2)(b)	3rd	Felony BUI.
379	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
380	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
381	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
382	379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.

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383	379.2431 (1) (e) 6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
384	400.9935 (4)	3rd	Operating a clinic without a license or filing false license application or other required information.
385	440.1051 (3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
386	501.001 (2) (b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
387	624.401 (4) (a)	3rd	Transacting insurance without a certificate of authority.
	624.401 (4) (b) 1.	3rd	Transacting insurance without a certificate of authority;

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			premium collected less than \$20,000.
388	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
389	697.08	3rd	Equity skimming.
390	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
391	796.05(1)	3rd	Live on earnings of a prostitute.
392	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
393	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
394	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed

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			with firearm or dangerous weapon.
395	812.014 (2) (c) 2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
396	812.0145 (2) (c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
397	815.04 <u>(5)</u> (4) (b)	2nd	Computer offense devised to defraud or obtain property.
398	817.034 (4) (a) 3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
399	817.233	3rd	Burning to defraud insurer.
400	817.234 (8) (b) - (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
401	817.234 (11) (a)	3rd	Insurance fraud; property value

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402			less than \$20,000.
	817.236	3rd	Filing a false motor vehicle insurance application.
403			
	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
404			
	817.413(2)	3rd	Sale of used goods as new.
405			
	817.505(4)	3rd	Patient brokering.
406			
	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
407			
	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
408			
	831.29	2nd	Possession of instruments for

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			counterfeiting drivers' licenses or identification cards.
409	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
410	843.19	3rd	Injure, disable, or kill police dog or horse.
411	860.15(3)	3rd	Overcharging for repairs and parts.
412	870.01(2)	3rd	Riot; inciting or encouraging.
413	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
414	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5.,

415	893.13(1)(f)2.	2nd	(2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
416	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
417	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
418	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
418	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation,

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419			etc.
	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
420			
	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
421			
	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
422			
	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled

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			substance.
423	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
424	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
425	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
426	944.47 (1)(a)1.-2.	3rd	Introduce contraband to correctional facility.
427	944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
428	985.721	3rd	Escapes from a juvenile

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facility (secure detention or
residential commitment
facility).

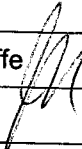

429

430

Section 8. This act shall take effect October 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 697 Controlled Substances
SPONSOR(S): Criminal Justice Subcommittee; Ingram and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 780

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Jones	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe 	Lloyd 
3) Judiciary Committee			

SUMMARY ANALYSIS

In recent years, synthetic drugs have become a problem in Florida. Synthetic drugs are industrial grade chemicals mixed to produce a "high" similar to what would be experienced when using illegal drugs such as marijuana, cocaine or methamphetamine.

In 2011, 2012, and 2013 numerous synthetic cannabinoids, cathinones, and phenethylamines were added to Schedule I of Florida's controlled substances schedules. Since the 2013 Legislative Session, new formulas of synthetic cannabinoids and phenethylamines have been developed that are made up of chemicals not covered by current law.

On October 9, 2013, Attorney General Pam Bondi filed an emergency rule that temporarily scheduled four synthetic cannabinoids in Schedule I. Since the Attorney General filed the emergency rule, the U.S. Department of Justice, Drug Enforcement Administration has federally scheduled two new synthetic phenethylamines that are currently not scheduled as controlled substances in Florida.

The bill adds four new synthetic cannabinoids and two new phenethylamines to Schedule I of Florida controlled substance schedules. As a result, the criminal penalties relating to the possession, sale, manufacture, delivery, etc., of controlled substances now apply to these synthetic substances.

The bill also adds three new phenethylamines to the list of substances included in the "trafficking in phenethylamines" statute.

On March 3, 2014, the Criminal Justice Impact Conference determined that CS/HB 697 will have an insignificant negative prison bed impact on the Department of Corrections. According to the Florida Department of Law Enforcement (FDLE), state and local law enforcement crime labs may see an increase in evidence submissions. However, FDLE states the impact should be minimal and absorbed within their current budget.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Scheduling Synthetic Drugs

Background

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act and classifies controlled substances into five categories, known as schedules. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances listed therein. The distinguishing factors between the different drug schedules are the "potential for abuse"¹ of the substance listed therein and whether there is a currently accepted medical use for the substance. Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States.² Cannabis and heroin are examples of Schedule I drugs.³

Chapter 893, F.S., contains a variety of provisions criminalizing behavior related to controlled substances. Most of these provisions are found in s. 893.13, F.S., which criminalizes the possession, sale, purchase, manufacture, and delivery of controlled substances. The penalty for violating these provisions depends largely on what schedule the substance is listed in. Other factors, such as the quantity of controlled substance involved, can also affect the penalties for violating the criminal provisions of ch. 893, F.S.

In recent years synthetic drugs have emerged in Florida. Synthetic drugs are industrial grade chemicals mixed to produce a "high" similar to what would be experienced when using illegal drugs such as marijuana, cocaine or methamphetamine.⁴ According to the Florida Department of Law Enforcement (FDLE), synthetic drugs "have no legitimate medical use and have a high potential for abuse."⁵

Synthetic Cannabinoids

Synthetic cannabinoids (also known as "K2" or "Spice") are chemically engineered substances that, when smoked or ingested, can produce a high similar to marijuana, without the delta-tetrahydrocannabinol (THC).⁶ The chemicals are a white powder that is often applied to a plant material to mimic marijuana.⁷ Synthetic cannabinoids have been developed over the last 30 years for research purposes to investigate the cannabinoid system.⁸ No legitimate non-research uses have been identified for synthetic cannabinoids and they have not been approved by the U.S. Food and Drug Administration for human consumption.⁹

¹ Section 893.035(3)(a), F.S., defines "potential for abuse" as a substance that has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of its being: used in amounts that create a hazard to the user's health or the safety of the community; diverted from legal channels and distributed through illegal channels; or taken on the user's own initiative rather than on the basis of professional medical advice.

² See, s. 893.03, F.S.

³ *Id.*

⁴ *Synthetic Narcotics*, FDLE Powerpoint Presentation before the House Criminal Justice Subcommittee, David Gross, January, 16, 2013 (on file with the Criminal Justice Subcommittee).

⁵ FDLE HB 697 Analysis (on file with the Criminal Justice Subcommittee).

⁶ *Supra* note 4.

⁷ *Id.*

⁸ *Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I*, Federal Register, The Daily Journal of the United States Government, November 24, 2010, <http://www.federalregister.gov/articles/2010/11/24/2010-29600/schedules-of-controlled-substances-temporary-placement-of-five-synthetic-cannabinoids-into-schedule> (last visited on February 7, 2014).

⁹ *Supra* note 4.

Synthetic Phenethylamines

Phenethylamines are synthetic substances invented by Dr. Alexander Shulgin.¹⁰ Phenethylamines are known for their intense hallucinogenic effects.¹¹ The use of synthetic phenethylamines is highly dose sensitive and directly affects the human body's nervous system.¹² There has been a recent increase of synthetic phenethylamines production and use because of the recent regulation of cannabinoids and cathinones.¹³

Synthetic Drug Abuse

Despite being labeled "not for human consumption," synthetic cannabinoids, and phenethylamines are used as recreational drugs and have been marketed as legal and safer alternatives to illegal methods of getting "high."¹⁴ They can be found on the Internet, specialty smoke shops, and convenience stores.¹⁵ These substances are predominately being used by individuals between the ages of 16 and 30. There have been cases in Florida where these substances have caused individuals to behave inappropriately, and in some instances die.¹⁶

Recent Legislation

In 2011, 2012, and 2013, numerous synthetic cannabinoids, cathinones, and phenethylamines were added to Schedule I of Florida's controlled substances schedules.¹⁷ As a result, the criminal penalties relating to the possession, sale, manufacture, delivery, etc. of controlled substances now apply to these synthetic substances. For example:

- Possessing three grams or less of listed synthetic cannabinoids, is a first degree misdemeanor^{18, 19}; and
- It is a third degree felony²⁰ for a person knowingly sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, listed synthetic cannabinoids or phenethylamines.²¹

Recent Issues

Since the 2013 Legislative Session, new formulas of synthetic cannabinoids and phenethylamines have been developed that are made up of chemicals not covered by current law.²²

On October 9, 2013, Attorney General Pam Bondi filed an emergency rule²³ that temporarily scheduled four synthetic cannabinoids, in s. 893.03(1)(c), F.S.²⁴ The emergency rule expires on June 30, 2014 unless the Legislature adopts the provisions of the rule as an amendment to chapter 893, F.S. Since the Attorney General filed the emergency rule, the U.S. Department of Justice, Drug Enforcement

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Bath Salts" Receive Emergency Drug Scheduling*, Brief # 10-194, Public Florida Fusion Center, Unit Reporting: Office of Statewide Intelligence, January 26, 2011, http://www.fdle.state.fl.us/Content/BathSalts/FDLEBrief10_194BathSaltsPublic.pdf (last visited on February 7, 2014); FDLE HB 697 Analysis (on file with the Criminal Justice Subcommittee).

¹⁵ *Id.*

¹⁶ *Supra* note 4.

¹⁷ Chapters 2013-29, 2012-23, 2011-73, and 2011-90, L.O.F.

¹⁸ A first degree misdemeanor is punishable by up to a year in jail, a fine of up to \$1,000, or both. Sections 775.082 and 775.083, F.S.

¹⁹ Section 893.13(6)(b), F.S.

²⁰ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

²¹ Section 893.13(1)(a)2., F.S.

²² *Supra* note 5.

²³ 2ER 13-1, Office of the Attorney General,

https://www.flrules.org/gateway/notice_Files.asp?ID=13661885 (last visited on February 7, 2014).

²⁴ Pursuant to s. 893.035, F.S., if the Attorney General finds that the scheduling of a substance in Schedule I of s. 893.03, F.S., on a temporary basis is necessary to avoid an imminent hazard to the public safety, she or he may by rule, and without regard to requirements in s. 893.035(5), F.S., regarding medical and scientific evaluation, schedule the substance in Schedule I if it is not listed in any other schedule in s. 893.03, F.S.

Administration has federally scheduled two new synthetic phenethylamines that are currently not scheduled as controlled substances in Florida.²⁵

Effect of the Bill

The bill amends s. 893.03(1)(c), F.S., to add the four synthetic cannabinoids temporarily scheduled by the Attorney General's emergency rule and the two phenethylamines now scheduled in federal law to Schedule I of Florida controlled substance schedules. The synthetic substances added are:

- AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide);
- AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide);
- ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide);
- Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(fluoropentyl)-1H-indole-3-carboxamide);
- 25B-NBOMe (4-bromo-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine); and
- 2C-C-NBOMe (4-chloro-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine).

As a result, the criminal penalties relating to the possession, sale, manufacture, delivery, etc., of controlled substances now apply to these synthetic substances.

The bill reenacts ss. 893.13(1)-(6) and 921.0022(3)(b), (c), (e), and (g)-(i), F.S., to incorporate the amendments of s. 893.03, F.S.

Trafficking in Phenethylamines

A person trafficks in phenethylamines if they knowingly sell, purchase, manufacture, deliver, or bring into this state, or who is knowingly in actual or constructive possession of, 10 grams or more²⁶ individually or in any combination of or any mixture containing any substance in s. 893.135(1)(k), F.S.

Trafficking in phenethylamines is a first degree felony,²⁷ and if the amount trafficked is:

- 10 grams or more but less than 200 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and ordered to pay a fine of \$50,000;
- Is 200 grams or more, but less than 400 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and ordered to pay a fine of \$100,000;
- Is 400 grams or more, the person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and ordered to pay a fine of \$250,000.

Trafficking in phenethylamines is a capital felony²⁸ if a person knowingly manufactures or brings into this state *30 kilograms or more* of any of the substances in s. 893.135(1)(k)3., F.S., or in any combination of or any mixture containing any substance listed above and knows that the probable result of such manufacture or importation would be the death of any person.

"Molly" (short for "molecule") is often illicitly marketed as a pure form of "Ecstasy," which is a type of phenethylamines.²⁹ In Florida, "Molly" is most often composed of:

- Methydone (3,4-methylenedioxymethcathinone);

²⁵ FDLE HB 697 Analysis (on file with the Criminal Justice Subcommittee).

²⁶ Section 893.135(1)(k)2., provides if the amount is: 10 grams or more but less than 200 grams that person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and ordered to pay a fine of \$50,000; 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and ordered to pay a fine of \$100,000; 400 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and ordered to pay a fine of \$250,000.

²⁷ 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.

²⁸ A capital felony is punished 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 shall be punished by life imprisonment and a \$15,000 fine. Sections 775.082 and 775.083, F.S.

²⁹ *Id.*

- 3,4-Methylenedioxypropylvalerone (MDPV); and
- Methylenedioxymethcathinone.

Molly is often sold as “bath salts” compounds and are similar in chemical structure to “Ecstasy.”³⁰ These substances pose significant health risks to users and are commonly imported from overseas via the Internet. The substances are then purchased for use in the U.S., particularly with intent to be distributed at clubs, parties and other social gatherings.³¹

Currently, the three substances most often found in “Molly” are not listed in s. 893.135(1)(k), F.S.

Effect of the Bill

The bill adds the following substances, and analogs or isomers thereto, to s. 893.135(1)(k), F.S.:

- 3,4-Methylenedioxymethcathinone;
- 3,4-Methylenedioxypropylvalerone (MDPV); and
- Methylenedioxymethcathinone.

As a result, the criminal penalties provided in s. 893.135(1)(k), F.S., will apply to these substances.

B. SECTION DIRECTORY:

Section 1. Amends s. 893.03, F.S., relating to standards and schedules.

Section 2. Reenacts and amends s. 893.13, F.S., relating to prohibited acts; penalties.

Section 3. Amends s. 893.135, F.S., relating to trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.

Section 4. Reenacts s. 921.0022, F.S., relating to criminal punishment code; offense severity ranking chart.

Section 5. The bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

On March 3, 2014, the Criminal Justice Impact Conference determined that CS/HB 697 will have an insignificant negative prison bed impact on the Department of Corrections.

The bill adds additional chemical substances to Schedule I of Florida’s controlled substance schedules. According to FDLE, this could potentially increase the number of evidence submissions into FDLE’s Crime Laboratory System.³² The lab system will need to acquire all of the required standards necessary to test the proposed chemical substances.³³ However, FDLE’s fiscal analysis states that the bill will have a minimal fiscal impact on FDLE and absorbed within their current budget.³⁴

³⁰ *Id.*

³¹ *Id.*

³² FDLE HB 697 Analysis (on file with the Criminal Justice Subcommittee).

³³ *Id.*

³⁴ *Id.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

Because the bill adds certain synthetic substances to s. 893.03, F.S., local agencies which fund and maintain their own crime lab with a chemistry section would potentially be facing a rise in evidence submissions associated with the additions of the proposed chemical substances.³⁵ This may also have a negative jail bed impact because possession of three grams or less of the newly added substances is a first degree misdemeanor.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to FDLE, the bill should have little impact on the private sector and would only affect those retailers who are currently profiting on the sale of chemical substances known to be abused by those seeking an altered mental state or 'high'.³⁶

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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 12, 2014, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment corrected the reference to s. 893.03(1)(c) 166.-173., F.S., to only list the substances that are synthetic cannabinoids.

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

³⁵ *Id.*

³⁶ *Id.*

1 A bill to be entitled
 2 An act relating to controlled substances; amending s.
 3 893.03, F.S.; adding to the list of Schedule I
 4 controlled substances specified materials, compounds,
 5 mixtures, or preparations that contain hallucinogenic
 6 substances, or any of their salts, isomers, and salts
 7 of isomers, if the existence of such salts, isomers,
 8 and salts of isomers is possible within the specific
 9 chemical designation; reenacting and amending s.
 10 893.13(1)-(6), F.S., relating to prohibited acts and
 11 penalties involving controlled substances, to
 12 incorporate the amendment made to s. 893.03, F.S., in
 13 a reference thereto; providing reduced penalties for
 14 possession of 3 grams or less of specified controlled
 15 substances; amending s. 893.135, F.S.; providing that
 16 a person who knowingly sells, purchases, manufactures,
 17 delivers, or brings into this state specified
 18 quantities of 3,4-Methylenedioxymethcathinone, 3,4-
 19 Methylenedioxyprovalerone (MDPV), or
 20 Methylmethcathinone, or who is knowingly in actual or
 21 constructive possession of specified quantities of
 22 3,4-Methylenedioxymethcathinone, 3,4-
 23 Methylenedioxyprovalerone (MDPV), or
 24 Methylmethcathinone, commits the offense of
 25 trafficking in Phenethylamines, a felony of the first
 26 degree; providing that a person who knowingly sells,

27 purchases, manufactures, delivers, or brings into this
 28 state specified quantities of 3,4-
 29 Methylenedioxy methcathinone, 3,4-
 30 Methylenedioxy pyrovalerone (MDPV), or
 31 Methy methcathinone, or who is knowingly in actual or
 32 constructive possession of specified quantities of
 33 3,4-Methylenedioxy methcathinone, 3,4-
 34 Methylenedioxy pyrovalerone (MDPV), or
 35 Methy methcathinone, commits the offense of capital
 36 manufacture or importation of Phenethylamines, a
 37 capital felony; providing criminal penalties;
 38 reenacting s. 921.0022(3)(b), (c), (e), and (g)-(i),
 39 F.S., relating to the Criminal Punishment Code, to
 40 incorporate the amendment made to ss. 893.03 and
 41 893.135, F.S., in a reference thereto; providing an
 42 effective date.

43

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

45

46 Section 1. Paragraph (c) of subsection (1) of section
 47 893.03, Florida Statutes, is amended to read:

48 893.03 Standards and schedules.—The substances enumerated
 49 in this section are controlled by this chapter. The controlled
 50 substances listed or to be listed in Schedules I, II, III, IV,
 51 and V are included by whatever official, common, usual,
 52 chemical, or trade name designated. The provisions of this

53 section shall not be construed to include within any of the
 54 schedules contained in this section any excluded drugs listed
 55 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded
 56 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical
 57 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted
 58 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt
 59 Anabolic Steroid Products."

60 (1) SCHEDULE I.—A substance in Schedule I has a high
 61 potential for abuse and has no currently accepted medical use in
 62 treatment in the United States and in its use under medical
 63 supervision does not meet accepted safety standards. The
 64 following substances are controlled in Schedule I:

65 (c) Unless specifically excepted or unless listed in
 66 another schedule, any material, compound, mixture, or
 67 preparation that contains any quantity of the following
 68 hallucinogenic substances or that contains any of their salts,
 69 isomers, including optical, positional, or geometric isomers,
 70 and salts of isomers, if the existence of such salts, isomers,
 71 and salts of isomers is possible within the specific chemical
 72 designation:

- 73 1. Alpha-ethyltryptamine.
- 74 2. 2-Amino-4-methyl-5-phenyl-2-oxazoline (4-
 75 methylaminorex).
- 76 3. 2-Amino-5-phenyl-2-oxazoline (Aminorex).
- 77 4. 4-Bromo-2,5-dimethoxyamphetamine.
- 78 5. 4-Bromo-2,5-dimethoxyphenethylamine.

- 79 | 6. Bufotenine.
- 80 | 7. Cannabis.
- 81 | 8. Cathinone.
- 82 | 9. Diethyltryptamine.
- 83 | 10. 2,5-Dimethoxyamphetamine.
- 84 | 11. 2,5-Dimethoxy-4-ethylamphetamine (DOET).
- 85 | 12. Dimethyltryptamine.
- 86 | 13. N-Ethyl-1-phenylcyclohexylamine (PCE) (Ethylamine
- 87 | analog of phencyclidine).
- 88 | 14. N-Ethyl-3-piperidyl benzilate.
- 89 | 15. N-ethylamphetamine.
- 90 | 16. Fenethylamine.
- 91 | 17. N-Hydroxy-3,4-methylenedioxyamphetamine.
- 92 | 18. Ibogaine.
- 93 | 19. Lysergic acid diethylamide (LSD).
- 94 | 20. Mescaline.
- 95 | 21. Methcathinone.
- 96 | 22. 5-Methoxy-3,4-methylenedioxyamphetamine.
- 97 | 23. 4-methoxyamphetamine.
- 98 | 24. 4-methoxymethamphetamine.
- 99 | 25. 4-Methyl-2,5-dimethoxyamphetamine.
- 100 | 26. 3,4-Methylenedioxy-N-ethylamphetamine.
- 101 | 27. 3,4-Methylenedioxyamphetamine.
- 102 | 28. N-Methyl-3-piperidyl benzilate.
- 103 | 29. N,N-dimethylamphetamine.
- 104 | 30. Parahexyl.

- 105 | 31. Peyote.
- 106 | 32. N-(1-Phenylcyclohexyl)-pyrrolidine (PCPY) (Pyrrolidine
- 107 | analog of phencyclidine).
- 108 | 33. Psilocybin.
- 109 | 34. Psilocyn.
- 110 | 35. *Salvia divinorum*, except for any drug product approved
- 111 | by the United States Food and Drug Administration which contains
- 112 | *Salvia divinorum* or its isomers, esters, ethers, salts, and
- 113 | salts of isomers, esters, and ethers, if the existence of such
- 114 | isomers, esters, ethers, and salts is possible within the
- 115 | specific chemical designation.
- 116 | 36. Salvinorin A, except for any drug product approved by
- 117 | the United States Food and Drug Administration which contains
- 118 | Salvinorin A or its isomers, esters, ethers, salts, and salts of
- 119 | isomers, esters, and ethers, if the existence of such isomers,
- 120 | esters, ethers, and salts is possible within the specific
- 121 | chemical designation.
- 122 | 37. Tetrahydrocannabinols.
- 123 | 38. 1-[1-(2-Thienyl)-cyclohexyl]-piperidine (TCP)
- 124 | (Thiophene analog of phencyclidine).
- 125 | 39. 3,4,5-Trimethoxyamphetamine.
- 126 | 40. 3,4-Methylenedioxy methcathinone.
- 127 | 41. 3,4-Methylenedioxy pyrovalerone (MDPV).
- 128 | 42. Methylmethcathinone.
- 129 | 43. Methoxymethcathinone.
- 130 | 44. Fluoromethcathinone.

- 131 | 45. Methylethcathinone.
- 132 | 46. 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-
- 133 | yl)phenol, also known as CP 47,497 and its dimethyloctyl (C8)
- 134 | homologue.
- 135 | 47. (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-
- 136 | methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol,
- 137 | also known as HU-210.
- 138 | 48. 1-Pentyl-3-(1-naphthoyl)indole, also known as JWH-018.
- 139 | 49. 1-Butyl-3-(1-naphthoyl)indole, also known as JWH-073.
- 140 | 50. 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl) indole,
- 141 | also known as JWH-200.
- 142 | 51. BZP (Benzylpiperazine).
- 143 | 52. Fluorophenylpiperazine.
- 144 | 53. Methylphenylpiperazine.
- 145 | 54. Chlorophenylpiperazine.
- 146 | 55. Methoxyphenylpiperazine.
- 147 | 56. DBZP (1,4-dibenzylpiperazine).
- 148 | 57. TFMPP (3-Trifluoromethylphenylpiperazine).
- 149 | 58. MBDB (Methylbenzodioxolylbutanamine).
- 150 | 59. 5-Hydroxy-alpha-methyltryptamine.
- 151 | 60. 5-Hydroxy-N-methyltryptamine.
- 152 | 61. 5-Methoxy-N-methyl-N-isopropyltryptamine.
- 153 | 62. 5-Methoxy-alpha-methyltryptamine.
- 154 | 63. Methyltryptamine.
- 155 | 64. 5-Methoxy-N,N-dimethyltryptamine.
- 156 | 65. 5-Methyl-N,N-dimethyltryptamine.

- 157 | 66. Tyramine (4-Hydroxyphenethylamine).
- 158 | 67. 5-Methoxy-N,N-Diisopropyltryptamine.
- 159 | 68. DiPT (N,N-Diisopropyltryptamine).
- 160 | 69. DPT (N,N-Dipropyltryptamine).
- 161 | 70. 4-Hydroxy-N,N-diisopropyltryptamine.
- 162 | 71. N,N-Diallyl-5-Methoxytryptamine.
- 163 | 72. DOI (4-Iodo-2,5-dimethoxyamphetamine).
- 164 | 73. DOC (4-Chloro-2,5-dimethoxyamphetamine).
- 165 | 74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
- 166 | 75. 2C-T-4 (2,5-Dimethoxy-4-isopropylthiophenethylamine).
- 167 | 76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
- 168 | 77. 2C-T (2,5-Dimethoxy-4-methylthiophenethylamine).
- 169 | 78. 2C-T-2 (2,5-Dimethoxy-4-ethylthiophenethylamine).
- 170 | 79. 2C-T-7 (2,5-Dimethoxy-4-(n)-propylthiophenethylamine).
- 171 | 80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
- 172 | 81. Butylone (beta-keto-N-methylbenzodioxolylpropylamine).
- 173 | 82. Ethcathinone.
- 174 | 83. Ethylone (3,4-methylenedioxy-N-ethylcathinone).
- 175 | 84. Naphyrone (naphthylpyrovalerone).
- 176 | 85. N-N-Dimethyl-3,4-methylenedioxycathinone.
- 177 | 86. N-N-Diethyl-3,4-methylenedioxycathinone.
- 178 | 87. 3,4-methylenedioxy-propiofenone.
- 179 | 88. 2-Bromo-3,4-Methylenedioxypropiofenone.
- 180 | 89. 3,4-methylenedioxy-propiofenone-2-oxime.
- 181 | 90. N-Acetyl-3,4-methylenedioxycathinone.
- 182 | 91. N-Acetyl-N-Methyl-3,4-Methylenedioxycathinone.

- 183 | 92. N-Acetyl-N-Ethyl-3,4-Methylenedioxcathinone.
- 184 | 93. Bromomethcathinone.
- 185 | 94. Buphedrone (alpha-methylamino-butyrophenone).
- 186 | 95. Eutylone (beta-Keto-Ethylbenzodioxolylbutanamine).
- 187 | 96. Dimethylcathinone.
- 188 | 97. Dimethylmethcathinone.
- 189 | 98. Pentylone (beta-Keto-Methylbenzodioxolylpentanamine).
- 190 | 99. (MDPPP) 3,4-Methylenedioxy-alpha-
- 191 | pyrrolidinopropiophenone.
- 192 | 100. (MDPBP) 3,4-Methylenedioxy-alpha-
- 193 | pyrrolidinobutiophenone.
- 194 | 101. Methoxy-alpha-pyrrolidinopropiophenone (MOPPP).
- 195 | 102. Methyl-alpha-pyrrolidinohexiophenone (MPHP).
- 196 | 103. Benocyclidine (BCP) or
- 197 | benzothiophenylcyclohexylpiperidine (BTCP).
- 198 | 104. Fluoromethylaminobutyrophenone (F-MABP).
- 199 | 105. Methoxypyrrolidinobutyrophenone (MeO-PBP).
- 200 | 106. Ethyl-pyrrolidinobutyrophenone (Et-PBP).
- 201 | 107. 3-Methyl-4-Methoxymethcathinone (3-Me-4-MeO-MCAT).
- 202 | 108. Methyleneethylaminobutyrophenone (Me-EABP).
- 203 | 109. Methylamino-butyrophenone (MABP).
- 204 | 110. Pyrrolidinopropiophenone (PPP).
- 205 | 111. Pyrrolidinobutiophenone (PBP).
- 206 | 112. Pyrrolidinovalerophenone (PVP).
- 207 | 113. Methyl-alpha-pyrrolidinopropiophenone (MPPP).
- 208 | 114. JWH-007 (1-pentyl-2-methyl-3-(1-naphthoyl)indole).

- 209 | 115. JWH-015 (2-Methyl-1-propyl-1H-indol-3-yl)-1-
 210 | naphthalenylmethanone).
- 211 | 116. JWH-019 (Naphthalen-1-yl-(1-hexylindol-3-
 212 | yl)methanone).
- 213 | 117. JWH-020 (1-heptyl-3-(1-naphthoyl)indole).
- 214 | 118. JWH-072 (Naphthalen-1-yl-(1-propyl-1H-indol-3-
 215 | yl)methanone).
- 216 | 119. JWH-081 (4-methoxynaphthalen-1-yl-(1-pentylindol-3-
 217 | yl)methanone).
- 218 | 120. JWH-122 (1-pentyl-3-(4-methyl-1-naphthoyl)indole).
- 219 | 121. JWH-133 ((6aR,10aR)-3-(1,1-Dimethylbutyl)-
 220 | 6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran)).
- 221 | 122. JWH-175 (3-(naphthalen-1-ylmethyl)-1-pentyl-1H-
 222 | indole).
- 223 | 123. JWH-201 (1-pentyl-3-(4-methoxyphenylacetyl)indole).
- 224 | 124. JWH-203 (2-(2-chlorophenyl)-1-(1-pentylindol-3-
 225 | yl)ethanone).
- 226 | 125. JWH-210 (4-ethylnaphthalen-1-yl-(1-pentylindol-3-
 227 | yl)methanone).
- 228 | 126. JWH-250 (2-(2-methoxyphenyl)-1-(1-pentylindol-3-
 229 | yl)ethanone).
- 230 | 127. JWH-251 (2-(2-methylphenyl)-1-(1-pentyl-1H-indol-3-
 231 | yl)ethanone).
- 232 | 128. JWH-302 (1-pentyl-3-(3-methoxyphenylacetyl)indole).
- 233 | 129. JWH-398 (1-pentyl-3-(4-chloro-1-naphthoyl)indole).
- 234 | 130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-

235 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-
 236 ol).

237 131. HU-308 ([(1R,2R,5R)-2-[2,6-dimethoxy-4-(2-
 238 methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-
 239 enyl] methanol).

240 132. HU-331 (3-hydroxy-2-[(1R,6R)-3-methyl-6-(1-
 241 methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-
 242 1,4-dione).

243 133. CB-13 (Naphthalen-1-yl-(4-pentyloxynaphthalen-1-
 244 yl)methanone).

245 134. CB-25 (N-cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-
 246 undecanamide).

247 135. CB-52 (N-cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-
 248 undecanamide).

249 136. CP 55,940 (2-[(1R,2R,5R)-5-hydroxy-2-(3-
 250 hydroxypropyl)cyclohexyl]-5-(2-methyloctan-2-yl)phenol).

251 137. AM-694 (1-[(5-fluoropentyl)-1H-indol-3-yl]-2-
 252 iodophenyl)methanone).

253 138. AM-2201 (1-[(5-fluoropentyl)-1H-indol-3-yl]-
 254 (naphthalen-1-yl)methanone).

255 139. RCS-4 ((4-methoxyphenyl) (1-pentyl-1H-indol-3-
 256 yl)methanone).

257 140. RCS-8 (1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-
 258 methoxyphenylethanone).

259 141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-
 260 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-

- 261 | naphthalenylmethanone).
- 262 | 142. WIN55,212-3 ([(3S)-2,3-Dihydro-5-methyl-3-(4-
- 263 | morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-
- 264 | naphthalenylmethanone).
- 265 | 143. Pentedrone (2-(methylamino)-1-phenyl-1-pentanone).
- 266 | 144. Fluoroamphetamine.
- 267 | 145. Fluoromethamphetamine.
- 268 | 146. Methoxetamine.
- 269 | 147. Methiopropamine.
- 270 | 148. 4-Methylbuphedrone (2-Methylamino-1-(4-
- 271 | methylphenyl)butan-1-one).
- 272 | 149. APB ((2-aminopropyl)benzofuran).
- 273 | 150. APDB ((2-aminopropyl)-2,3-dihydrobenzofuran).
- 274 | 151. UR-144 ((1-pentyl-1H-indol-3-yl)(2,2,3,3-
- 275 | tetramethylcyclopropyl)methanone).
- 276 | 152. XLR11 ((1-(5-fluoropentyl)-1H-indol-3-yl)(2,2,3,3-
- 277 | tetramethylcyclopropyl)methanone).
- 278 | 153. (1-(5-chloropentyl)-1H-indol-3-yl)(2,2,3,3-
- 279 | tetramethylcyclopropyl)methanone.
- 280 | 154. AKB48 (1-pentyl-N-tricyclo[3.3.1.1^{3,7}]dec-1-yl-1H-
- 281 | indazole-3-carboxamide).
- 282 | 155. AM-2233((2-iodophenyl)[1-[(1-methyl-2-
- 283 | piperidinyl)methyl]-1H-indol-3-yl]-methanone).
- 284 | 156. STS-135 (1-(5-fluoropentyl)-N-
- 285 | tricyclo[3.3.1.1^{3,7}]dec-1-yl-1H-indole-3-carboxamide).
- 286 | 157. URB-597 ((3'-(aminocarbonyl)[1,1'-biphenyl]-3-yl)-

- 287 | cyclohexylcarbamate).
- 288 | 158. URB-602 ([1,1'-biphenyl]-3-yl-carbamic acid,
- 289 | cyclohexyl ester).
- 290 | 159. URB-754 (6-methyl-2-[(4-methylphenyl)amino]-1-
- 291 | benzoxazin-4-one).
- 292 | 160. 2C-D (2-(2,5-Dimethoxy-4-methylphenyl)ethanamine).
- 293 | 161. 2C-H (2-(2,5-Dimethoxyphenyl)ethanamine).
- 294 | 162. 2C-N (2-(2,5-Dimethoxy-4-nitrophenyl)ethanamine).
- 295 | 163. 2C-P (2-(2,5-Dimethoxy-4-(n)-
- 296 | propylphenyl)ethanamine).
- 297 | 164. 25I-NBOMe (4-iodo-2,5-dimethoxy-N-[(2-
- 298 | methoxyphenyl)methyl]-benzeneethanamine).
- 299 | 165. 3,4-Methylenedioxymethamphetamine (MDMA).
- 300 | 166. PB-22 (1-pentyl-8-quinolinyl ester-1H-indole-3-
- 301 | carboxylic acid).
- 302 | 167. 5-Fluoro PB-22 (8-quinolinyl ester-1-(5-
- 303 | fluoropentyl)-1H-indole-3-carboxylic acid).
- 304 | 168. BB-22 (1-(cyclohexylmethyl)-8-quinolinyl ester-1H-
- 305 | indole-3-carboxylic acid).
- 306 | 169. 5-Fluoro AKB48 (N-((3s,5s,7s)-adamantan-1-yl)-1-(5-
- 307 | fluoropentyl)-1H-indazole-3-carboxamide).
- 308 | 170. AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
- 309 | pentyl-1H-indazole-3-carboxamide).
- 310 | 171. AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
- 311 | (4-fluorobenzyl)-1H-indazole-3-carboxamide).
- 312 | 172. ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-

313 | 1-pentyl-1H-indazole-3-carboxamide).

314 | 173. Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-
 315 | yl)-1-(fluoropentyl)-1H-indole-3-carboxamide).

316 | 174. 25B-NBOMe (4-bromo-2,5-dimethoxy-N-[(2-methoxyphenyl)
 317 | methyl]-benzeneethanamine).

318 | 175. 2C-C-NBOMe (4-chloro-2,5-dimethoxy-N-[(2-
 319 | methoxyphenyl)methyl]-benzeneethanamine).

320 | Section 2. For the purpose of incorporating the amendment
 321 | made by this act to section 893.03, Florida Statutes, in
 322 | reference thereto, subsections (1) through (6) of section
 323 | 893.13, Florida Statutes, are reenacted and amended to read:

324 | 893.13 Prohibited acts; penalties.—

325 | (1)(a) Except as authorized by this chapter and chapter
 326 | 499, a it is unlawful for any person may not to sell,
 327 | manufacture, or deliver, or possess with intent to sell,
 328 | manufacture, or deliver, a controlled substance. A ~~Any~~ person
 329 | who violates this provision with respect to:

330 | 1. A controlled substance named or described in s.
 331 | 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. ~~7~~
 332 | commits a felony of the second degree, punishable as provided in
 333 | s. 775.082, s. 775.083, or s. 775.084.

334 | 2. A controlled substance named or described in s.
 335 | 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 336 | (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 337 | the third degree, punishable as provided in s. 775.082, s.
 338 | 775.083, or s. 775.084.

339 3. A controlled substance named or described in s.
 340 893.03(5) commits a misdemeanor of the first degree, punishable
 341 as provided in s. 775.082 or s. 775.083.

342 (b) Except as provided in this chapter, a person may not
 343 ~~it is unlawful to~~ sell or deliver in excess of 10 grams of any
 344 substance named or described in s. 893.03(1)(a) or (1)(b), or
 345 any combination thereof, or any mixture containing any such
 346 substance. A ~~Any~~ person who violates this paragraph commits a
 347 felony of the first degree, punishable as provided in s.
 348 775.082, s. 775.083, or s. 775.084.

349 (c) Except as authorized by this chapter, a ~~it is unlawful~~
 350 ~~for any person may not to~~ sell, manufacture, or deliver, or
 351 possess with intent to sell, manufacture, or deliver, a
 352 controlled substance in, on, or within 1,000 feet of the real
 353 property comprising a child care facility as defined in s.
 354 402.302 or a public or private elementary, middle, or secondary
 355 school between the hours of 6 a.m. and 12 midnight, or at any
 356 time in, on, or within 1,000 feet of real property comprising a
 357 state, county, or municipal park, a community center, or a
 358 publicly owned recreational facility. As used in ~~For the~~
 359 ~~purposes of~~ this paragraph, the term "community center" means a
 360 facility operated by a nonprofit community-based organization
 361 for the provision of recreational, social, or educational
 362 services to the public. A ~~Any~~ person who violates this paragraph
 363 with respect to:

364 1. A controlled substance named or described in s.

365 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
 366 commits a felony of the first degree, punishable as provided in
 367 s. 775.082, s. 775.083, or s. 775.084. The defendant must be
 368 sentenced to a minimum term of imprisonment of 3 calendar years
 369 unless the offense was committed within 1,000 feet of the real
 370 property comprising a child care facility as defined in s.
 371 402.302.

372 2. A controlled substance named or described in s.
 373 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 374 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 375 the second degree, punishable as provided in s. 775.082, s.
 376 775.083, or s. 775.084.

377 3. Any other controlled substance, except as lawfully
 378 sold, manufactured, or delivered, must be sentenced to pay a
 379 \$500 fine and to serve 100 hours of public service in addition
 380 to any other penalty prescribed by law.

381
 382 This paragraph does not apply to a child care facility unless
 383 the owner or operator of the facility posts a sign that is not
 384 less than 2 square feet in size with a word legend identifying
 385 the facility as a licensed child care facility and that is
 386 posted on the property of the child care facility in a
 387 conspicuous place where the sign is reasonably visible to the
 388 public.

389 (d) Except as authorized by this chapter, a ~~it is unlawful~~
 390 ~~for any person~~ may not ~~to~~ sell, manufacture, or deliver, or

391 possess with intent to sell, manufacture, or deliver, a
 392 controlled substance in, on, or within 1,000 feet of the real
 393 property comprising a public or private college, university, or
 394 other postsecondary educational institution. A ~~Any~~ person who
 395 violates this paragraph with respect to:

396 1. A controlled substance named or described in s.
 397 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.~~7~~
 398 commits a felony of the first degree, punishable as provided in
 399 s. 775.082, s. 775.083, or s. 775.084.

400 2. A controlled substance named or described in s.
 401 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 402 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 403 the second degree, punishable as provided in s. 775.082, s.
 404 775.083, or s. 775.084.

405 3. Any other controlled substance, except as lawfully
 406 sold, manufactured, or delivered, must be sentenced to pay a
 407 \$500 fine and to serve 100 hours of public service in addition
 408 to any other penalty prescribed by law.

409 (e) Except as authorized by this chapter, a ~~it is unlawful~~
 410 ~~for any person may not~~ to sell, manufacture, or deliver, or
 411 possess with intent to sell, manufacture, or deliver, a
 412 controlled substance not authorized by law in, on, or within
 413 1,000 feet of a physical place for worship at which a church or
 414 religious organization regularly conducts religious services or
 415 within 1,000 feet of a convenience business as defined in s.
 416 812.171. A ~~Any~~ person who violates this paragraph with respect

417 to:

418 1. A controlled substance named or described in s.
 419 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.7
 420 commits a felony of the first degree, punishable as provided in
 421 s. 775.082, s. 775.083, or s. 775.084.

422 2. A controlled substance named or described in s.
 423 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 424 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 425 the second degree, punishable as provided in s. 775.082, s.
 426 775.083, or s. 775.084.

427 3. Any other controlled substance, except as lawfully
 428 sold, manufactured, or delivered, must be sentenced to pay a
 429 \$500 fine and to serve 100 hours of public service in addition
 430 to any other penalty prescribed by law.

431 (f) Except as authorized by this chapter, a ~~it is unlawful~~
 432 ~~for any person may not~~ to sell, manufacture, or deliver, or
 433 possess with intent to sell, manufacture, or deliver, a
 434 controlled substance in, on, or within 1,000 feet of the real
 435 property comprising a public housing facility at any time. As
 436 used in ~~For purposes of~~ this section, the term "real property
 437 comprising a public housing facility" means real property, as
 438 defined in s. 421.03(12), of a public corporation created as a
 439 housing authority pursuant to part I of chapter 421. A ~~Any~~
 440 person who violates this paragraph with respect to:

441 1. A controlled substance named or described in s.
 442 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.7

443 | commits a felony of the first degree, punishable as provided in
 444 | s. 775.082, s. 775.083, or s. 775.084.

445 | 2. A controlled substance named or described in s.
 446 | 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 447 | (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 448 | the second degree, punishable as provided in s. 775.082, s.
 449 | 775.083, or s. 775.084.

450 | 3. Any other controlled substance, except as lawfully
 451 | sold, manufactured, or delivered, must be sentenced to pay a
 452 | \$500 fine and to serve 100 hours of public service in addition
 453 | to any other penalty prescribed by law.

454 | (g) Except as authorized by this chapter, a ~~it is unlawful~~
 455 | ~~for any person~~ may not ~~to~~ manufacture methamphetamine or
 456 | phencyclidine, or possess any listed chemical as defined in s.
 457 | 893.033 in violation of s. 893.149 and with intent to
 458 | manufacture methamphetamine or phencyclidine. If a ~~any~~ person
 459 | violates this paragraph and:

460 | 1. The commission or attempted commission of the crime
 461 | occurs in a structure or conveyance where any child younger than
 462 | ~~under~~ 16 years of age is present, the person commits a felony of
 463 | the first degree, punishable as provided in s. 775.082, s.
 464 | 775.083, or s. 775.084. In addition, the defendant must be
 465 | sentenced to a minimum term of imprisonment of 5 calendar years.

466 | 2. The commission of the crime causes any child younger
 467 | than ~~under~~ 16 years of age to suffer great bodily harm, the
 468 | person commits a felony of the first degree, punishable as

469 provided in s. 775.082, s. 775.083, or s. 775.084. In addition,
 470 the defendant must be sentenced to a minimum term of
 471 imprisonment of 10 calendar years.

472 (h) Except as authorized by this chapter, a ~~it is unlawful~~
 473 ~~for any person~~ may not ~~to~~ sell, manufacture, or deliver, or
 474 possess with intent to sell, manufacture, or deliver, a
 475 controlled substance in, on, or within 1,000 feet of the real
 476 property comprising an assisted living facility, as that term is
 477 used in chapter 429. A ~~Any~~ person who violates this paragraph
 478 with respect to:

479 1. A controlled substance named or described in s.
 480 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
 481 commits a felony of the first degree, punishable as provided in
 482 s. 775.082, s. 775.083, or s. 775.084.

483 2. A controlled substance named or described in s.
 484 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 485 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 486 the second degree, punishable as provided in s. 775.082, s.
 487 775.083, or s. 775.084.

488 (2)(a) Except as authorized by this chapter and chapter
 489 499, a ~~it is unlawful for any person~~ may not ~~to~~ purchase, or
 490 possess with intent to purchase, a controlled substance. A ~~Any~~
 491 person who violates this provision with respect to:

492 1. A controlled substance named or described in s.
 493 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
 494 commits a felony of the second degree, punishable as provided in

495 | s. 775.082, s. 775.083, or s. 775.084.

496 | 2. A controlled substance named or described in s.
497 | 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
498 | (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
499 | the third degree, punishable as provided in s. 775.082, s.
500 | 775.083, or s. 775.084.

501 | 3. A controlled substance named or described in s.
502 | 893.03(5) commits a misdemeanor of the first degree, punishable
503 | as provided in s. 775.082 or s. 775.083.

504 | (b) Except as provided in this chapter, a person may not
505 | ~~it is unlawful to purchase more than in excess of~~ 10 grams of
506 | any substance named or described in s. 893.03(1)(a) or (1)(b),
507 | or any combination thereof, or any mixture containing any such
508 | substance. A ~~Any~~ person who violates this paragraph commits a
509 | felony of the first degree, punishable as provided in s.
510 | 775.082, s. 775.083, or s. 775.084.

511 | (3) A ~~Any~~ person who delivers, without consideration, ~~not~~
512 | ~~more than~~ 20 grams or less of cannabis, as defined in this
513 | chapter, commits a misdemeanor of the first degree, punishable
514 | as provided in s. 775.082 or s. 775.083. As used in ~~For the~~
515 | ~~purposes of~~ this paragraph, the term "cannabis" does not include
516 | the resin extracted from the plants of the genus *Cannabis* or any
517 | compound manufacture, salt, derivative, mixture, or preparation
518 | of such resin.

519 | (4) Except as authorized by this chapter, a ~~it is unlawful~~
520 | ~~for any~~ person 18 years of age or older may not ~~to~~ deliver any

521 | controlled substance to a person younger than ~~under the age of~~
 522 | 18 years of age, ~~or to~~ use or hire a person younger than ~~under~~
 523 | ~~the age of~~ 18 years of age as an agent or employee in the sale
 524 | or delivery of such a substance, or ~~to~~ use such person to assist
 525 | in avoiding detection or apprehension for a violation of this
 526 | chapter. A ~~Any~~ person who violates this provision with respect
 527 | to:

528 | (a) A controlled substance named or described in s.
 529 | 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.~~7~~
 530 | commits a felony of the first degree, punishable as provided in
 531 | s. 775.082, s. 775.083, or s. 775.084.

532 | (b) A controlled substance named or described in s.
 533 | 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 534 | (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 535 | the second degree, punishable as provided in s. 775.082, s.
 536 | 775.083, or s. 775.084.

537 |
 538 | Imposition of sentence may not be suspended or deferred, and ~~nor~~
 539 | ~~shall~~ the person so convicted may not be placed on probation.

540 | (5) A ~~It is unlawful for any person~~ may not ~~to~~ bring into
 541 | this state any controlled substance unless the possession of
 542 | such controlled substance is authorized by this chapter or
 543 | unless such person is licensed to do so by the appropriate
 544 | federal agency. A ~~Any~~ person who violates this provision with
 545 | respect to:

546 | (a) A controlled substance named or described in s.

547 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.~~7~~
 548 commits a felony of the second degree, punishable as provided in
 549 s. 775.082, s. 775.083, or s. 775.084.

550 (b) A controlled substance named or described in s.
 551 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 552 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 553 the third degree, punishable as provided in s. 775.082, s.
 554 775.083, or s. 775.084.

555 (c) A controlled substance named or described in s.
 556 893.03(5) commits a misdemeanor of the first degree, punishable
 557 as provided in s. 775.082 or s. 775.083.

558 (6)(a) A ~~It is unlawful for any person may not to~~ be in
 559 actual or constructive possession of a controlled substance
 560 unless such controlled substance was lawfully obtained from a
 561 practitioner or pursuant to a valid prescription or order of a
 562 practitioner while acting in the course of his or her
 563 professional practice or to be in actual or constructive
 564 possession of a controlled substance except as otherwise
 565 authorized by this chapter. A ~~Any~~ person who violates this
 566 provision commits a felony of the third degree, punishable as
 567 provided in s. 775.082, s. 775.083, or s. 775.084.

568 (b) If the offense is the possession of ~~not more than~~ 20
 569 grams or less of cannabis, as defined in this chapter, or 3
 570 grams or less of a controlled substance described in s.
 571 893.03(1)(c)46.-50., 114.-142., 151.-159., or 166.-173. ~~166.-~~
 572 ~~169.~~, the person commits a misdemeanor of the first degree,

573 punishable as provided in s. 775.082 or s. 775.083. As used in
 574 ~~For the purposes of~~ this subsection, the term "cannabis" does
 575 not include the resin extracted from the plants of the genus
 576 *Cannabis*, or any compound manufacture, salt, derivative,
 577 mixture, or preparation of such resin, and a controlled
 578 substance described in s. 893.03(1)(c)46.-50., 114.-142., 151.-
 579 159., or 166.-173. ~~166.-169.~~, does not include the substance in
 580 a powdered form.

581 (c) Except as provided in this chapter, a person may not
 582 ~~it is unlawful to~~ possess more than in excess of 10 grams of any
 583 substance named or described in s. 893.03(1)(a) or (1)(b), or
 584 any combination thereof, or any mixture containing any such
 585 substance. A ~~Any~~ person who violates this paragraph commits a
 586 felony of the first degree, punishable as provided in s.
 587 775.082, s. 775.083, or s. 775.084.

588 (d) Notwithstanding any provision to the contrary of the
 589 laws of this state relating to arrest, a law enforcement officer
 590 may arrest without warrant any person who the officer has
 591 probable cause to believe is violating the provisions of this
 592 chapter relating to possession of cannabis.

593 Section 3. Paragraph (k) of subsection (1) of section
 594 893.135, Florida Statutes, is amended to read:

595 893.135 Trafficking; mandatory sentences; suspension or
 596 reduction of sentences; conspiracy to engage in trafficking.—

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

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599 (k)1. A ~~Any~~ person who knowingly sells, purchases,
 600 manufactures, delivers, or brings into this state, or who is
 601 knowingly in actual or constructive possession of, 10 grams or
 602 more of any of the following substances described in s.

603 893.03(1)(c):

- 604 a. 3,4-Methylenedioxyamphetamine (MDMA);
- 605 b. 4-Bromo-2,5-dimethoxyamphetamine;
- 606 c. 4-Bromo-2,5-dimethoxyphenethylamine;
- 607 d. 2,5-Dimethoxyamphetamine;
- 608 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
- 609 f. N-ethylamphetamine;
- 610 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
- 611 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
- 612 i. 4-methoxyamphetamine;
- 613 j. 4-methoxymethamphetamine;
- 614 k. 4-Methyl-2,5-dimethoxyamphetamine;
- 615 l. 3,4-Methylenedioxy-N-ethylamphetamine;
- 616 m. 3,4-Methylenedioxyamphetamine;
- 617 n. N,N-dimethylamphetamine; ~~or~~
- 618 o. 3,4,5-Trimethoxyamphetamine;~~;~~or
- 619 p. 3,4-Methylenedioxyamfetamine;
- 620 q. 3,4-Methylenedioxypropylamphetamine (MDPV); or
- 621 r. Methylenedioxypropylamphetamine,

622
 623 individually or analogs thereto or isomers thereto or in any
 624 combination of or any mixture containing any substance listed in

625 sub-subparagraphs a.-r. ~~a.-o.~~, commits a felony of the first
 626 degree, which felony shall be known as "trafficking in
 627 Phenethylamines," punishable as provided in s. 775.082, s.
 628 775.083, or s. 775.084.

629 2. If the quantity involved:

630 a. Is 10 grams or more, but less than 200 grams, such
 631 person shall be sentenced to a mandatory minimum term of
 632 imprisonment of 3 years, ~~and the defendant~~ shall be ordered to
 633 pay a fine of \$50,000.

634 b. Is 200 grams or more, but less than 400 grams, such
 635 person shall be sentenced to a mandatory minimum term of
 636 imprisonment of 7 years, ~~and the defendant~~ shall be ordered to
 637 pay a fine of \$100,000.

638 c. Is 400 grams or more, such person shall be sentenced to
 639 a mandatory minimum term of imprisonment of 15 ~~calendar~~ years
 640 and shall be ordered to pay a fine of \$250,000.

641 3. A ~~Any~~ person who knowingly manufactures or brings into
 642 this state 30 kilograms or more of any of the following
 643 substances described in s. 893.03(1)(c):

- 644 a. 3,4-Methylenedioxyamphetamine (MDMA);
- 645 b. 4-Bromo-2,5-dimethoxyamphetamine;
- 646 c. 4-Bromo-2,5-dimethoxyphenethylamine;
- 647 d. 2,5-Dimethoxyamphetamine;
- 648 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
- 649 f. N-ethylamphetamine;
- 650 g. N-Hydroxy-3,4-methylenedioxyamphetamine;

- 651 | h. 5-Methoxy-3,4-methylenedioxyamphetamine;
- 652 | i. 4-methoxyamphetamine;
- 653 | j. 4-methoxymethamphetamine;
- 654 | k. 4-Methyl-2,5-dimethoxyamphetamine;
- 655 | l. 3,4-Methylenedioxy-N-ethylamphetamine;
- 656 | m. 3,4-Methylenedioxyamphetamine;
- 657 | n. N,N-dimethylamphetamine; ~~or~~
- 658 | o. 3,4,5-Trimethoxyamphetamine;~~r~~
- 659 | p. 3,4-Methylenedioxymethcathinone;
- 660 | q. 3,4-Methylenedioxypyrovalerone (MDPV); or
- 661 | r. Methylnmethcathinone,
- 662 |

663 | individually or analogs thereto or isomers thereto or in any
 664 | combination of or any mixture containing any substance listed in
 665 | sub-subparagraphs a.-r. a.-e., and who knows that the probable
 666 | result of such manufacture or importation would be the death of
 667 | any person commits capital manufacture or importation of
 668 | Phenethylamines, a capital felony punishable as provided in ss.
 669 | 775.082 and 921.142. A ~~Any~~ person sentenced for a capital felony
 670 | under this paragraph shall also be sentenced to pay the maximum
 671 | fine provided under subparagraph 1.

672 | Section 4. For the purpose of incorporating the amendment
 673 | made by this act to sections 893.03 and 893.135, Florida
 674 | Statutes, in a reference thereto, paragraphs (b), (c), (e), and
 675 | (g) through (i) of subsection (3) of section 921.0022, Florida
 676 | Statutes, are reenacted to read:

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677 921.0022 Criminal Punishment Code; offense severity
678 ranking chart.-

679 (3) OFFENSE SEVERITY RANKING CHART

680 (b) LEVEL 2

681

Florida

Felony

Statute

Degree

Description

682

379.2431

3rd

Possession of 11 or fewer
marine turtle eggs in
violation of the Marine
Turtle Protection Act.

(1) (e) 3.

683

379.2431

3rd

Possession of more than 11
marine turtle eggs in
violation of the Marine
Turtle Protection Act.

(1) (e) 4.

684

403.413(6) (c)

3rd

Dumps waste litter
exceeding 500 lbs. in
weight or 100 cubic
feet in volume or any
quantity for commercial
purposes, or hazardous
waste.

685

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

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686	517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
687	590.28(1)	3rd	Intentional burning of lands.
688	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
689	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
690	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or

691			furthering burglary.
	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
692			
	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
693			
	812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
694			
	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
695			
	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
696			

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

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697	817.481 (3) (a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
698	817.52 (3)	3rd	Failure to redeliver hired vehicle.
699	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
700	817.60 (5)	3rd	Dealing in credit cards of another.
701	817.60 (6) (a)	3rd	Forgery; purchase goods, services with false card.
702	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom

			related.
703	831.01	3rd	Forgery.
704	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
705	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
706	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
707	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
708	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
709	832.05 (3) (a)	3rd	Cashing or depositing item with intent to

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			defraud.
710	843.08	3rd	Falsely impersonating an officer.
711	893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs other than cannabis.
712	893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.
713			
714	(c) LEVEL 3		
715			
	Florida	Felony	
	Statute	Degree	Description
716	119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
717	316.066	3rd	Unlawfully obtaining or using

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718	(3) (b) - (d)		confidential crash reports.
	316.193 (2) (b)	3rd	Felony DUI, 3rd conviction.
719			
	316.1935 (2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
720			
	319.30 (4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
721			
	319.33 (1) (a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
722			
	319.33 (1) (c)	3rd	Procure or pass title on stolen vehicle.
723			
	319.33 (4)	3rd	With intent to defraud, possess, sell, etc., a blank,

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724	327.35 (2) (b)	forged, or unlawfully obtained title or registration.
725	328.05 (2)	3rd Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
726	328.07 (4)	3rd Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
727	376.302 (5)	3rd Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
728	379.2431 (1) (e) 5.	3rd Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or

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729	379.2431 (1) (e) 6.	3rd	marine turtle nests in violation of the Marine Turtle Protection Act. Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
730	400.9935 (4)	3rd	Operating a clinic without a license or filing false license application or other required information.
731	440.1051 (3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
732	501.001 (2) (b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
733	624.401 (4) (a)	3rd	Transacting insurance

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734			without a certificate of authority.
	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
735			
	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
736			
	697.08	3rd	Equity skimming.
737			
	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
738			
	796.05(1)	3rd	Live on earnings of a prostitute.
739			
	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
740			

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741	806.10 (2)	3rd	Interferes with or assaults firefighter in performance of duty.
742	810.09 (2) (c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
743	812.014 (2) (c) 2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
744	812.0145 (2) (c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
745	815.04 (4) (b)	2nd	Computer offense devised to defraud or obtain property.
	817.034 (4) (a) 3.	3rd	Engages in scheme to

746			defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
	817.233	3rd	Burning to defraud insurer.
747			
	817.234 (8) (b) - (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
748			
	817.234 (11) (a)	3rd	Insurance fraud; property value less than \$20,000.
749			
	817.236	3rd	Filing a false motor vehicle insurance application.
750			
	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
751			
	817.413 (2)	3rd	Sale of used

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			goods as new.
752	817.505 (4)	3rd	Patient brokering.
753	828.12 (2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
754	831.28 (2) (a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
755	831.29	2nd	Possession of instruments for counterfeiting <u>driver</u> drivers' licenses or identification cards.
756	838.021 (3) (b)	3rd	Threatens unlawful harm to public servant.
757	843.19	3rd	Injure, disable, or kill

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758			police dog or horse.
	860.15(3)	3rd	Overcharging for repairs and parts.
759			
	870.01(2)	3rd	Riot; inciting or encouraging.
760			
	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
761			
	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
762			

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763	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
764	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
765	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
766	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.

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767	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
768	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
769	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a

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770			controlled substance.
	893.13 (8) (a) 3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
771			
	893.13 (8) (a) 4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
772			
	918.13 (1) (a)	3rd	Alter, destroy, or conceal investigation evidence.
773			
	944.47 (1) (a) 1.-2.	3rd	Introduce contraband to correctional facility.
774			
	944.47 (1) (c)	2nd	Possess contraband while upon the grounds of a correctional institution.
775			

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776	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
777	(e) LEVEL 5		
778			
779	Florida Statute	Felony Degree	Description
780	316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
781	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
782	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
	327.30(5)	3rd	Vessel accidents

783	379.367(4)	3rd	involving personal injury; leaving scene.
784	379.3671 (2)(c)3.	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
785	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
786	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
787	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation

788			claims.
	440.381 (2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
789			
	624.401 (4) (b) 2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
790			
	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
791			
	790.01 (2)	3rd	Carrying a concealed firearm.
792			
	790.162	2nd	Threat to throw or discharge destructive device.
793			

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794	790.163 (1)	2nd	False report of deadly explosive or weapon of mass destruction.
795	790.221 (1)	2nd	Possession of short-barreled shotgun or machine gun.
796	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
797	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
798	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
799	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.

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800	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
801	812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
802	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
803	812.131 (2) (b)	3rd	Robbery by sudden snatching.
804	812.16 (2)	3rd	Owning, operating, or conducting a chop shop.
805	817.034 (4) (a) 2.	2nd	Communications fraud, value \$20,000 to \$50,000.
	817.234 (11) (b)	2nd	Insurance fraud; property value

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\$20,000 or more but
less than \$100,000.

806

817.2341(1),
(2)(a) & (3)(a)

3rd

Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.

807

817.568(2)(b)

2nd

Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.

808

817.625(2)(b)

2nd

Second or subsequent fraudulent use of scanning device or reencoder.

809

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810	825.1025 (4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
811	827.071 (4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
812	827.071 (5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
813	839.13 (2) (b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
	843.01	3rd	Resist officer with violence to person; resist arrest with

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814			violence.
	847.0135 (5) (b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
815	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
816	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
817	874.05 (1) (b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
818	874.05 (2) (a)	2nd	Encouraging or recruiting person under 13 to join a criminal gang.
819	893.13 (1) (a)1.	2nd	Sell; manufacture, or deliver cocaine (or other

820

893.13(1)(c)2.

2nd

s. 893.03(1)(a), (1)(b),
 (1)(d), (2)(a), (2)(b), or
 (2)(c)4. drugs).

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

821

893.13(1)(d)1.

1st

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

822

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	893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
823	893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.
824	893.13(4)(b)	2nd	Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5.,

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(2) (c) 6., (2) (c) 7.,
 (2) (c) 8., (2) (c) 9., (3), or
 (4) drugs).

825

893.1351(1)

3rd

Ownership, lease, or rental
 for trafficking in or
 manufacturing of controlled
 substance.

826

827

(g) LEVEL 7

828

Florida

Felony

Statute

Degree

Description

829

316.027(1) (b)

1st

Accident involving
 death, failure to
 stop; leaving scene.

830

316.193(3) (c) 2.

3rd

DUI resulting in
 serious bodily
 injury.

831

316.1935(3) (b)

1st

Causing serious bodily
 injury or death to
 another person; driving

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832	327.35(3)(c)2.	3rd	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. Vessel BUI resulting in serious bodily injury.
833	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
834	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
835	409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than

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\$50,000.

836

456.065(2) 3rd Practicing a health care profession without a license.

837

456.065(2) 2nd Practicing a health care profession without a license which results in serious bodily injury.

838

458.327(1) 3rd Practicing medicine without a license.

839

459.013(1) 3rd Practicing osteopathic medicine without a license.

840

460.411(1) 3rd Practicing chiropractic medicine without a license.

841

461.012(1) 3rd Practicing podiatric medicine without a license.

842

462.17 3rd Practicing naturopathy without a

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			license.
843	463.015(1)	3rd	Practicing optometry without a license.
844	464.016(1)	3rd	Practicing nursing without a license.
845	465.015(2)	3rd	Practicing pharmacy without a license.
846	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
847	467.201	3rd	Practicing midwifery without a license.
848	468.366	3rd	Delivering respiratory care services without a license.
849	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
850			

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851	483.901(9)	3rd	Practicing medical physics without a license.
852	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
853	484.053	3rd	Dispensing hearing aids without a license.
854	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.
855	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.

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856	560.125(5) (a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
857	655.50(10) (b) 1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
858	775.21(10) (a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
859	775.21(10) (b)	3rd	Sexual predator working where children regularly congregate.
859	775.21(10) (g)	3rd	Failure to report or providing false information about a

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860	782.051(3)	2nd	sexual predator; harbor or conceal a sexual predator. Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
861	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
862	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
863	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
864			

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865	784.045 (1) (a) 1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
866	784.045 (1) (a) 2.	2nd	Aggravated battery; using deadly weapon.
867	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
868	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
869	784.048 (7)	3rd	Aggravated stalking; violation of court order.
870	784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.
	784.074 (1) (a)	1st	Aggravated battery on sexually violent predators facility

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			staff.
871	784.08 (2) (a)	1st	Aggravated battery on a person 65 years of age or older.
872	784.081 (1)	1st	Aggravated battery on specified official or employee.
873	784.082 (1)	1st	Aggravated battery by detained person on visitor or other detainee.
874	784.083 (1)	1st	Aggravated battery on code inspector.
875	787.06 (3) (a)	1st	Human trafficking using coercion for labor and services.
876	787.06 (3) (e)	1st	Human trafficking using coercion for labor and services by the transfer or transport of any

877	790.07(4)	1st	<p>individual from outside Florida to within the state.</p> <p>Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).</p>
878	790.16(1)	1st	<p>Discharge of a machine gun under specified circumstances.</p>
879	790.165(2)	2nd	<p>Manufacture, sell, possess, or deliver hoax bomb.</p>
880	790.165(3)	2nd	<p>Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.</p>
881	790.166(3)	2nd	<p>Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.</p>
882			

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883	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
884	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
885	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.
886	796.03	2nd	Procuring any person under 16 years for prostitution.
	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age;

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887	800.04(5)(c)2.	2nd	offender less than 18 years.
888	806.01(2)	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
889	810.02(3)(a)	2nd	Maliciously damage structure by fire or explosive.
890	810.02(3)(b)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
891	810.02(3)(d)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
892			Burglary of occupied conveyance; unarmed; no assault or battery.

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893	810.02 (3) (e)	2nd	Burglary of authorized emergency vehicle.
894	812.014 (2) (a) 1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
895	812.014 (2) (b) 2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
896	812.014 (2) (b) 3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
	812.014 (2) (b) 4.	2nd	Property stolen, law enforcement equipment

897	812.0145(2)(a)	1st	from authorized emergency vehicle.
898	812.019(2)	1st	Theft from person 65 years of age or older; \$50,000 or more.
899	812.131(2)(a)	2nd	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
900	812.133(2)(b)	1st	Robbery by sudden snatching.
901	817.034(4)(a)1.	1st	Carjacking; no firearm, deadly weapon, or other weapon.
902			Communications fraud, value greater than \$50,000.

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903	817.234 (8) (a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
904	817.234 (9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
905	817.234 (11) (c)	1st	Insurance fraud; property value \$100,000 or more.
906	817.2341 (2) (b) & (3) (b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
907	817.535 (2) (a)	3rd	Filing false lien or other unauthorized document.

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908	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
909	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.
910	827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
911	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
912	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.

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913	838.015	2nd	Bribery.
914	838.016	2nd	Unlawful compensation or reward for official behavior.
915	838.021(3)(a)	2nd	Unlawful harm to a public servant.
916	838.22	2nd	Bid tampering.
917	843.0855(2)	3rd	Impersonation of a public officer or employee.
918	843.0855(3)	3rd	Unlawful simulation of legal process.
919	843.0855(4)	3rd	Intimidation of a public officer or employee.
920	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
	847.0135(4)	2nd	Traveling to meet a minor to commit an

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921			unlawful sex act.
	872.06	2nd	Abuse of a dead human body.
922			
	874.05 (2) (b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
923			
	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
924			
	893.13 (1) (c) 1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4.) within 1,000 feet of a child care facility, school, or

925	893.13(1)(e)1.	1st	<p>state, county, or municipal park or publicly owned recreational facility or community center.</p> <p>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.</p>
926	893.13(4)(a)	1st	<p>Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).</p>
927	893.135(1)(a)1.	1st	<p>Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.</p>
928			

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929	893.135 (1) (b) 1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
930	893.135 (1) (c) 1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
931	893.135 (1) (d) 1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
932	893.135 (1) (e) 1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
933	893.135 (1) (f) 1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
	893.135 (1) (g) 1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14

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934	893.135 (1) (h) 1.a.	1st	grams. Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
935	893.135 (1) (j) 1.a.	1st	Trafficking in 1,4- Butanediol, 1 kilogram or more, less than 5 kilograms.
936	893.135 (1) (k) 2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
937	893.1351 (2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
938	896.101 (5) (a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
939			

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940	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
941	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
942	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
943	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
	943.0435(13)	3rd	Failure to report or providing false information about a

944	943.0435(14)	3rd	<p>sexual offender; harbor or conceal a sexual offender.</p> <p>Sexual offender; failure to report and reregister; failure to respond to address verification.</p>
945	944.607(9)	3rd	<p>Sexual offender; failure to comply with reporting requirements.</p>
946	944.607(10)(a)	3rd	<p>Sexual offender; failure to submit to the taking of a digitized photograph.</p>
947	944.607(12)	3rd	<p>Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.</p>
948	944.607(13)	3rd	<p>Sexual offender; failure to</p>

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949			report and reregister; failure to respond to address verification.
	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
950			
	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
951			
	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
952			
953	(h) LEVEL 8		
954			
	Florida	Felony	
	Statute	Degree	Description
955			

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956	316.193 (3) (c) 3.a.	2nd	DUI manslaughter.
957	316.1935(4) (b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
958	327.35(3) (c) 3.	2nd	Vessel BUI manslaughter.
959	499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
960	499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.
961	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.

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962	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.
963	655.50(10) (b) 2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
964	777.03(2) (a)	1st	Accessory after the fact, capital felony.
964	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

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965	782.051(2)	1st	<p>death, aircraft piracy, or unlawfully discharging bomb.</p> <p>Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).</p>
966	782.071(1)(b)	1st	<p>Committing vehicular homicide and failing to render aid or give information.</p>
967	782.072(2)	1st	<p>Committing vessel homicide and failing to render aid or give information.</p>
968	787.06(3)(b)	1st	<p>Human trafficking using coercion for commercial sexual activity.</p>
969	787.06(3)(c)	1st	<p>Human trafficking using coercion for labor and services of an</p>

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unauthorized alien.

970

787.06(3)(f)

1st

Human trafficking using coercion for commercial sexual activity by the transfer or transport of any individual from outside Florida to within the state.

971

790.161(3)

1st

Discharging a destructive device which results in bodily harm or property damage.

972

794.011(5)

2nd

Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.

973

794.08(3)

2nd

Female genital mutilation, removal of a victim younger than 18 years of age from

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			this state.
974	800.04(4)	2nd	Lewd or lascivious battery.
975	806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
976	810.02(2)(a)	1st, PBL	Burglary with assault or battery.
977	810.02(2)(b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.
978	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
979	812.014(2)(a)2.	1st	Property stolen; cargo valued at

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			\$50,000 or more, grand theft in 1st degree.
980	812.13(2)(b)	1st	Robbery with a weapon.
981	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
982	817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
983	817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
984	817.535(4)(a)1.	2nd	Filing false lien or other unauthorized document; defendant is

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985			incarcerated or under supervision.
	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.
986			
	817.568 (6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
987			
	825.102 (2)	1st	Aggravated abuse of an elderly person or disabled adult.
988			
	825.1025 (2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
989			
	825.103 (2) (a)	1st	Exploiting an elderly person or disabled

			adult and property is valued at \$100,000 or more.
990	837.02 (2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
991	837.021 (2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
992	860.121 (2) (c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
993	860.16	1st	Aircraft piracy.
994	893.13 (1) (b)	1st	Sell or deliver in excess of 10 grams of any

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substance specified in s.
893.03(1)(a) or (b).

995

893.13(2)(b)

1st

Purchase in excess of 10
grams of any substance
specified in s.
893.03(1)(a) or (b).

996

893.13(6)(c)

1st

Possess in excess of 10
grams of any substance
specified in s.
893.03(1)(a) or (b).

997

893.135(1)(a)2.

1st

Trafficking in
cannabis, more than
2,000 lbs., less than
10,000 lbs.

998

893.135
(1)(b)1.b.

1st

Trafficking in cocaine,
more than 200 grams, less
than 400 grams.

999

893.135
(1)(c)1.b.

1st

Trafficking in illegal
drugs, more than 14 grams,
less than 28 grams.

1000

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1001	893.135 (1) (d) 1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
1002	893.135 (1) (e) 1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
1003	893.135 (1) (f) 1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
1004	893.135 (1) (g) 1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
1005	893.135 (1) (h) 1.b.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
1006	893.135 (1) (j) 1.b.	1st	Trafficking in 1,4- Butanediol, 5 kilograms or more, less than 10 kilograms.

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1007	893.135 (1) (k) 2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
1008	893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
1009	895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
1010	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
1011	895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
	896.101(5) (b)	2nd	Money laundering, financial transactions totaling or exceeding

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\$20,000, but less than
\$100,000.

1012

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.

1013

1014

(i) LEVEL 9

1015

Florida
Statute

Felony
Degree

Description

1016

316.193
(3)(c)3.b.

1st

DUI manslaughter; failing to
render aid or give
information.

1017

327.35(3)(c)3.b.

1st

BUI manslaughter;
failing to render aid or
give information.

1018

409.920

1st

Medicaid provider

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1019	(2) (b) 1. c.		fraud; \$50,000 or more.
	499.0051 (9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
1020	560.123 (8) (b) 3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
1021	560.125 (5) (c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
1022	655.50 (10) (b) 3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
1023			

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1024	775.0844	1st	Aggravated white collar crime.
1025	782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
1026	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.
1027	782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
	782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled

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adult.

1028

787.01(1)(a)1.

1st, PBL

Kidnapping; hold for
ransom or reward or
as a shield or
hostage.

1029

787.01(1)(a)2.

1st, PBL

Kidnapping with
intent to commit or
facilitate
commission of any
felony.

1030

787.01(1)(a)4.

1st, PBL

Kidnapping with intent
to interfere with
performance of any
governmental or
political function.

1031

787.02(3)(a)

1st

False imprisonment; child
under age 13; perpetrator
also commits aggravated
child abuse, sexual battery,
or lewd or lascivious
battery, molestation,

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conduct, or exhibition.

1032

787.06(3)(d)

1st

Human trafficking using coercion for commercial sexual activity of an unauthorized alien.

1033

787.06(3)(g)

1st, PBL

Human trafficking for commercial sexual activity of a child under the age of 18.

1034

787.06(4)

1st

Selling or buying of minors into human trafficking.

1035

790.161

1st

Attempted capital destructive device offense.

1036

790.166(2)

1st, PBL

Possessing, selling, using, or attempting to use a weapon of mass destruction.

1037

794.011(2)

1st

Attempted sexual battery; victim less

than 12 years of age.

1038

794.011(2)

Life

Sexual battery;
offender younger than
18 years and commits
sexual battery on a
person less than 12
years.

1039

794.011(4)

1st

Sexual battery; victim 12 years
or older, certain
circumstances.

1040

794.011(8)(b)

1st

Sexual battery; engage
in sexual conduct with
minor 12 to 18 years by
person in familial or
custodial authority.

1041

794.08(2)

1st

Female genital mutilation;
victim younger than 18 years
of age.

1042

796.035

1st

Selling or buying of minors into
prostitution.

1043

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1044	800.04 (5) (b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
1045	812.13 (2) (a)	1st, PBL	Robbery with firearm or other deadly weapon.
1046	812.133 (2) (a)	1st, PBL	Carjacking; firearm or other deadly weapon.
1047	812.135 (2) (b)	1st	Home-invasion robbery with weapon.
1048	817.535 (3) (b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.
1048	817.535 (4) (a) 2.	1st	Filing false claim or other unauthorized

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1049	817.535 (5) (b)	1st	document; defendant is incarcerated or under supervision.
1050	817.568 (7)	2nd, PBL	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.
1051	827.03 (2) (a)	1st	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.
1052	847.0145 (1)	1st	Aggravated child abuse.
1053			Selling, or otherwise transferring custody or control, of a minor.

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1054	847.0145 (2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
1055	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
1056	893.135	1st	Attempted capital trafficking offense.
1057	893.135 (1) (a) 3.	1st	Trafficking in cannabis, more than 10,000 lbs.
1058	893.135 (1) (b) 1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
1059	893.135 (1) (c) 1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.

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1060	893.135 (1) (d) 1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
1061	893.135 (1) (e) 1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
1062	893.135 (1) (f) 1.c.	1st	Trafficking in amphetamine, more than 200 grams.
1063	893.135 (1) (h) 1.c.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 10 kilograms or more.
1064	893.135 (1) (j) 1.c.	1st	Trafficking in 1,4- Butanediol, 10 kilograms or more.
1065	893.135 (1) (k) 2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.
1066	896.101(5) (c)	1st	Money laundering, financial instruments totaling or exceeding \$100,000.

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896.104(4)(a)3.

1st Structuring transactions
to evade reporting or
registration
requirements, financial
transactions totaling or
exceeding \$100,000.



1067

1068

Section 5. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7035 PCB CRJS 14-08 Juvenile Sentencing
SPONSOR(S): Criminal Justice Subcommittee, Grant
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	12 Y, 0 N	Cox	Cunningham
1) Justice Appropriations Subcommittee		deNagy 	Lloyd 
2) Judiciary Committee			

SUMMARY ANALYSIS

In 2010, the United States Supreme Court held in *Graham v. Florida* that the 8th Amendment of the U.S. Constitution prohibits states from sentencing juvenile nonhomicide offenders to life without providing a meaningful opportunity to obtain release. In 2012, the United States Supreme Court held in *Miller v. Alabama* that the 8th Amendment of the U.S. Constitution prohibits a sentencing scheme that *mandates* life in prison without the possibility of parole for juvenile offenders convicted of a homicide offense. The Court held that children are constitutionally different from adults and as a result, the sentencer must take into consideration these differences before sentencing these offenders to one of the most severe punishments available in the criminal justice system.

The bill specifies that a juvenile offender convicted of:

- A *capital felony* homicide offense *must* be sentenced to life imprisonment if the judge, after considering specified factors at a sentencing hearing, determines that life imprisonment is an appropriate sentence. If life imprisonment is not appropriate, the offender must be sentenced to a term of imprisonment of at least 30 years.
- A *life felony homicide or first degree felony* homicide offense *may* be sentenced to life imprisonment or a term of years equal to life imprisonment if the judge, after considering specified factors at a sentencing hearing, determines that such sentence is appropriate.
- A capital felony, life felony, or first degree felony *nonhomicide* offense *may* be sentenced to life imprisonment or a term of years equal to life imprisonment if the judge, after considering specified factors at a sentencing hearing, determines that such sentence is appropriate.

Juvenile offenders convicted of:

- A *life felony homicide or first degree felony homicide* offense are entitled to have the court of original jurisdiction review the sentence after 25 years if the juvenile is sentenced to life imprisonment or a term of years equal to life (and every 10 years thereafter if necessary).
- A capital felony, life felony, or first degree felony *nonhomicide* offense are entitled to have the court of original jurisdiction review the sentence after 20 years if the juvenile is sentenced to life imprisonment, a term of years equal to life imprisonment, or imprisonment for a term of more than 25 years (and every 5 years thereafter if necessary).

On March 3, 2014, the Criminal Justice Impact Conference determined that HB 7035 will have no prison bed impact on the Department of Corrections.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

In recent years, the U.S. Supreme Court has issued several opinions addressing the application of the Eighth Amendment's prohibition against cruel and unusual punishment in relation to the punishment of juvenile offenders.¹ The first of these was *Roper v. Simmons*, in which the Court found that juvenile offenders cannot be subject to the death penalty for any offense.² More recently, the Court expanded constitutional doctrine regarding punishment of juvenile offenders in *Graham v. Florida*³ and *Miller v. Alabama*.⁴

Graham v. Florida

In 2010, the United States Supreme Court decided *Graham v. Florida* and held that the 8th Amendment of the U.S. Constitution prohibits states from sentencing juvenile nonhomicide offenders to a life sentence without providing a meaningful opportunity to obtain release. The Court's opinion stated:

A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance.⁵

Graham was held to apply retroactively, even to criminal cases which were considered final at the time *Graham* was rendered.⁶

Because Florida has abolished parole⁷ and the Court deems the possibility of executive clemency to be remote,⁸ a juvenile offender in Florida cannot currently be sentenced to life imprisonment for a nonhomicide offense.

Post-Graham Decisions

Subsequent to the *Graham* decision, inmates who were convicted of nonhomicide offenses and sentenced to life imprisonment before *Graham* was decided began petitioning for and receiving resentencing hearings. There appears to be no consolidated source for obtaining the results of these resentencing hearings. However, the results of some resentencing hearings are known from news reports. These include:

- An inmate sentenced to life for the 2005 rape of a young girl when he was seventeen years old was resentenced to a split sentence of 7 years in prison followed by 20 years of probation.⁹

¹ The term "juvenile offender" refers to an offender who was under 18 years of age at the time of committing the offense for which he or she was sentenced.

² 125 S.Ct. 1183 (2005).

³ 130 S.Ct. 2011 (2010).

⁴ 132 S.Ct. 2455 (2012).

⁵ *Graham*, 130 S.Ct. 2011 at 2016.

⁶ See *Witt v. State*, 387 So.2d 922, 925 (Fla. 1980)(Court held that the "doctrine of finality should be abridged only when a more compelling objective appears, such as ensuring fairness and uniformity in individual adjudications.... a sweeping change of law can so drastically alter the substantive or procedural underpinnings of a final conviction and sentence that post-conviction relief is necessary to avoid individual instances of obvious injustice."). In addition, Florida courts have held that *Graham* applies retroactively even without applying the *Witt* standard. *Kleppinger v. State*, 81 So.3d 547, 549 (Fla. 2nd DCA 2012).

⁷ Parole was abolished in 1983 for all non-capital felonies committed on or after October 1, 1983, and was completely abolished in 1995 for any offense committed on or after October 1, 1995.

⁸ *Graham*, at 2027.

⁹ "Rapist who was serving life sentence will get second chance," August 30, 2011, <http://tbo.com/news/rapist-who-was-serving-life-sentence-will-get-second-chance-254096> (last visited on January 27, 2014).

- An inmate sentenced to four life sentences for armed robberies committed in 2004 and 2005 when he was 14 and 15 years old was resentenced to a term of 30 years.¹⁰
- An inmate sentenced to life for sexual battery with a weapon or force committed in 2008 when he was 14 was resentenced to a term of 65 years.¹¹

Juvenile offenders convicted and sentenced after the issuance of *Graham* have received lengthy prison sentences. For example:

- An inmate was sentenced to concurrent 50 years in prison with a 25-year mandatory minimum for armed robbery and aggravated battery;¹²
- An inmate was sentenced to 70 years in prison for attempted first degree murder, including a 25-year mandatory minimum for the use of a firearm;¹³
- An inmate was sentenced to 60 years in prison with an aggregate minimum mandatory term of 50 years for attempted first degree murder, armed burglary and armed robbery.¹⁴

Juveniles who have been sentenced or resentenced subsequent to *Graham* have challenged their sentences on grounds that they effectively constitute a life sentence. To date, Florida's District Courts of Appeal have provided a wide range of rulings. Some courts have applied a strict reading of *Graham*, holding that *Graham* only applies when a defendant is sentenced to a term of life imprisonment, not a lengthy term of years.¹⁵ Other courts have held that a term of years sentence is not in violation of *Graham* if the sentence is for multiple nonhomicide offenses, thus limiting the application of *Graham* to a singular nonhomicide offense where a juvenile is sentenced to life.¹⁶ Yet, still other courts have held that *any* sentence which will result in the juvenile being incarcerated past that juvenile's life expectancy violates the holding in *Graham*.¹⁷

Courts also disagree on the number of years that is the functional equivalent of a life sentence for the purposes of *Graham*.¹⁸ However, this issue may soon be resolved. On September 17, 2013, the Florida Supreme Court heard oral argument in *Gridine v. State* and *Henry v. State*.¹⁹ In *Gridine*, the First District Court of Appeal held that a 70-year sentence was not the equivalent of life. In *Henry*, the Fifth District Court of Appeal upheld a sentence of 90 years holding that *Graham* does not prohibit a lengthy term of years. The Court has not issued an opinion in either case at this time.

¹⁰ "Man who served 11 years fails to persuade Hillsborough judge to set him free," October 6, 2011, <http://www.tampabay.com/news/courts/criminal/man-who-served-11-years-fails-to-persuade-hillsborough-judge-to-set-him/1195464> (last visited on January 24, 2014).

¹¹ "Teenage rapist Jose Walle resentenced to 65 years in prison," November 17, 2010, <http://www.tampabay.com/news/courts/criminal/teenage-rapist-jose-walle-resentenced-to-65-years-in-prison/1134862> (last visited on January 24, 2014).

¹² *Thomas v. State*, 78 So.3d 644 (Fla. 1st DCA 2011). The Court held that the defendant's sentence of a term-of-years totaling 50 years is not the functional equivalent of a life sentence for purposes of the Eighth Amendment prohibition on life.

¹³ *Gridine v. State*, 89 So.3d 909 (Fla. 1st DCA 2011). The Court held that a term-of-years sentence of 70 years including a 25 year mandatory minimum was not constitutionally excessive.

¹⁴ *Adams v. State*, 2012 WL 3193932 (Fla. 1st DCA 2012). The Court held that a term-of-years sentence which would require the juvenile to serve a minimum of 58.5 years was unconstitutional for purposes of the 8th Amendment. The Court held that, at the earliest, the juvenile would not be released until he was 76 years of age, which was past the life expectancy, thus the sentence was a de facto life sentence. The Court certified conflict with the case *Henry v. State*, 82 So.3d 1084 (Fla. 5th DCA 2012).

¹⁵ See *Walle v. State*, 99 So.3d 967, 971 (Fla. 1st DCA 2012) (Court held that the express holdings of *Graham* and *Miller* were not violated and held that extending the rulings would be left for the Supreme Court.); *Henry v. State*, 82 So.3d 1084, 1089 (Fla. 5th DCA 2012) (Court held that a defendant's aggregate term-of-years sentence totaling 90 years in prison was not unconstitutionally excessive.)

¹⁶ *Walle*, at 972.

¹⁷ See *Floyd v. State*, 87 So.3d 45, 47 (Fla. 1st DCA 2012); *Adams*, at 2.

¹⁸ See *Walle*, at 967 (Court held a sentence of 65 years consecutive to a 27 year sentence was not violative of the 8th Amendment); *Henry v. State*, 82 So.3d 1084 (Fla. 5th DCA 2012) (Court held that 90 years, of which he would be required to serve at least 76.5 years, was not violative of the 8th Amendment); *Floyd v. State*, 87 So.3d 45, 47 (Fla. 1st DCA 2012) (Court held that consecutive sentences of 40 years, totaling 80 years, was unconstitutional under the 8th Amendment.); *Adams v. State*, 2012 WL 3193932 (Court held that a 60 year sentence which would require the juvenile to serve a minimum of 58.5 years was unconstitutional under the 8th Amendment.).

¹⁹ Florida Supreme Court case numbers SC12-1223 and SC12-578, respectively.

Miller v. Alabama

In 2012, the United States Supreme Court held in *Miller v. Alabama* that the 8th Amendment of the U.S. Constitution²⁰ prohibits a sentencing scheme that *mandates* life in prison without the possibility of parole for juvenile offenders.²¹ *Miller* does not prohibit a court from sentencing a juvenile offender convicted of a homicide offense to life without parole, but requires the sentencer to take into consideration “how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison” before doing so.²² The Court’s opinion stated:

Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him.^{23,24}

Florida’s District Courts of Appeal disagree on whether *Miller* applies retroactively to juveniles whose cases were considered to be final at the time *Miller* was rendered. The First and Third District Courts have held that *Miller* does not apply retroactively²⁵ as the ruling is not a “development of fundamental significance.”²⁶ However, on January 22, 2014, the Second District Court held in *Toye v. State*,²⁷ that by creating a “constitutionally meaningful sentencing hearing” that did not previously exist, *Miller* cannot be “characterized as mere evolutionarily refinement in criminal procedure,” and should be applied retroactively. This issue was certified to the Florida Supreme Court as a question of public importance in *Falcon v. State*.²⁸ Oral argument has been scheduled for March 6, 2014.

Effect of the Bill

Penalties

The bill amends s. 775.082, F.S., to:

- *Require* a court to sentence a juvenile offender convicted of a homicide offense²⁹ that is a capital felony or an offense that was reclassified as a capital felony (capital felony homicide) to:
 - Life imprisonment, if, after conducting a sentencing hearing in accordance with the newly created s. 921.140, F.S., the court concludes that life imprisonment is an appropriate sentence; or
 - A term of imprisonment of not less than 30 years, if the judge concludes at the sentencing hearing that life imprisonment is not an appropriate sentence.

²⁰ *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

²¹ *Id.*

²² *Id.* at 2469.

²³ *Id.* at 2468.

²⁴ The Court further held that “*Graham, Roper*, and our individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles.” *See also Roper v. Simmons*, 543 S.Ct. 551(2005)(Court barred capital punishment for children and first held that children are constitutionally different from adults for purposes of sentencing.); *Woodson v. North Carolina*, 96 S.Ct. 2978 (1976)(Court held that imposition of mandatory death sentence without consideration of the character and record of the individual offender or the circumstances of the particular offense was inconsistent with the fundamental respect for humanity which underlies the 8th Amendment.)

²⁵ *See Geter v. State*, 3D12-1736, 2012 WL 4448860 (Fla. 3rd DCA 2012)(Court held that the ruling in *Miller* was not a development of “fundamental significance;” because “*Miller* mandates only that a sentencer follow a certain process before imposing life sentence. . . . this was a procedural change providing for new process in juvenile homicide sentencing and was merely an evolutionary refinement in criminal law that did not compel abridgement of the finality of judgments.”); *Gonzalez v. State*, 101 So.3d 886, 887 (Fla. 1st DCA 2012).

²⁶ *See Witt v. State*, 387 So.2d 922 (Fla. 1980).

²⁷ 2014 WL 228639 (Fla. 2nd DCA 2014).

²⁸ *Falcon v. State*, 111 So.3d 973 (Fla. 1st DCA, 2013); SC13-865.

²⁹ Section 782.04, F.S., establishes homicide offenses.

- *Permit* a court to sentence a juvenile offender convicted of a homicide offense that was reclassified as a life felony (life felony homicide), or is a first degree felony punishable by a term of years not exceeding life or an offense that was reclassified as a first degree felony punishable by a term of years not exceeding life (first degree felony homicide), to:
 - Life imprisonment or a term of years equal to life imprisonment, if, after conducting a sentencing hearing in accordance with s. 921.140, F.S., the court finds such sentence appropriate.

Unlike capital felony homicide, the bill does not require the court to impose a minimum sentence in instances where the court determines that life imprisonment is not appropriate.

- Permit a court to sentence a juvenile offender convicted of a *nonhomicide* offense that is a life felony, punishable by a term of imprisonment for life, or punishable by a term of years not exceeding life imprisonment, or an offense reclassified as such, to:
 - Life imprisonment or a term of years equal to life imprisonment, if, after conducting a sentencing hearing in accordance with s. 921.140, F.S., the court finds such sentence appropriate.

Again, the bill does not require the court to impose a minimum sentence in instances where the court determines that life imprisonment is not appropriate.

The bill also provides that specified juvenile offenders are entitled to a review of their sentence hearings. However, a juvenile offender convicted of a capital felony homicide offense is never entitled to a review.

Sentencing Proceedings for Juvenile Offenders Sentenced to Life Imprisonment

The bill creates s. 921.140, F.S., which authorizes the court to conduct a separate sentencing hearing to determine whether life imprisonment or a term of years equal to life imprisonment is an appropriate sentence for a juvenile offender convicted of one of the above-described homicide or nonhomicide offenses that was committed on or after July 1, 2014. When determining whether such sentence is appropriate, the court must consider factors relevant to the offense and to the juvenile offender's youth and attendant circumstances, including, but not limited to the:

- Nature and circumstances of offense committed by the juvenile offender;
- Effect of crime on the victim's family and on the community;
- Juvenile offender's age, maturity, intellectual capacity, and mental and emotional health at time of offense;
- Juvenile offender's background, including his or her family, home, and community environment;
- Effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the juvenile offender's participation in the offense;
- Extent of the juvenile offender's participation in the offense;
- Effect, if any, of familial pressure or peer pressure on the juvenile offender's actions;
- Nature and extent of the juvenile offender's prior criminal history;
- Effect, if any, of characteristics attributable to the juvenile offender's youth on the juvenile offender's judgment; and
- Possibility of rehabilitating the juvenile offender.

This sentencing hearing is mandatory in all capital felony homicide cases. The hearing is not required in all life felony homicide, first degree felony homicide, or nonhomicide cases, but must be conducted before the court can impose a sentence of life imprisonment or a term of years equal to life imprisonment.

Sentence Review Proceedings

The bill creates s. 921.1401, F.S., which entitles certain juvenile offenders to a review of his or her sentence by the court of original jurisdiction after specified periods of time. The sentence review

hearing is to determine whether the juvenile offender has been rehabilitated and is deemed fit to re-enter society. "Juvenile offender" is defined to mean a person sentenced to imprisonment in the custody of the Department of Corrections (DOC) for an offense committed on or after July 1, 2014, and committed before he or she was 18 years of age.

A juvenile offender convicted of a *life felony homicide* or *first degree felony homicide* offense is entitled to a sentence review hearing after 25 years, but only if he or she is sentenced to:

- Life imprisonment; or
- A term of years equal to life imprisonment.

A juvenile offender convicted of a *nonhomicide* offense is entitled to a sentence review hearing after 20 years, if he or she is sentenced to:

- Life imprisonment;
- A term of years equal to life imprisonment; or
- A term of imprisonment for more than 25 years.

This bill does not authorize sentence review hearings for juvenile offenders convicted of a *capital felony homicide* offense.

The juvenile offender must submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. DOC must notify a juvenile offender of his or her eligibility to request a sentencing review hearing 18 months before the juvenile offender becomes entitled to such review. Additionally, an eligible juvenile offender is entitled to be represented by counsel at the sentence review hearing, including a court appointed public defender, if the juvenile offender cannot afford an attorney.

The bill requires the original sentencing court to consider any factor it deems appropriate during the sentence review hearing, including all of the following:

- Whether the offender demonstrates maturity and rehabilitation;
- Whether the offender remains at the same level of risk to society as he or she did at the time of the initial sentencing;
- The opinion of the victim or the victim's next of kin;³⁰
- Whether the offender was a relatively minor participant in the criminal offense or acted under extreme duress or the domination of another person;
- Whether the offender has shown sincere and sustained remorse for the criminal offense;
- Whether the offender's age, maturity, and psychological development at the time of the offense affected his or her behavior;
- Whether the offender has successfully obtained a general educational development certificate or completed another educational, technical, work, vocational, or self-rehabilitation program, if such a program is available;
- Whether the offender was a victim of sexual, physical, or emotional abuse before he or she committed the offense; and
- The results of any mental health assessment, risk assessment, or evaluation of the offender as to rehabilitation.

If a court, after conducting a sentence review hearing, finds that the juvenile offender has been rehabilitated and is reasonably fit to reenter society, the court must modify the offender's sentence and impose a term of probation of at least 5 years. If the court determines that the juvenile offender has not demonstrated rehabilitation or is not fit to reenter society, the court must issue an order in writing stating the reasons why the sentence is not being modified.

³⁰ The bill further states that the absence of the victim or the victim's next of kin from the resentencing hearing may not be a factor in the court's determination. The victim or victim's next of kin is authorized to appear in person, in writing, or by electronic means. Additionally, if the victim or the victim's next of kin chooses not to participate in the hearing, the court may consider previous statements made by the victim or the victim's next of kin during the trial, initial sentencing phase, or subsequent sentence review hearings.

A juvenile offender convicted of a life felony homicide or first degree felony homicide offense whose sentence is not modified after the initial sentence review hearing is eligible for additional sentence review hearings every 10 years. Juvenile offenders convicted of a nonhomicide offense whose sentence is not modified after the initial sentence review hearing are eligible for an additional sentence review hearings every 5 years.

B. SECTION DIRECTORY:

Section 1. Amends s. 775.082, F.S., relating to penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.

Section 2. Creates s. 921.140, F.S., relating to sentence of life imprisonment for persons who are under the age of 18 years at the time of the offense; sentencing proceedings.

Section 3. Creates s. 921.1041, F.S., relating to review of sentences for persons convicted of specified offenses committed while under the age of 18 years.

Section 4. Amends s. 316.3026, F.S., relating to unlawful operation of motor carriers.

Section 5. Amends s. 373.430, F.S., relating to prohibitions, violation, penalty, intent.

Section 6. Amends s. 403.161, F.S., relating to prohibitions, violation, penalty, intent.

Section 7. Amends s. 648.571, F.S., relating to failure to return collateral; penalty.

Section 8. Provides an effective date of July 1, 2014.

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 March 3, 2014, the Criminal Justice Impact Conference determined that HB 7035 will have no prison bed impact on the Department of Corrections.

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:

Victims and the victims' kin will have the option to attend a juvenile offender's sentence review hearing many years after the case has been closed.

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:

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

1 A bill to be entitled
 2 An act relating to juvenile sentencing; amending s.
 3 775.082, F.S.; providing criminal penalties applicable
 4 to a juvenile offender for certain serious felonies;
 5 requiring a judge to consider specified factors before
 6 determining if life imprisonment is an appropriate
 7 sentence for a juvenile offender convicted of certain
 8 offenses; providing review of sentences for specified
 9 juvenile offenders; creating s. 921.140, F.S.;
 10 providing sentencing proceedings for determining if
 11 life imprisonment is an appropriate sentence for a
 12 juvenile offender convicted of certain offenses;
 13 providing certain factors a judge shall consider when
 14 determining if life imprisonment is appropriate for a
 15 juvenile offender; creating s. 921.1401, F.S.;
 16 defining the term "juvenile offender"; providing
 17 sentence review proceedings to be conducted after a
 18 specified period of time by the original sentencing
 19 court for juvenile offenders convicted of certain
 20 offenses; providing for subsequent reviews; requiring
 21 the Department of Corrections to notify a juvenile
 22 offender of his or her eligibility to participate in
 23 sentence review hearings; entitling a juvenile
 24 offender to be represented by counsel; providing
 25 factors that must be considered by the court in the
 26 sentence review; requiring the court to modify a

27 juvenile offender's sentence if certain factors are
 28 found; requiring the court to impose a term of
 29 probation for any sentence modified; requiring the
 30 court to make written findings if the court declines
 31 to modify a juvenile offender's sentence; amending ss.
 32 316.3026, 373.430, 403.161, and 648.571, F.S.;
 33 conforming cross-references; providing an effective
 34 date.

35
 36 Be It Enacted by the Legislature of the State of Florida:

37
 38 Section 1. Subsections (1) and (3) of section 775.082,
 39 Florida Statutes, are amended to read:

40 775.082 Penalties; applicability of sentencing structures;
 41 mandatory minimum sentences for certain reoffenders previously
 42 released from prison.—

43 (1) (a) Except as provided in paragraph (b), a person who
 44 has been convicted of a capital felony shall be punished by
 45 death if the proceeding held to determine sentence according to
 46 the procedure set forth in s. 921.141 results in findings by the
 47 court that such person shall be punished by death, otherwise
 48 such person shall be punished by life imprisonment and shall be
 49 ineligible for parole.

50 (b) A person who is convicted under s. 782.04 of a capital
 51 felony or an offense that was reclassified as a capital felony,
 52 which was committed before the person attained 18 years of age,

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53 shall be punished by a term of imprisonment for life if, after a
 54 sentencing hearing conducted by the court in accordance with s.
 55 921.140, the court finds that life imprisonment is an
 56 appropriate sentence. If the court finds that life imprisonment
 57 is not an appropriate sentence, such person shall be punished by
 58 a term of imprisonment of at least 30 years.

59 (3) A person who has been convicted of any other
 60 designated felony may be punished as follows:

61 (a)1. For a life felony committed before ~~prior to~~ October
 62 1, 1983, by a term of imprisonment for life or for a term of at
 63 least years not less than 30 years.

64 2. For a life felony committed on or after October 1,
 65 1983, by a term of imprisonment for life or by a term of
 66 imprisonment not exceeding 40 years.

67 3. Except as provided in subparagraph 4., for a life
 68 felony committed on or after July 1, 1995, by a term of
 69 imprisonment for life or by imprisonment for a term of years not
 70 exceeding life imprisonment.

71 4.a. Except as provided in sub-subparagraph b., for a life
 72 felony committed on or after September 1, 2005, which is a
 73 violation of s. 800.04(5)(b), by:

74 (I) A term of imprisonment for life; or

75 (II) A split sentence that is a term of at least ~~not less~~
 76 ~~than~~ 25 years' imprisonment and not exceeding life imprisonment,
 77 followed by probation or community control for the remainder of
 78 the person's natural life, as provided in s. 948.012(4).

79 b. For a life felony committed on or after July 1, 2008,
80 which is a person's second or subsequent violation of s.
81 800.04(5)(b), by a term of imprisonment for life.

82 5. Notwithstanding subparagraphs 1.-4., a person who is
83 convicted under s. 782.04 of an offense that was reclassified as
84 a life felony, which was committed before the person attained 18
85 years of age, may be punished by a term of imprisonment for life
86 or by a term of years equal to life imprisonment if the judge
87 conducts a sentencing hearing in accordance with s. 921.140 and
88 finds that life imprisonment or a term of years equal to life
89 imprisonment is an appropriate sentence. A person sentenced to a
90 term of imprisonment for life or by a term of years equal to
91 life imprisonment is entitled to a review of his or her sentence
92 in accordance with s. 921.1401.

93 (b)1. For a felony of the first degree, by a term of
94 imprisonment not exceeding 30 years or, when specifically
95 provided by statute, by imprisonment for a term of years not
96 exceeding life imprisonment.

97 2. Notwithstanding subparagraph 1., a person convicted
98 under s. 782.04 of a first degree felony punishable by a term of
99 years not exceeding life imprisonment or an offense that was
100 reclassified as a first degree felony punishable by a term of
101 years not exceeding life, which was committed before the person
102 attained 18 years of age, may be punished by a term of years
103 equal to life imprisonment if the judge conducts a sentencing
104 hearing in accordance with s. 921.140 and finds that a term of

105 years equal to life imprisonment is an appropriate sentence. A
 106 person sentenced to a term of years equal to life imprisonment
 107 is entitled to a review of his or her sentence in accordance
 108 with s. 921.1401.

109 (c) Notwithstanding paragraphs (a) and (b), a person
 110 convicted of an offense that is not included in s. 782.04, but
 111 an offense that is a life felony or is punishable by term of
 112 imprisonment for life or by a term of years not exceeding life
 113 imprisonment, or an offense that was reclassified as a life
 114 felony or an offense punishable by a term of imprisonment for
 115 life or by a term of years not exceeding life imprisonment,
 116 which was committed before the person attained 18 years of age,
 117 may be punished by a term of imprisonment for life or a term of
 118 years equal to life imprisonment if the judge conducts a
 119 sentencing hearing in accordance with s. 921.140 and finds that
 120 life imprisonment or a term of years equal to life imprisonment
 121 is an appropriate sentence. A person sentenced to a term of
 122 imprisonment for life, a term of years equal to life
 123 imprisonment, or a term of more than 25 years is entitled to a
 124 review of his or her sentence in accordance with s. 921.1401.

125 (d)(e) For a felony of the second degree, by a term of
 126 imprisonment not exceeding 15 years.

127 (e)(d) For a felony of the third degree, by a term of
 128 imprisonment not exceeding 5 years.

129 Section 2. Section 921.140, Florida Statutes, is created
 130 to read:

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131 921.140 Sentence of life imprisonment for persons who are
132 under the age of 18 years at the time of the offense; sentencing
133 proceedings.-

134 (1) Upon conviction or adjudication of guilt of an offense
135 described in ss. 775.082(1)(b), (3)(a)5., (3)(b)2., or (3)(c)
136 which was committed on or after July 1, 2014, the court may
137 conduct a separate sentencing hearing to determine if a term of
138 imprisonment for life or a term of years equal to life
139 imprisonment is an appropriate sentence.

140 (2) In determining whether life imprisonment or a term of
141 years equal to life imprisonment is an appropriate sentence, the
142 court shall consider factors relevant to the offense and the
143 defendant's youth and attendant circumstances, including, but
144 not limited to:

145 (a) The nature and circumstances of the offense committed
146 by the defendant.

147 (b) The effect of the crime on the victim's family and on
148 the community.

149 (c) The defendant's age, maturity, intellectual capacity,
150 and mental and emotional health at the time of the offense.

151 (d) The defendant's background, including his or her
152 family, home, and community environment.

153 (e) The effect, if any, of immaturity, impetuosity, or
154 failure to appreciate risks and consequences on the defendant's
155 participation in the offense.

156 (f) The extent of the defendant's participation in the

157 offense.

158 (g) The effect, if any, of familial pressure or peer
 159 pressure on the defendant's actions.

160 (h) The nature and extent of the defendant's prior
 161 criminal history.

162 (i) The effect, if any, of characteristics attributable to
 163 the defendant's youth on the defendant's judgment.

164 (j) The possibility of rehabilitating the defendant.

165 Section 3. Section 921.1401, Florida Statutes, is created
 166 to read:

167 921.1401 Review of sentences for persons convicted of
 168 specified offenses committed while under the age of 18 years.-

169 (1) For purposes of this section, the term "juvenile
 170 offender" means a person sentenced to imprisonment in the
 171 custody of the Department of Corrections for an offense
 172 committed on or after July 1, 2014, and committed before he or
 173 she attained 18 years of age.

174 (2)(a) A juvenile offender sentenced to a term of
 175 imprisonment for life or a term of years equal to life
 176 imprisonment under s. 775.082(3)(a)5. or 775.082(3)(b)2. is
 177 entitled to a review of his or her sentence after 25 years. The
 178 juvenile offender must submit an application to the court of
 179 original jurisdiction requesting that a sentence review hearing
 180 be held. The sentencing court shall retain original jurisdiction
 181 for the duration of the sentence for this purpose.

182 (b) A juvenile offender who is not resentenced under

183 paragraph (a) is eligible for additional sentence reviews every
 184 10 years. The juvenile offender must submit a new application to
 185 the court of original jurisdiction to request subsequent
 186 sentence review hearings.

187 (3)(a) A juvenile offender sentenced to a term of
 188 imprisonment for life, a term of years equal to life
 189 imprisonment, or a term of more than 25 years under s.
 190 775.082(3)(c) is entitled to a review of his or her sentence
 191 after 20 years. The juvenile offender must submit an application
 192 to the court of original jurisdiction requesting that a sentence
 193 review hearing be held. The sentencing court shall retain
 194 original jurisdiction for the duration of the sentence for this
 195 purpose.

196 (b) A juvenile offender who is not resentenced under
 197 paragraph (a) is eligible for additional sentence reviews every
 198 5 years. The juvenile offender must submit a new application to
 199 the court of original jurisdiction to request subsequent
 200 sentence review hearings.

201 (4) The Department of Corrections shall notify a juvenile
 202 offender of his or her eligibility to request a sentence review
 203 hearing 18 months before the juvenile offender is entitled to a
 204 sentence review hearing under this section.

205 (5) A juvenile offender who is eligible for a sentence
 206 review hearing under this section is entitled to be represented
 207 by counsel and the court shall appoint a public defender to
 208 represent the juvenile offender if the juvenile offender cannot

209 afford an attorney.

210 (6) Upon receiving an application from an eligible
 211 juvenile offender, the court of original sentencing jurisdiction
 212 shall hold a sentence review hearing to determine whether the
 213 juvenile offender's sentence should be modified. When
 214 determining if it is appropriate to resentence the juvenile
 215 offender, the court shall consider any factor it deems
 216 appropriate, including all of the following:

217 (a) Whether the juvenile offender demonstrates maturity
 218 and rehabilitation.

219 (b) Whether the juvenile offender remains at the same
 220 level of risk to society as he or she did at the time of the
 221 initial sentencing.

222 (c) The opinion of the victim or the victim's next of kin.
 223 The absence of the victim or the victim's next of kin from the
 224 sentence review hearing may not be a factor in the determination
 225 of the court under this section. The court shall permit the
 226 victim or victim's next of kin to be heard, in person, in
 227 writing, or by electronic means. If the victim or the victim's
 228 next of kin chooses not to participate in the hearing, the court
 229 may consider previous statements made by the victim or the
 230 victim's next of kin during the trial, initial sentencing phase,
 231 or subsequent sentencing review hearings.

232 (d) Whether the juvenile offender was a relatively minor
 233 participant in the criminal offense or acted under extreme
 234 duress or the domination of another person.

235 (e) Whether the juvenile offender has shown sincere and
 236 sustained remorse for the criminal offense.

237 (f) Whether the juvenile offender's age, maturity, and
 238 psychological development at the time of the offense affected
 239 his or her behavior.

240 (g) Whether the juvenile offender has successfully
 241 obtained a general educational development certificate or
 242 completed another educational, technical, work, vocational, or
 243 self-rehabilitation program, if such a program is available.

244 (h) Whether the juvenile offender was a victim of sexual,
 245 physical, or emotional abuse before he or she committed the
 246 offense.

247 (i) The results of any mental health assessment, risk
 248 assessment, or evaluation of the juvenile offender as to
 249 rehabilitation.

250 (7) If the court determines at a sentence review hearing
 251 that the juvenile offender has been rehabilitated and is
 252 reasonably believed to be fit to reenter society, the court
 253 shall modify the sentence and impose a term of probation of at
 254 least 5 years. If the court determines that the juvenile
 255 offender has not demonstrated rehabilitation or is not fit to
 256 reenter society, the court shall issue a written order stating
 257 the reasons why the sentence is not being modified.

258 Section 4. Subsection (2) of section 316.3026, Florida
 259 Statutes, is amended to read:

260 316.3026 Unlawful operation of motor carriers.-

261 (2) Any motor carrier enjoined or prohibited from
 262 operating by an out-of-service order by this state, any other
 263 state, or the Federal Motor Carrier Safety Administration may
 264 not operate on the roadways of this state until the motor
 265 carrier has been authorized to resume operations by the
 266 originating enforcement jurisdiction. Commercial motor vehicles
 267 owned or operated by any motor carrier prohibited from operation
 268 found on the roadways of this state shall be placed out of
 269 service by law enforcement officers of the Department of Highway
 270 Safety and Motor Vehicles, and the motor carrier assessed a
 271 \$10,000 civil penalty pursuant to 49 C.F.R. s. 383.53, in
 272 addition to any other penalties imposed on the driver or other
 273 responsible person. Any person who knowingly drives, operates,
 274 or causes to be operated any commercial motor vehicle in
 275 violation of an out-of-service order issued by the department in
 276 accordance with this section commits a felony of the third
 277 degree, punishable as provided in s. 775.082(3)(e)
 278 ~~775.082(3)(d)~~. Any costs associated with the impoundment or
 279 storage of such vehicles are the responsibility of the motor
 280 carrier. Vehicle out-of-service orders may be rescinded when the
 281 department receives proof of authorization for the motor carrier
 282 to resume operation.

283 Section 5. Subsection (3) of section 373.430, Florida
 284 Statutes, is amended to read:

285 373.430 Prohibitions, violation, penalty, intent.—

286 (3) Any person who willfully commits a violation specified

287 in paragraph (1)(a) is guilty of a felony of the third degree,
 288 punishable as provided in ss. 775.082(3)(e) ~~775.082(3)(d)~~ and
 289 775.083(1)(g), by a fine of not more than \$50,000 or by
 290 imprisonment for 5 years, or by both, for each offense. Each day
 291 during any portion of which such violation occurs constitutes a
 292 separate offense.

293 Section 6. Subsection (3) of section 403.161, Florida
 294 Statutes, is amended to read:

295 403.161 Prohibitions, violation, penalty, intent.—

296 (3) Any person who willfully commits a violation specified
 297 in paragraph (1)(a) is guilty of a felony of the third degree
 298 punishable as provided in ss. 775.082(3)(e) ~~775.082(3)(d)~~ and
 299 775.083(1)(g) by a fine of not more than \$50,000 or by
 300 imprisonment for 5 years, or by both, for each offense. Each day
 301 during any portion of which such violation occurs constitutes a
 302 separate offense.

303 Section 7. Paragraph (c) of subsection (3) of section
 304 648.571, Florida Statutes, is amended to read:

305 648.571 Failure to return collateral; penalty.—

306 (3)

307 (c) Allowable expenses incurred in apprehending a
 308 defendant because of a bond forfeiture or judgment under s.
 309 903.29 may be deducted if such expenses are accounted for. The
 310 failure to return collateral under these terms is punishable as
 311 follows:

312 1. If the collateral is of a value less than \$100, as

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2014

313 provided in s. 775.082(4)(a).

314 2. If the collateral is of a value of \$100 or more, as
 315 provided in s. 775.082(3)(e) ~~775.082(3)(d)~~.

316 3. If the collateral is of a value of \$1,500 or more, as
 317 provided in s. 775.082(3)(d) ~~775.082(3)(e)~~.

318 4. If the collateral is of a value of \$10,000 or more, as
 319 provided in s. 775.082(3)(b).

320 Section 8. This act shall take effect July 1, 2014.



Justice Appropriations Subcommittee

Amendment Packet

**March 11, 2014
9:30 a.m. – 11:30 a.m.
Morris Hall**

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Justice Appropriations
 2 Subcommittee

3 Representative Trujillo offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (12) is added to section 951.23,
 8 Florida Statutes, to read:

9 951.23 County and municipal detention facilities;

10 definitions; administration; standards and requirements.-

11 (12) ARREST BOOKING PHOTOGRAPHS.-

12 (a) As used in this subsection, the term:

13 1. "Arrest booking photograph" means a photograph of an
 14 arrestee taken for the purpose of recording the arrestee's image
 15 as part of the arrest and booking process.

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16 2. "Criminal justice agency" has the same meaning as
17 provided in s. 943.045, and includes county and municipal
18 detention facilities.

19 (b) A county or municipal detention facility may not
20 electronically publish an arrest booking photograph of an
21 arrestee who is charged with, but not yet convicted of, a
22 criminal offense.

23 (c) Paragraph (b) does not apply to the electronic
24 publication of arrest booking photographs:

25 1. To governmental entities;

26 2. To third parties that provide electronic criminal
27 justice services to criminal justice agencies; and

28 3. To any entity if the sheriff or police chief, or their
29 designee, decides such publication is necessary to protect the
30 public's safety.

31 (d) This subsection does not restrict public access to
32 records as provided by s. 119.07.

33 Section 2. This act shall take effect October 1, 2014.

34

35

36

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

38 Remove everything before the enacting clause and insert:

39 A bill to be entitled

40 An act relating to arrest booking photographs; amending s.

41 951.23, F.S.; providing definitions; prohibiting a county

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 265 (2014)

Amendment No. 1

42 | or municipal detention facility from electronically
43 | publishing arrest booking photographs of certain arrestees;
44 | providing exceptions; providing construction; providing an
45 | effective date.

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COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Justice Appropriations
2 Subcommittee

3 Representative La Rosa offered the following:

4
5 **Amendment**

6 Remove line 272 and insert:

7 within the scope of his or her lawful employment. Nothing in
8 this act may be construed to impose liability on any provider of
9 an interactive computer service, as defined in 47 U.S.C. 230(f);
10 information service, as defined in 47 U.S.C. 153; or
11 communications service as defined in s. 202.11(2), F.S. when the
12 provider provides (i) the transmission, storage or caching of
13 electronic communications or messages of others, (ii) other
14 related telecommunications or commercial mobile radio service or
15 (iii) content provided by another person.
16
17

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COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Justice Appropriations
2 Subcommittee
3 Representative Grant offered the following:

Amendment

6 Remove lines 58-177 and insert:
7 a term of imprisonment of at least 30 years. A person sentenced
8 to a term of imprisonment for life, by a term of years equal to
9 life imprisonment, or by a term of 30 years or more may be
10 entitled to a review of his or her sentence in accordance with
11 s. 921.1401.

12 (3) A person who has been convicted of any other
13 designated felony may be punished as follows:

14 (a)1. For a life felony committed before ~~prior to~~ October
15 1, 1983, by a term of imprisonment for life or for a term of at
16 least years not less than 30 years.

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17 2. For a life felony committed on or after October 1,
18 1983, by a term of imprisonment for life or by a term of
19 imprisonment not exceeding 40 years.

20 3. Except as provided in subparagraph 4., for a life
21 felony committed on or after July 1, 1995, by a term of
22 imprisonment for life or by imprisonment for a term of years not
23 exceeding life imprisonment.

24 4.a. Except as provided in sub-subparagraph b., for a life
25 felony committed on or after September 1, 2005, which is a
26 violation of s. 800.04(5)(b), by:

27 (I) A term of imprisonment for life; or

28 (II) A split sentence that is a term of at least ~~not less~~
29 ~~than~~ 25 years' imprisonment and not exceeding life imprisonment,
30 followed by probation or community control for the remainder of
31 the person's natural life, as provided in s. 948.012(4).

32 b. For a life felony committed on or after July 1, 2008,
33 which is a person's second or subsequent violation of s.
34 800.04(5)(b), by a term of imprisonment for life.

35 5. Notwithstanding subparagraphs 1.-4., a person who is
36 convicted under s. 782.04 of an offense that was reclassified as
37 a life felony, which was committed before the person attained 18
38 years of age, may be punished by a term of imprisonment for life
39 or by a term of years equal to life imprisonment if the judge
40 conducts a sentencing hearing in accordance with s. 921.140 and
41 finds that life imprisonment or a term of years equal to life
42 imprisonment is an appropriate sentence. A person sentenced to a

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43 term of imprisonment for life, by a term of years equal to life
44 imprisonment, or by a term of more than 25 years may be entitled
45 to a review of his or her sentence in accordance with s.
46 921.1401.

47 (b)1. For a felony of the first degree, by a term of
48 imprisonment not exceeding 30 years or, when specifically
49 provided by statute, by imprisonment for a term of years not
50 exceeding life imprisonment.

51 2. Notwithstanding subparagraph 1., a person convicted
52 under s. 782.04 of a first degree felony punishable by a term of
53 years not exceeding life imprisonment or an offense that was
54 reclassified as a first degree felony punishable by a term of
55 years not exceeding life, which was committed before the person
56 attained 18 years of age, may be punished by a term of years
57 equal to life imprisonment if the judge conducts a sentencing
58 hearing in accordance with s. 921.140 and finds that a term of
59 years equal to life imprisonment is an appropriate sentence. A
60 person sentenced to a term of years equal to life imprisonment
61 or a term of more than 25 years may be entitled to a review of
62 his or her sentence in accordance with s. 921.1401.

63 (c) Notwithstanding paragraphs (a) and (b), a person
64 convicted of an offense that is not included in s. 782.04, but
65 an offense that is a life felony or is punishable by term of
66 imprisonment for life or by a term of years not exceeding life
67 imprisonment, or an offense that was reclassified as a life
68 felony or an offense punishable by a term of imprisonment for

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69 life or by a term of years not exceeding life imprisonment,
70 which was committed before the person attained 18 years of age,
71 may be punished by a term of imprisonment for life or a term of
72 years equal to life imprisonment if the judge conducts a
73 sentencing hearing in accordance with s. 921.140 and finds that
74 life imprisonment or a term of years equal to life imprisonment
75 is an appropriate sentence. A person sentenced to a term of
76 imprisonment for life, a term of years equal to life
77 imprisonment, or a term of more than 25 years is entitled to a
78 review of his or her sentence in accordance with s. 921.1401.

79 (d) ~~(e)~~ For a felony of the second degree, by a term of
80 imprisonment not exceeding 15 years.

81 (e) ~~(d)~~ For a felony of the third degree, by a term of
82 imprisonment not exceeding 5 years.

83 Section 2. Section 921.140, Florida Statutes, is created
84 to read:

85 921.140 Sentence of life imprisonment for persons who are
86 under the age of 18 years at the time of the offense; sentencing
87 proceedings.-

88 (1) Upon conviction or adjudication of guilt of an offense
89 described in ss. 775.082(1)(b), (3)(a)5., (3)(b)2., or (3)(c)
90 which was committed on or after July 1, 2014, the court may
91 conduct a separate sentencing hearing to determine if a term of
92 imprisonment for life or a term of years equal to life
93 imprisonment is an appropriate sentence.

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94 (2) In determining whether life imprisonment or a term of
95 years equal to life imprisonment is an appropriate sentence, the
96 court shall consider factors relevant to the offense and the
97 defendant's youth and attendant circumstances, including, but
98 not limited to:

99 (a) The nature and circumstances of the offense committed
100 by the defendant.

101 (b) The effect of the crime on the victim's family and on
102 the community.

103 (c) The defendant's age, maturity, intellectual capacity,
104 and mental and emotional health at the time of the offense.

105 (d) The defendant's background, including his or her
106 family, home, and community environment.

107 (e) The effect, if any, of immaturity, impetuosity, or
108 failure to appreciate risks and consequences on the defendant's
109 participation in the offense.

110 (f) The extent of the defendant's participation in the
111 offense.

112 (g) The effect, if any, of familial pressure or peer
113 pressure on the defendant's actions.

114 (h) The nature and extent of the defendant's prior
115 criminal history.

116 (i) The effect, if any, of characteristics attributable to
117 the defendant's youth on the defendant's judgment.

118 (j) The possibility of rehabilitating the defendant.

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119 Section 3. Section 921.1401, Florida Statutes, is created
120 to read:

121 921.1401 Review of sentences for persons convicted of
122 specified offenses committed while under the age of 18 years.-

123 (1) For purposes of this section, the term "juvenile
124 offender" means a person sentenced to imprisonment in the
125 custody of the Department of Corrections for an offense
126 committed on or after July 1, 2014, and committed before he or
127 she attained 18 years of age.

128 (2) (a) A juvenile offender sentenced to a term of
129 imprisonment for life, a term of years equal to life
130 imprisonment, or a term of more than 25 years under s.
131 775.082 (1) (b), 775.082 (3) (a) 5., or 775.082 (3) (b) 2. is entitled
132 to a review of his or her sentence after 25 years, unless the
133 judge at sentencing determines that the juvenile offender is not
134 eligible due to the extent of his or her participation in the
135 killing of the victim. The

136