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# **Judiciary Committee**

**March 21, 2014**

**9:00 AM**

**404 HOB**

**Meeting Packet**

**Will Weatherford  
Speaker**

**Dennis Baxley  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Judiciary Committee

**Start Date and Time:** Friday, March 21, 2014 09:00 am  
**End Date and Time:** Friday, March 21, 2014 11:00 am  
**Location:** Sumner Hall (404 HOB)  
**Duration:** 2.00 hrs

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

CS/HB 69 Pub. Rec./Names of Spouses and Children of Public Defenders and Criminal Conflict and Civil Regional Counsel by Criminal Justice Subcommittee, Pritchett  
CS/HB 409 Offenses Against Vulnerable Persons by Criminal Justice Subcommittee, Passidomo  
CS/HB 485 Sexual Offenses Against Students by Authority Figures by Criminal Justice Subcommittee, Raburn  
CS/HB 569 Nursing Home Litigation by Civil Justice Subcommittee, Gaetz  
CS/HB 609 Article V Constitutional Convention by Civil Justice Subcommittee, Wood  
CS/HB 697 Controlled Substances by Criminal Justice Subcommittee, Ingram  
CS/HB 757 Estates by Civil Justice Subcommittee, Spano  
HB 885 Manatee County by Steube  
CS/HB 1013 Court-Ordered Expunction of Criminal History Records by Criminal Justice Subcommittee, Steube  
HB 7035 Juvenile Sentencing by Criminal Justice Subcommittee, Grant

**NOTICE FINALIZED on 03/19/2014 16:13 by Jones.Missy**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 69 Pub. Rec./Names of Spouses and Children of Public Defenders and Criminal Conflict and Civil Regional Counsel

**SPONSOR(S):** Criminal Justice Subcommittee; Pritchett and others

**TIED BILLS:** IDEN./SIM. **BILLS:** CS/CS/SB 238

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Cox	Cunningham
2) Government Operations Subcommittee	9 Y, 0 N	Williamson	Williamson
3) Judiciary Committee		Cox <i>lee</i>	Havlicak <i>RH</i>

### SUMMARY ANALYSIS

Current law provides a public records exemption for certain identification and location information of current and former public defenders, assistant public defenders, criminal conflict and civil regional counsel, assistant criminal conflict and civil regional counsel ("public defenders"), and for certain identification and location information of the spouses and children of public defenders. Notably, the *names* of spouses and children of public defenders are not exempted.

The bill amends the current public record exemption to add the names of the spouses and children of current and former public defenders. The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

**Article I, Section 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands the current public record exemption; thus, it requires a two-thirds vote for final passage.**



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

##### Public Record Exemption for Certain Identification and Location Information

Currently, s. 119.071(4)(d)2.j., F.S., provides a public records exemption for certain identification and location information of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel ("public defenders"), and their spouses and children. The following information is exempt<sup>3</sup> from public records requirements:

- Home addresses, telephone numbers, social security numbers, dates of birth, and photographs of public defenders;
- Home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of public defenders; and
- Names and locations of schools and day care facilities attended by the children of public defenders.

<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> See s. 119.15, F.S.

<sup>3</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See 85-62 Fla. Op. Att'y Gen. (1985).

If exempt information is held by an agency<sup>4</sup> that is not the employer of the public defender, the public defender must submit a written request to that agency to maintain the public records exemption.<sup>5</sup>

Notably, the *names* of spouses and children of public defenders are not exempt from public records requirements. In contrast, the names of spouses and children of the following are exempt from public disclosure: former or current sworn or civilian law enforcement personnel, state attorneys, human resource or labor relations agency personnel, code enforcement officers, guardians ad litem, juvenile justice officers, investigators or inspectors of the Department of Business and Professional Regulation, and county tax collectors.<sup>6</sup>

### **Effect of the Bill**

The bill amends s. 119.071(4)(d)2.j., F.S., to expand the current public record exemption for the identification and location information of current and former public defenders. It adds the names of spouses and children of current or former public defenders to the list of exempt information.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.<sup>7</sup>

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

Section 1. Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2. Provides a public necessity statement.

Section 3. 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 government revenues.

#### **2. Expenditures:**

See FISCAL COMMENTS.

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

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

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

#### **2. Expenditures:**

See FISCAL COMMENTS.

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<sup>4</sup> Section 119.011(2), F.S., defines "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.

<sup>5</sup> Section 119.071(4)(d)3., F.S.

<sup>6</sup> Section 119.071(4)(d)2., F.S.

<sup>7</sup> Article I, Sec. 24(c), FLA. CONST.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on agencies, because agency staff would be responsible for complying with public records requests and may require training related to the expansion of the public record exemption. In addition, agencies could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of agencies.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill expands the public records exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands the public records exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands the public record exemption for location and identification information of current and former public defenders and their spouses and children. It affords the spouses and children with similar protections provided to others. As such, the exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

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 March 5, 2014, the Criminal Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments provide technical clarifications and do not make any substantive changes to the bill.

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 public records; amending s.  
 3       119.071, F.S.; creating an exemption from public  
 4       records requirements for the names of the spouses and  
 5       children of current or former public defenders,  
 6       assistant public defenders, criminal conflict and  
 7       civil regional counsel, and assistant criminal  
 8       conflict and civil regional counsel; providing for  
 9       future review and repeal of the exemption; providing a  
 10      statement of necessity; providing an effective date.

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

13  
 14           Section 1. Paragraph (d) of subsection (4) of section  
 15   119.071, Florida Statutes, is amended to read:

16           119.071 General exemptions from inspection or copying of  
 17   public records.—

18           (4) AGENCY PERSONNEL INFORMATION.—

19           (d)1. For purposes of this paragraph, the term "telephone  
 20   numbers" includes home telephone numbers, personal cellular  
 21   telephone numbers, personal pager telephone numbers, and  
 22   telephone numbers associated with personal communications  
 23   devices.

24           2.a.(I) The home addresses, telephone numbers, social  
 25   security numbers, dates of birth, and photographs of active or  
 26   former sworn or civilian law enforcement personnel, including

27 | correctional and correctional probation officers, personnel of  
 28 | the Department of Children and Families whose duties include the  
 29 | investigation of abuse, neglect, exploitation, fraud, theft, or  
 30 | other criminal activities, personnel of the Department of Health  
 31 | whose duties are to support the investigation of child abuse or  
 32 | neglect, and personnel of the Department of Revenue or local  
 33 | governments whose responsibilities include revenue collection  
 34 | and enforcement or child support enforcement; the home  
 35 | addresses, telephone numbers, social security numbers,  
 36 | photographs, dates of birth, and places of employment of the  
 37 | spouses and children of such personnel; and the names and  
 38 | locations of schools and day care facilities attended by the  
 39 | children of such personnel are exempt from s. 119.07(1).

40 | (II) The names of the spouses and children of active or  
 41 | former sworn or civilian law enforcement personnel and the other  
 42 | specified agency personnel identified in sub-sub-subparagraph  
 43 | (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the  
 44 | State Constitution.

45 | (III) Sub-sub-subparagraph (II) is subject to the Open  
 46 | Government Sunset Review Act in accordance with s. 119.15, and  
 47 | shall stand repealed on October 2, 2018, unless reviewed and  
 48 | saved from repeal through reenactment by the Legislature.

49 | b. The home addresses, telephone numbers, dates of birth,  
 50 | and photographs of firefighters certified in compliance with s.  
 51 | 633.408; the home addresses, telephone numbers, photographs,  
 52 | dates of birth, and places of employment of the spouses and

53 children of such firefighters; and the names and locations of  
 54 schools and day care facilities attended by the children of such  
 55 firefighters are exempt from s. 119.07(1).

56 c. The home addresses, dates of birth, and telephone  
 57 numbers of current or former justices of the Supreme Court,  
 58 district court of appeal judges, circuit court judges, and  
 59 county court judges; the home addresses, telephone numbers,  
 60 dates of birth, and places of employment of the spouses and  
 61 children of current or former justices and judges; and the names  
 62 and locations of schools and day care facilities attended by the  
 63 children of current or former justices and judges are exempt  
 64 from s. 119.07(1).

65 d.(I) The home addresses, telephone numbers, social  
 66 security numbers, dates of birth, and photographs of current or  
 67 former state attorneys, assistant state attorneys, statewide  
 68 prosecutors, or assistant statewide prosecutors; the home  
 69 addresses, telephone numbers, social security numbers,  
 70 photographs, dates of birth, and places of employment of the  
 71 spouses and children of current or former state attorneys,  
 72 assistant state attorneys, statewide prosecutors, or assistant  
 73 statewide prosecutors; and the names and locations of schools  
 74 and day care facilities attended by the children of current or  
 75 former state attorneys, assistant state attorneys, statewide  
 76 prosecutors, or assistant statewide prosecutors are exempt from  
 77 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

78 (II) The names of the spouses and children of current or

79 former state attorneys, assistant state attorneys, statewide  
 80 prosecutors, or assistant statewide prosecutors are exempt from  
 81 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

82 (III) Sub-sub-subparagraph (II) is subject to the Open  
 83 Government Sunset Review Act in accordance with s. 119.15, and  
 84 shall stand repealed on October 2, 2018, unless reviewed and  
 85 saved from repeal through reenactment by the Legislature.

86 e. The home addresses, dates of birth, and telephone  
 87 numbers of general magistrates, special magistrates, judges of  
 88 compensation claims, administrative law judges of the Division  
 89 of Administrative Hearings, and child support enforcement  
 90 hearing officers; the home addresses, telephone numbers, dates  
 91 of birth, and places of employment of the spouses and children  
 92 of general magistrates, special magistrates, judges of  
 93 compensation claims, administrative law judges of the Division  
 94 of Administrative Hearings, and child support enforcement  
 95 hearing officers; and the names and locations of schools and day  
 96 care facilities attended by the children of general magistrates,  
 97 special magistrates, judges of compensation claims,  
 98 administrative law judges of the Division of Administrative  
 99 Hearings, and child support enforcement hearing officers are  
 100 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 101 Constitution if the general magistrate, special magistrate,  
 102 judge of compensation claims, administrative law judge of the  
 103 Division of Administrative Hearings, or child support hearing  
 104 officer provides a written statement that the general

105 | magistrate, special magistrate, judge of compensation claims,  
 106 | administrative law judge of the Division of Administrative  
 107 | Hearings, or child support hearing officer has made reasonable  
 108 | efforts to protect such information from being accessible  
 109 | through other means available to the public.

110 |       f. The home addresses, telephone numbers, dates of birth,  
 111 | and photographs of current or former human resource, labor  
 112 | relations, or employee relations directors, assistant directors,  
 113 | managers, or assistant managers of any local government agency  
 114 | or water management district whose duties include hiring and  
 115 | firing employees, labor contract negotiation, administration, or  
 116 | other personnel-related duties; the names, home addresses,  
 117 | telephone numbers, dates of birth, and places of employment of  
 118 | the spouses and children of such personnel; and the names and  
 119 | locations of schools and day care facilities attended by the  
 120 | children of such personnel are exempt from s. 119.07(1) and s.  
 121 | 24(a), Art. I of the State Constitution.

122 |       g. The home addresses, telephone numbers, dates of birth,  
 123 | and photographs of current or former code enforcement officers;  
 124 | the names, home addresses, telephone numbers, dates of birth,  
 125 | and places of employment of the spouses and children of such  
 126 | personnel; and the names and locations of schools and day care  
 127 | facilities attended by the children of such personnel are exempt  
 128 | from s. 119.07(1) and s. 24(a), Art. I of the State  
 129 | Constitution.

130 |       h. The home addresses, telephone numbers, places of



131 employment, dates of birth, and photographs of current or former  
 132 guardians ad litem, as defined in s. 39.820; the names, home  
 133 addresses, telephone numbers, dates of birth, and places of  
 134 employment of the spouses and children of such persons; and the  
 135 names and locations of schools and day care facilities attended  
 136 by the children of such persons are exempt from s. 119.07(1) and  
 137 s. 24(a), Art. I of the State Constitution, if the guardian ad  
 138 litem provides a written statement that the guardian ad litem  
 139 has made reasonable efforts to protect such information from  
 140 being accessible through other means available to the public.

141 i. The home addresses, telephone numbers, dates of birth,  
 142 and photographs of current or former juvenile probation  
 143 officers, juvenile probation supervisors, detention  
 144 superintendents, assistant detention superintendents, juvenile  
 145 justice detention officers I and II, juvenile justice detention  
 146 officer supervisors, juvenile justice residential officers,  
 147 juvenile justice residential officer supervisors I and II,  
 148 juvenile justice counselors, juvenile justice counselor  
 149 supervisors, human services counselor administrators, senior  
 150 human services counselor administrators, rehabilitation  
 151 therapists, and social services counselors of the Department of  
 152 Juvenile Justice; the names, home addresses, telephone numbers,  
 153 dates of birth, and places of employment of spouses and children  
 154 of such personnel; and the names and locations of schools and  
 155 day care facilities attended by the children of such personnel  
 156 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State

157 Constitution.

158       j.(I) The home addresses, telephone numbers, dates of  
 159 birth, and photographs of current or former public defenders,  
 160 assistant public defenders, criminal conflict and civil regional  
 161 counsel, and assistant criminal conflict and civil regional  
 162 counsel; the home addresses, telephone numbers, dates of birth,  
 163 and places of employment of the spouses and children of such  
 164 defenders or counsel; and the names and locations of schools and  
 165 day care facilities attended by the children of such defenders  
 166 or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of  
 167 the State Constitution.

168       (II) The names of the spouses and children of the  
 169 specified agency personnel identified in sub-sub-subparagraph  
 170 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the  
 171 State Constitution. This sub-sub-subparagraph is subject to the  
 172 Open Government Sunset Review Act in accordance with s. 119.15  
 173 and shall stand repealed on October 2, 2019, unless reviewed and  
 174 saved from repeal through reenactment by the Legislature.

175       k. The home addresses, telephone numbers, and photographs  
 176 of current or former investigators or inspectors of the  
 177 Department of Business and Professional Regulation; the names,  
 178 home addresses, telephone numbers, and places of employment of  
 179 the spouses and children of such current or former investigators  
 180 and inspectors; and the names and locations of schools and day  
 181 care facilities attended by the children of such current or  
 182 former investigators and inspectors are exempt from s. 119.07(1)

183 and s. 24(a), Art. I of the State Constitution if the  
 184 investigator or inspector has made reasonable efforts to protect  
 185 such information from being accessible through other means  
 186 available to the public. This sub-subparagraph is subject to the  
 187 Open Government Sunset Review Act in accordance with s. 119.15  
 188 and shall stand repealed on October 2, 2017, unless reviewed and  
 189 saved from repeal through reenactment by the Legislature.

190 1. The home addresses and telephone numbers of county tax  
 191 collectors; the names, home addresses, telephone numbers, and  
 192 places of employment of the spouses and children of such tax  
 193 collectors; and the names and locations of schools and day care  
 194 facilities attended by the children of such tax collectors are  
 195 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 196 Constitution if the county tax collector has made reasonable  
 197 efforts to protect such information from being accessible  
 198 through other means available to the public. This sub-  
 199 subparagraph is subject to the Open Government Sunset Review Act  
 200 in accordance with s. 119.15 and shall stand repealed on October  
 201 2, 2017, unless reviewed and saved from repeal through  
 202 reenactment by the Legislature.

203 3. An agency that is the custodian of the information  
 204 specified in subparagraph 2. and that is not the employer of the  
 205 officer, employee, justice, judge, or other person specified in  
 206 subparagraph 2. shall maintain the exempt status of that  
 207 information only if the officer, employee, justice, judge, other  
 208 person, or employing agency of the designated employee submits a

209 written request for maintenance of the exemption to the  
 210 custodial agency.

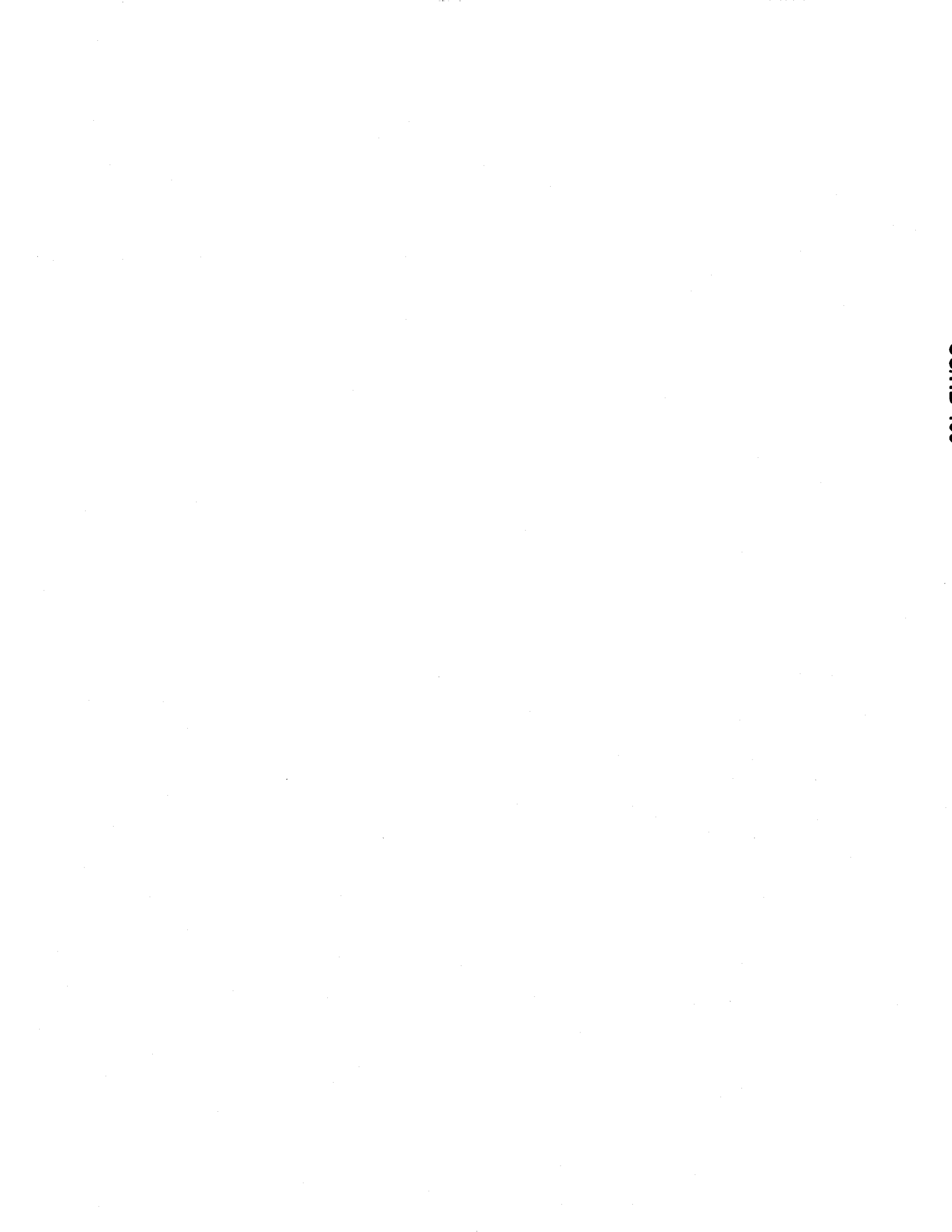
211 4. The exemptions in this paragraph apply to information  
 212 held by an agency before, on, or after the effective date of the  
 213 exemption.

214 5. Except as otherwise expressly provided in this  
 215 paragraph, this paragraph is subject to the Open Government  
 216 Sunset Review Act in accordance with s. 119.15, and shall stand  
 217 repealed on October 2, 2017, unless reviewed and saved from  
 218 repeal through reenactment by the Legislature.

219 Section 2. The Legislature finds that it is a public  
 220 necessity that the names of the spouses and children of current  
 221 or former public defenders, assistant public defenders, criminal  
 222 conflict and civil regional counsel, and assistant criminal  
 223 conflict and civil regional counsel be made exempt from s.  
 224 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
 225 State Constitution. Public defenders, assistant public  
 226 defenders, criminal conflict and civil regional counsel, and  
 227 assistant criminal conflict and civil regional counsel personnel  
 228 in this state perform a variety of important duties that ensure  
 229 public safety and welfare and encourage safe and civil  
 230 communities. These persons work with felons, many of whom have  
 231 committed violent crimes. As a result of their duties, such  
 232 personnel often come in close contact with individuals who not  
 233 only may be a threat to these personnel, but who might seek to  
 234 take revenge against them by harming their spouses and children.

235 These attorneys also interact with the victims of crime.  
 236 Allowing access to the names of the spouses and children of  
 237 current or former public defenders, assistant public defenders,  
 238 criminal conflict and civil regional counsel, and assistant  
 239 criminal conflict and civil regional counsel provides a means by  
 240 which individuals who have been investigated, arrested,  
 241 interrogated, or incarcerated can identify and cause physical or  
 242 emotional harm to these spouses and children. In addition,  
 243 criminal conflict and civil regional counsel and their  
 244 assistants provide representation in sensitive civil matters,  
 245 such as those in which a person's parental rights may be  
 246 terminated based on allegations of perpetrating abuse and  
 247 neglect against a child. By providing legal representation in  
 248 criminal and civil matters, these attorneys provide a valuable  
 249 service. The Legislature therefore finds that the harm that may  
 250 result from the release of the names of spouses and children of  
 251 current or former public defenders, assistant public defenders,  
 252 criminal conflict and civil regional counsel, and assistant  
 253 criminal conflict and civil regional counsel outweighs any  
 254 public benefit that may be derived from the disclosure of the  
 255 information.

256 Section 3. 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: CS/SB 588

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Rows include Criminal Justice Subcommittee, Justice Appropriations Subcommittee, and 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...
• 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 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 a vulnerable adult from specified accounts in which the vulnerable 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:

- Decreases the property threshold values for exploitation of vulnerable adults offenses;
• Creates a permissive presumption that specified property transfers are the result of exploitation;
• Requires 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
• Limits 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 persons 60 years of age 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.

## 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.<sup>1</sup> In 2010, Florida had the highest proportion of people over the age of 65, making up 17% of the total state population.<sup>2</sup>

In 2011, there were 11,468,487 people aged 18 to 64 in Florida.<sup>3</sup> Of that number of people, 1,131,661, or 9.9%, people had at least one disability.<sup>4</sup> The number of individuals aged 65 and older in Florida in 2011 totaled 3,296,861.<sup>5</sup> Of that number of people, 1,136,372, or 34.5%, had at least one disability.<sup>6</sup>

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.<sup>7</sup> 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.”<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> The “typical” victim of financial exploitation is between 70 and 89 years of age, Caucasian, female, frail, and cognitively impaired.<sup>11</sup> 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.<sup>12</sup>

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<sup>1</sup> Administration on Aging, National Center for Elder Abuse, *America’s Growing Elderly Population*, available at [www.ncea.aoa.gov/Library/Data/index.aspx](http://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).

<sup>2</sup> *Id.*

<sup>3</sup> 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](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_1YR_DP02&prodType=table) (last visited on February 3, 2014).

<sup>4</sup> *Id.*

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

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 24.

<sup>8</sup> 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).

<sup>9</sup> *Id.*

<sup>10</sup> 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.

<sup>11</sup> *Id.*

<sup>12</sup> 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 deception<sup>13</sup> or intimidation,<sup>14</sup> 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;<sup>15</sup> 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;<sup>16</sup>
- Valued at \$20,000 or more but less than \$100,000, it is a second degree felony;<sup>17</sup> and
- Valued at less than \$20,000, it is a third degree felony.<sup>18</sup>

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.<sup>19</sup>

<sup>13</sup> 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.

<sup>14</sup> 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.

<sup>15</sup> 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.

<sup>16</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>17</sup> 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.

<sup>18</sup> 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.

<sup>19</sup> 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" to delete the requirement that a person use *deception or intimidation* to obtain or use a vulnerable adult's funds, assets, or property.<sup>20</sup> 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.
- (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 caregiver<sup>21</sup> or a person who stands in a position of trust and confidence with the vulnerable adult.

The bill lowers the property threshold amounts applicable to s. 825.103, F.S., providing that 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.

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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.

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

<sup>21</sup> 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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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.

### **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.<sup>22</sup> A presumption is derived from another fact or group of facts that has been proven in the action.<sup>23</sup> 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.<sup>24</sup>

Hundreds of presumptions exist in American jurisprudence.<sup>25</sup> 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 procedure to resolve certain issues that could not otherwise be resolved due to a lack of proof.<sup>26</sup> The strongest justification for most presumptions is the probabilistic determination that the existence of certain facts can be logically inferred from other facts.<sup>27</sup>

#### *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.<sup>28</sup> Exploited elders frequently are unable, and sometimes unwilling, to effectively assist prosecutors.<sup>29</sup> 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.<sup>30</sup>

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;<sup>31</sup>
- 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.

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<sup>22</sup> *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.”).

<sup>23</sup> *Id.*

<sup>24</sup> *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*, 1 So.3d at 232.

<sup>25</sup> *Preying on the Graying*, at 125.

<sup>26</sup> *Id.*

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

<sup>28</sup> *Id.*

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

<sup>30</sup> *Id.* at 106.

<sup>31</sup> 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 a disabled adult, unless such disabled adult is also 65 years of age or older.

### **Personal Identification Information**

Section 817.568, F.S., contains a variety of provisions criminalizing the fraudulent use of a person's personal identification information.<sup>32</sup> 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 less than 18 years of age, to willfully and fraudulently use personal identification information of that individual.

### **Effect of the Bill**

The bill expands the application of s. 817.568(6) and (7), F.S., enhancing the criminal penalties for a person to fraudulently use the personal identification information of a person who is 60 years of age or older, as well as a person less than 18 years of age.

### **Hearsay Exception for Vulnerable Adults**

#### *Hearsay in Criminal Cases*

"Hearsay" is a statement,<sup>33</sup> other than one made by the declarant<sup>34</sup> while testifying at trial or a hearing,<sup>35</sup> offered in evidence to prove the truth of the matter asserted.<sup>36</sup> Currently, hearsay statements are not admissible at trial unless a statutory exception applies.<sup>37</sup>

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<sup>32</sup> 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.

<sup>33</sup> 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.

<sup>34</sup> The "declarant" is the person who made the statement; See s. 90.801(1)(b), F.S.

<sup>35</sup> Often referred to simply as an "out-of-court statement."

<sup>36</sup> Section 90.801(1)(c), F.S.

<sup>37</sup> Section 90.802, 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;<sup>38</sup> 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.<sup>39</sup>

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.<sup>40</sup>

#### *Confrontation Clause and the Admissibility of Hearsay Statements*

Since the hearsay exception for vulnerable adults was enacted,<sup>41</sup> the United States Supreme Court (Court) has held the admission of certain out-of-court statements violates the Confrontation Clause of the Sixth Amendment.<sup>42,43</sup> In *Crawford*, the Court held that before an out-of-court statement that is testimonial in nature<sup>44</sup> can be admissible in a criminal proceeding the Confrontation Clause requires the:

- Declarant to be unavailable;<sup>45</sup> and

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<sup>38</sup> 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.

<sup>39</sup> 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.

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

<sup>41</sup> 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).

<sup>42</sup> *Crawford v. Washington*, 124 S.Ct. 1354 (2004).

<sup>43</sup> 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."

<sup>44</sup> 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*, 124 S.Ct. 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... contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions. *Crawford*, 124 S.Ct. at 1364.

<sup>45</sup> 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).

- 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.<sup>46</sup>

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.<sup>47</sup>

The statute is not currently in conformance with these rulings 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 based on 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.

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<sup>46</sup> *Davis v. Washington*, 126 S.Ct. 2266, 2273 (2006).

<sup>47</sup> 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.<sup>48</sup> 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.<sup>49</sup> Permissive presumptions can be constitutional, but only if they do not shift the burden of persuasion to the defendant.<sup>50</sup>

When reviewing a permissive presumption, the United States Supreme Court requires the challenging party to demonstrate its invalidity as applied.<sup>51</sup> Since a permissive presumption allows the trier of fact to accept or reject the inference and does not shift the burden of proof, the only

<sup>48</sup> *Burtrram v. State*, 780 So.2d 224 (Fla. 2d DCA 2001).

<sup>49</sup> *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).

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

<sup>51</sup> *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).

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.<sup>52</sup> 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.<sup>53</sup>

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.<sup>54</sup> 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.<sup>55</sup>

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.

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<sup>52</sup> *Allen*, 99 S.Ct. at 2225.

<sup>53</sup> *Id.*

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

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





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

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,

			grand theft in 2nd degree.
286	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

			disabled adult.
293	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
294	<u>825.103(3)(c)</u> <del>825.103(2)(e)</del>	3rd	Exploiting an elderly person or disabled adult and property is valued at less than <u>\$10,000</u> <del>\$20,000</del> .
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



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.
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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

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

			profession without a license.
321			
	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.
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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



			of court order.
353	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

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

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

			alleged capital felony to a law enforcement officer.
396	838.015	2nd	Bribery.
397	838.016	2nd	Unlawful compensation or reward for official behavior.
398	838.021(3)(a)	2nd	Unlawful harm to a public servant.
399	838.22	2nd	Bid tampering.
400	843.0855(2)	3rd	Impersonation of a public officer or employee.
401	843.0855(3)	3rd	Unlawful simulation of legal process.
402	843.0855(4)	3rd	Intimidation of a public officer or employee.
403	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

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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,

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,

420	(1)(j)1.a.		1 kilogram or more, less than 5 kilograms.
	893.135	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
421	(1)(k)2.a.		
	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.
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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	944.607(12)	3rd	digitized photograph.
432	944.607(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
433	985.4815(10)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
434	985.4815(12)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
435	985.4815(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
436			Sexual offender; failure to report and reregister; failure to respond to address verification.

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437 (h) LEVEL 8

438

Florida	Felony	
Statute	Degree	Description

439

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

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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transmitter.

445

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.

446

655.50(10)(b)2.        2nd    Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.

447

777.03(2)(a)            1st    Accessory after the fact, capital felony.

448

782.04(4)                2nd    Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or



			unlawfully discharging bomb.
449	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.

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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

			an elderly person or disabled adult.
473	<u>825.103(3)(a)</u>	1st	Exploiting an elderly person or disabled adult and property is valued at <u>\$50,000</u> <del>\$100,000</del> or more.
	<del>825.103(2)(a)</del>		
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.
486	893.135 (1) (e) 1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
487	893.135 (1) (f) 1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
488	893.135 (1) (g) 1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
489	893.135 (1) (h) 1.b.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
490	893.135 (1) (j) 1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
490	893.135	1st	Trafficking in Phenethylamines,

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491	(1) (k) 2.b.	1st	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.

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

772.11 Civil remedy for theft or exploitation.—

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

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.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Passidomo offered the following:

**Amendment**

Remove lines 144-178 and insert:

lacks the capacity to consent; ~~or~~

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

1. For agents appointed under chapter 709:
  - a. Committing fraud in obtaining their appointments;
  - b. Abusing their powers;



Amendment No. 1

- 18 c. Wasting, embezzling, or intentionally mismanaging the
- 19 assets of the principal or beneficiary; or
- 20 d. Acting contrary to the principal's sole benefit or best
- 21 interest; or
- 22 2. For guardians and trustees who are individuals and who
- 23 are appointed under chapter 736 or chapter 744:
- 24 a. Committing fraud in obtaining their appointments;
- 25 b. Abusing their powers; or
- 26 c. Wasting, embezzling, or intentionally mismanaging the
- 27 assets of the ward or beneficiary of the trust;
- 28 (d) Misappropriating, misusing, or transferring without
- 29 authorization money belonging to an elderly person or disabled
- 30 adult from an account in which the elderly person or disabled
- 31 adult placed the funds, owned the funds, and was the sole
- 32 contributor or payee of the funds before the misappropriation,
- 33 misuse, or unauthorized transfer. This paragraph only applies to
- 34 the following types of accounts:
- 35 1. Personal accounts;
- 36 2. Joint accounts created with the intent that only the
- 37 elderly person or disabled adult enjoys all rights, interests,
- 38 and claims to moneys deposited into such account; or
- 39 3. Convenience accounts created in accordance with s.
- 40 655.80; or
- 41



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 485 Sexual Offenses Against 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	12 Y, 0 N	McAuliffe	Lloyd
3) Judiciary Committee		Cunningham	Havlicak <i>RH</i>

**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 18 years of age or older who is 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. It 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.<sup>1</sup> 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.<sup>2</sup> If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.<sup>3</sup>

A defendant's sentence is calculated based on points assigned for factors including the offense for which the defendant is being sentenced, injury to the victim, additional offenses that the defendant committed at the time of the primary offense, the defendant's prior record, and other aggravating factors.<sup>4</sup> A defendant's total sentence points are then entered into a mathematical computation that determines the defendant's lowest permissible sentence.<sup>5</sup> 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).<sup>6</sup>

#### **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)

<sup>1</sup> Section 921.002, F.S.

<sup>2</sup> Section 921.0022, F.S.

<sup>3</sup> Section 921.0023, F.S.

<sup>4</sup> Section 921.0024, F.S.

<sup>5</sup> *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."

<sup>6</sup> 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 18 years of age or older who is 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. It 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(4)(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.

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A bill to be entitled  
 An act relating to sexual offenses against students by  
 authority figures; providing a short title; creating s.  
 775.0862, F.S.; providing definitions; providing for  
 reclassification of specified sexual offenses committed  
 against students by an authority figure of the school;  
 providing for severity ranking of offenses; amending s.  
 921.0022, F.S.; providing for application of the severity  
 ranking chart of the Criminal Punishment Code; providing  
 an effective date.

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

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

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

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

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

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

(b) "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.

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 569 Nursing Home Litigation Reform  
**SPONSOR(S):** Civil Justice Subcommittee; Gaetz and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/CS/SB 670

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 3 N, As CS	Ward	Bond
2) Judiciary Committee		<i>[Signature]</i> Ward	Havlicak <i>[Signature]</i>

**SUMMARY ANALYSIS**

Current law creates a statutory cause of action for a nursing home resident alleging negligence to sue the nursing home facility and others. The bill:

- Limits the class of persons who may be sued in the initial pleading for negligence or a violation of a nursing home resident's rights to only the nursing home licensee and its management or consulting company, managing employees, and direct caregivers, whether employees or contracted. A passive investor is shielded from liability. Definitions are provided for these individuals or entities;
- Provides that the statutory cause of action is the exclusive remedy against a nursing home licensee, its management or consulting company, managing employees, and direct caregivers alleging direct or vicarious liability for the recovery of damages for the personal injury or death of a nursing home resident arising out of negligence or a violation of a resident's statutory rights;
- Provides that a claimant who believes any other person was negligent and thus liable to the resident must get court permission to add such parties to the action as defendants;
- Specifies when a claimant must elect either survival damages or wrongful death damages;
- Requires the court to hold an evidentiary hearing before allowing a claim for punitive damages to proceed;
- Requires payment of a judgment within 60 days, unless agreed otherwise, or the nursing home is subject to licensure sanction by the Agency for Health Care Administration (Agency); and
- Revises provisions relating to the release of a nursing home resident's records.

This bill appears to have an unknown recurring fiscal impact on the state court system and upon the agency. The bill does not appear to have a fiscal impact on local governments.

The bill takes effect upon becoming law.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

A nursing home is a facility that provides "24-hour nursing care, personal care, or custodial care for three or more persons . . . who by reason of illness, physical infirmity, or advanced age require [nursing] services" outside of a hospital.<sup>1</sup> Florida nursing homes are regulated under Part II of ch. 400, F.S. The Agency for Health Care Administration (Agency) is charged with the responsibility of developing rules related to the operation of nursing homes.

Section 400.022, F.S., sets forth various legal rights of nursing home residents. Included in those rights is the right to receive "adequate and appropriate health care and protective and support services." Section 400.023, F.S., provides that any resident whose rights are violated by a nursing home has a cause of action against the nursing home.<sup>2</sup> Sections 400.023-.0238, F.S., create a comprehensive framework for litigation and recovery against a nursing home, including provisions for presuit notice, mediation, availability of records, and punitive damages.

##### Named Defendants in Nursing Home Cases

Section 400.023(1), F.S., provides that "any resident whose rights as specified in this part are violated shall have a cause of action." It does not limit who can be named as a defendant in the lawsuit.

In *Estate of Canavan v. National Healthcare Corp.*, the court considered whether the managing member of a limited liability company could be held personally liable for damages suffered by a resident in a nursing home. The claimant argued the managing member, Friedbauer, could be held liable.

[The claimant] argues that the concept of piercing the corporate veil does not apply in the case of a tort, and that it presented sufficient evidence of Friedbauer's negligence, by act or omission, for the jury to reasonably conclude that Friedbauer caused harm to Canavan. [The claimant] argues that Friedbauer had the responsibility of approving the budget for the nursing home. He also functioned as the sole member of the "governing body" of the nursing home, and pursuant to federal regulation 42 C.F.R. § 483.75(d) 2002, the governing body is legally responsible for establishing and implementing policies regarding the management and operation of the facility and for appointing the administrator who is responsible for the management of the facility. Friedbauer was thus required by federal mandate to create, approve, and implement the facility's policies and procedures. Because he ignored complaints of inadequate staffing while cutting the operating expenses, and because the problems Canavan suffered, pressure sores, infections, poor hygiene, malnutrition and dehydration, were the direct result of understaffing, [The claimant] argues that a reasonable jury could have found that Friedbauer's elevation of profit over patient care was negligent.<sup>3</sup>

The trial court granted a directed verdict in favor of Friedbauer, finding that there was no basis upon which a corporate officer could be held liable. On appeal, the district court reversed:

<sup>1</sup> Section 400.021(7), F.S.

<sup>2</sup> The action may be brought by the resident or his or her guardian, by a person or organization acting on behalf of a resident with the consent of the resident or his or her guardian, or by the personal representative of the estate of a deceased resident regardless of the cause of death. See s. 400.023(1), F.S.

<sup>3</sup> *Estate of Canavan v. National Healthcare Corp.*, 889 So. 2d 825 (Fla. 2d DCA 2004).

We conclude that the trial court erred in granting the directed verdict because there was evidence by which the jury could have found that Friedbauer's negligence in ignoring the documented problems at the facility contributed to the harm suffered by Canavan. This was not a case in which the plaintiffs were required to pierce the corporate veil in order to establish individual liability because Friedbauer's alleged negligence constituted tortious conduct, which is not shielded from individual liability. We, therefore, reverse the order granting the directed verdict and remand for a new trial against Friedbauer.<sup>4</sup>

This bill provides that only the nursing home licensee, the licensee's management or consulting company, the licensee's managing employees, or a direct caregiver employee may be sued for a violation of a nursing home resident's rights. The bill further provides that a "passive investor is not liable" for a violation of a resident's rights.

The bill creates the following definitions regarding these positions:

- "Licensee" means an individual, corporation, partnership, firm, association, governmental entity, or other entity that is issued a permit, registration, certificate, or license by the agency, and that is legally responsible for all aspects of the operation of the nursing home facility.
- "Management or consulting company" means an individual or entity who contracts with, or receives a fee from a licensee to provide any of the following services for a nursing home facility:
  - Hiring or firing of the administrator or director of nursing;
  - Controlling or having control over the staffing levels at the facility;
  - Having control over the budget of the facility; or
  - Implementing and enforcing the policies and procedures of the facility.
- "Passive investor" means an individual or entity that does not participate in the decisionmaking or operations of a facility.

The bill further provides, regarding named defendants, that before a person other than the licensee, the licensee's management or consulting company, the licensee's managing employees, or a direct caregiver employee can be named as a defendant in a lawsuit alleging violation of a resident's rights, the court or arbitration panel must find that there is sufficient evidence that the individual or entity owed a duty of reasonable care to the resident and the individual or entity breached that duty; and the breach of that duty is a legal cause of loss, injury, or damage to or death of the resident. If the court or arbitration panel makes this finding, and if in a proposed amended pleading it is asserted that such cause of action arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the proposed amendment relates back to the original pleading.<sup>5</sup>

### **Election of Remedy**

Where a violation of rights resulted in the death of a resident, current law requires the resident's estate to elect either survival damages under s. 46.021, F.S., or wrongful death damages under s. 768.21, F.S. Current law is unclear as to when the resident's estate must make the election.<sup>6</sup>

The bill provides that the election of remedies must be made after the verdict and before the judgment is entered.

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<sup>4</sup> *Id* at 827.

<sup>5</sup> An amended pleading that relates back is considered to have been filed when the original lawsuit was filed for purposes of determining compliance with the statute of limitations.

<sup>6</sup> *In re Estate of Trollinger*, 9 So.3d 667 (Fla. 2d DCA 2009).

## Causes of Action in Nursing Home Cases

Section 400.023, F.S., provides that "any resident whose rights as specified in this part are violated shall have a cause of action." The statute is cumulative to other types of lawsuits, that is, an aggrieved resident may sue under the statute and may sue under some other legal theory, if appropriate.

In general, a statute creating a remedy is considered cumulative to all other remedies. A remedy created by statute may only supplant other statutory and common law remedies if the statute specifically states that it is an exclusive remedy.<sup>7</sup> Section 400.023, F.S., is not an exclusive remedy statute.<sup>8</sup>

This bill amends s. 400.023, F.S., to provide that the provisions of ss. 400.023-.0238, F.S., are the exclusive remedy against a licensee or management company for a cause of action for recovery of personal injury or death of a nursing home resident arising out of negligence or a violation of a resident's statutory rights.

## Punitive Damages - Preliminary Finding

Punitive damages "are not compensation for injury. Instead, they are private fines levied by civil juries to punish reprehensible conduct and to deter its future occurrence."<sup>9</sup> Punitive damages are generally limited to three times the amount of compensatory damages or \$1 million, whichever is greater.<sup>10</sup> Damages can exceed \$1 million if the jury finds that the wrongful conduct was motivated primarily by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was actually known by the managing agent, director, officer, or other person responsible for making policy decisions on behalf of the defendant.<sup>11</sup> If the jury finds that the defendant had a specific intent to harm the claimant and determines that the defendant's conduct did in fact harm the claimant, there is no cap on punitive damages.<sup>12</sup>

Current law at s. 400.0237, F.S., allows a claim for punitive damages in a suit alleging a violation of the rights of a nursing home resident. A claimant may not allege a claim in the initial complaint, but must make a reasonable showing that shows a reasonable basis for recovery. A court discussed how a claimant may make a proffer to assert a punitive damages claim:

[A] 'proffer' according to traditional notions of the term, connotes merely an 'offer' of evidence and neither the term standing alone nor the statute itself calls for an adjudication of the underlying veracity of that which is submitted, much less for countervailing evidentiary submissions. Therefore, a proffer is merely a representation of what evidence the defendant proposes to present and is not actual evidence. A reasonable showing by evidence in the record would typically include depositions, interrogatories, and requests for admissions that have been filed with the court. Hence, an evidentiary hearing where witnesses testify and evidence is offered and scrutinized under the pertinent evidentiary rules, as in a trial, is neither contemplated nor mandated by the statute in order to determine whether a reasonable basis has been established to plead punitive damages.<sup>13,14</sup>

<sup>7</sup> *St. Angelo v. Healthcare and Retirement Corp. of America*, 824 So.2d 997, 999 (Fla. 4th DCA 2002).

<sup>8</sup> *Id.* at 1000.

<sup>9</sup> *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974).

<sup>10</sup> Section 400.0238(1)(a), F.S.

<sup>11</sup> Section 400.0238(1)(b), F.S.

<sup>12</sup> Section 400.0238(1)(c), F.S.

<sup>13</sup> *Estate of Despain v. Avante Group, Inc.*, 900 So.2d 637, 642 (Fla. 5th DCA 2005)(internal citations omitted).

<sup>14</sup> The *Despain* court was discussing a prior version of the punitive damages statute relating to nursing home litigation, but the language on proffering in that statute is the same as that in current law.

The bill provides that a claimant may not bring a claim for punitive damages unless admissible evidence submitted by the parties provides a reasonable basis for the recovery of punitive damages. The bill thus appears to require the court to conduct an evidentiary hearing rather than accept a simple proffer. The court must determine whether there is sufficient admissible evidence to ensure that there is a reasonable basis to believe that the claimant can demonstrate at trial, by clear and convincing evidence, that the recovery of punitive damages is warranted under a claim for direct or vicarious liability.

### **Punitive Damages - Against Wrongdoer**

Section 400.0237(2), F.S., provides that a defendant in a lawsuit alleging a violation of a nursing home resident's rights may only be liable for punitive damages upon a finding that the defendant personally committed intentional misconduct or committed gross negligence. "Intentional misconduct" means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage. "Gross negligence" means that the defendant's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.

The bill amends s. 400.0237(2), F.S., to require a showing that the defendant "actively and knowingly participated in intentional misconduct or engaged in conduct that constitutes gross negligence and contributed to the loss, damages, or injury suffered by the claimant." The intentional misconduct must have been committed by that defendant.

### **Punitive Damages - Vicarious Liability**

A punitive damages claim is sometimes brought under a theory of vicarious liability. Vicarious liability is the "imposition of liability on one person for the actionable conduct of another, based solely on a relationship between the two persons."<sup>15</sup> Vicarious liability applies to both general liability and liability for punitive damages, and commonly applies to situations where an employer is held responsible for the acts of an employee.

The bill amends s. 400.0237(3), F.S., the section on vicarious liability for punitive damages law related to a claim for violation of rights of a nursing home resident, to remove two paragraphs that define direct liability for punitive damages.<sup>16</sup>

### **Judgments against a Nursing Home**

Current law does not specifically address the situation where a nursing home fails to pay an adverse final judgment after being found to have violated a resident's rights.

The bill provides that when an adverse judgment that arises from a court award, arbitration award, or settlement agreement relating to a claim of negligence or violation of a resident's rights against a licensee is final, the licensee must pay the judgment creditor the entire amount of the judgment and all accrued interest within 60 days, unless otherwise mutually agreed to in writing by the parties. If the licensee does not do so, the Agency may suspend the nursing home's license, deny a license renewal application, or deny a change of ownership application.

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<sup>15</sup> Black's Law Dictionary, Sixth Edition, at 1566.

<sup>16</sup> The two removed paragraphs are: "(a) The employer, principal, corporation, or other legal entity actively and knowingly participated in such conduct;" and "(c) The employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant."

The bill outlines the procedures the Agency must follow upon notification of the existence of an unsatisfied judgment or settlement. The Agency must notify the licensee that within 30 days after receipt of the notification the licensee is subject to disciplinary action unless it provides the Agency with proof of compliance with one of five conditions pertaining to the judgment or settlement. The five conditions are:

- The judgment or settlement has been paid;
- A mutually agreed upon payment plan exists;
- A notice of appeal has been timely filed;
- A court order staying execution of the final judgment exists; or
- The court or arbitration panel that is overseeing the action documents that the licensee is seeking indemnification from an insurance carrier or other party that may be required to pay the award.

If the licensee fails to provide proof of one of the five conditions within the 30 days, the Agency must issue an emergency order finding that the nursing home facility lacks financial ability to operate and that the Agency is in the process of suspending the facility's license. Following or during the period of suspension, a controlling interest in that facility may not seek licensure for the facility at issue. Additionally, if the judgment results from a trial or arbitration, the Agency may not approve a change of ownership until one of the five conditions is met with respect to the judgment.

### **Release of a Resident's Records**

This bill substantially rewords current law regarding release of a resident's records to comply with the federal Health Insurance Portability and Accountability Act<sup>17</sup> (HIPAA) and to provide for release of a resident's medical records.

Upon receipt of a written request that complies with HIPAA or this section of law, a nursing home must provide to a competent resident or to a resident's representative who is authorized to make requests for the resident's records copies of medical records and records concerning the care and treatment of the resident performed by the facility. However, progress notes and consultation report sections of a psychiatric nature may not be released.

The bill requires the nursing home to provide the requested records within 14 working days after receipt of a request relating to a current resident or within 30 working days after receipt of a request relating to a former resident. Current law requires a nursing home to release requested records pertaining to a current resident within 7 working days after receipt of a written request and within 10 working days after receipt of a written request pertaining to a former resident.

The bill identifies to whom and under what circumstances medical records relating to a deceased resident may be released. The list is presented in the order of priority, as follows:

- A court appointed personal representative, executor, administrator, or temporary administrator of the deceased resident's estate, upon submission of a copy of the court order;
- If a judicial appointment has not been made, a person designated in the deceased resident's legally valid will to act as his or her representative, upon submission of a copy of the will; or
- If a judicial appointment or person designated by will is not available, the following individuals may request the medical records upon submission of a letter from the person's attorney verifying the relationship to the deceased resident:
  - A surviving spouse;
  - A surviving child of the resident if there is no spouse; or
  - A parent of the resident if there is no spouse or child.

The bill authorizes a nursing home to refuse to release records to the resident if it would be detrimental to the physical or mental health of the resident. However, the nursing home must provide the records to another medical provider designated by the resident.

A nursing home is granted immunity from criminal or civil laws and is not civilly liable to the resident or other persons for any damages resulting from release of the medical records if the nursing home relies on this section of law and releases the records in good faith. The Agency may not cite a nursing home through the survey process for noncompliance with the requirements of this section of law.

The bill restates current law<sup>18</sup> with respect to the fees a nursing home may charge for copies of the records and allowing an authorized person to examine original records on site. The fees may not exceed \$1 per page for the first 25 pages and 25 cents for each additional page. As in current law, the bill provides that a nursing home is not required to provide copies of requested records more frequently than once per month, except that copies of physician reports must be released as often as necessary to allow the effective monitoring of the resident's condition.

### **Effective Date**

The portions of the bill regarding payment of a judgment and access to nursing home records take effect upon becoming a law. The remaining portions of the bill, related to liability of a nursing home, are effective upon becoming law but only apply to causes of action that accrue on or after that date.

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

Section 1 amends s. 400.023, F.S., relating to civil enforcement.

Section 2 amends s. 400.0237, F.S., relating to punitive damages; pleading; burden of proof.

Section 3 creates s. 400.024, F.S., relating to failure to satisfy a judgment or settlement agreement.

Section 4 amends s. 400.145, F.S., relating to records of care and treatment of resident; copies to be furnished.

Section 5 creates an unnumbered section of law to apply the amendments to ss. 400.023 and 400.0237, F.S., to causes of action accruing on or after the effective date of this act.

Section 6 provides that the bill shall take effect upon becoming a law.

## **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 Agency for Health Care Administration may incur administrative and legal costs as it assumes responsibility to notify nursing homes that have not satisfied adverse final judgments or entered into definite terms of a settlement agreement. The Agency may incur administrative and legal costs in enforcing any unpaid judgments by pursuing emergency suspensions and final suspension of

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<sup>18</sup> See s. 400.145, F.S.  
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nursing home licenses if the statutory conditions are not met. The Agency analysis does not address this issue so the cost is indeterminate at this time.<sup>19</sup>

There may be additional costs to the court system due to the additional hearings required by the bill. "Increased judicial time and court workload may be anticipated should proposed language be adopted requiring the courts conduct additional evidentiary hearings. Specifically, new language under ss. 400.023(2) and 400.023(1)(b), F.S., respectively requires the courts to determine whether to permit actions against persons or entities other than a nursing home licensee, a management company employed by the licensee, or a direct caregiver employee and whether sufficient evidence exists to support claims for recovery of punitive damages." "The fiscal impact on expenditures of the State Courts System cannot be accurately determined due to the unavailability of data needed to quantifiably establish the increase in judicial time and court workload as discussed in Section III, Anticipated Judicial or Court Workload Impact. . . ."<sup>20</sup>

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

1. Revenues:

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

2. Expenditures:

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

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

The bill does not appear to have a direct impact on the private sector.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The state constitution provides that the "courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." In *Kluger v. White*, 281 So.2d (Fla. 1973), the Florida Supreme Court held that:

[w]here a right of access to the courts for redress for a particular injury has been provided... the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the

<sup>19</sup> 2014 Agency Legislative Bill Analysis for HB 569, Relating to Nursing Home Litigation Reform,, Agency for Health Care Administration, on file with the Florida House of Representatives Judiciary Committee.

<sup>20</sup> Office of State Courts Administrator, 2014 Judicial Impact Statement regarding SB 670, dated February 10, 2014, on file with the House of Representatives, Civil Justice Subcommittee.

abolishment of such right, and no alternative method of meeting such public necessity can be shown.<sup>21</sup>

This bill limits lawsuits against passive investors of a nursing home and provides that the remedies of ss. 400.023-.0238, F.S., are exclusive remedies, thereby foreclosing use of other remedies. Because injured parties would still have a remedy, it is possible that these limits do not implicate the Access to Courts provision. On the other hand, because these limits may limit tort remedies, the courts may review these limits under *Kluger* to determine whether the statutory remedies are a "reasonable alternative."

**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 March 5, 2014, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed the limitation that would have only allowed nursing home negligence actions against the nursing home and the direct caregiver responsible; added definitions for terms used in the bill, added provisions relating to punitive damages, added provisions relating to collection of and adverse final judgment arising from a claim of negligence of from violation of a resident's rights, and added provisions for release of a resident's records upon request. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

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<sup>21</sup> *Kluger v. White*, 281 So.2d 1, 4 (Fla. 1973).



1 A bill to be entitled

2 An act relating to nursing home litigation; amending

3 s. 400.023, F.S.; specifying that a cause of action

4 for negligence or violation of residents' rights

5 alleging direct or vicarious liability for the injury

6 or death of nursing home resident may be brought

7 against a licensee, its management or consulting

8 company, its managing employees, and any direct

9 caregiver employees; providing that a cause of action

10 may not be asserted against other individuals or

11 entities except under certain circumstances; revising

12 related judicial procedures; defining terms; amending

13 s. 400.0237, F.S.; providing that a claim for punitive

14 damages may not be brought unless there is a showing

15 of evidence that provides a reasonable basis for

16 recovery of such damages when certain criteria are

17 applied; requiring the court to conduct a hearing to

18 determine whether there is sufficient evidence to

19 demonstrate that the recovery of punitive damages is

20 warranted; requiring the trier of fact to find that a

21 specific person or corporate defendant participated in

22 or engaged in conduct that constituted gross

23 negligence and contributed to the damages or injury

24 suffered by the claimant before a defendant may be

25 held liable for punitive damages; requiring an

26 officer, director, or manager of the employer,

27 corporation, or legal entity to condone, ratify, or  
 28 consent to certain specified conduct before holding  
 29 such person or entity vicariously liable for punitive  
 30 damages; creating s. 400.024, F.S.; authorizing the  
 31 Agency for Health Care Administration to suspend the  
 32 license of a nursing home facility that fails to pay a  
 33 judgment or settlement agreement; providing  
 34 exceptions; providing agency procedures for  
 35 suspension; prohibiting certain parties from applying  
 36 for a license for an affected facility; amending s.  
 37 400.145, F.S.; revising procedures for obtaining the  
 38 records of a resident; specifying which records may be  
 39 obtained and who may obtain them; providing immunity  
 40 from liability to a facility that provides such  
 41 records in good faith; providing that the agency may  
 42 not cite a facility that does not meet these records  
 43 requirements; providing applicability; providing an  
 44 effective date.

45  
 46 Be It Enacted by the Legislature of the State of Florida:

47  
 48 Section 1. Section 400.023, Florida Statutes, is amended  
 49 to read:

50 400.023 Civil enforcement.—

51 (1) An exclusive cause of action for negligence or a  
 52 violation of residents' ~~Any resident whose~~ rights as specified

53 under in this part which alleges direct or vicarious liability  
 54 for the personal injury or death of a nursing home resident  
 55 arising from such negligence or violation of rights and which  
 56 seeks damages for such injury or death may be brought against  
 57 the licensee, the licensee's management or consulting company,  
 58 the licensee's managing employees, and any direct caregivers,  
 59 whether employees or contractors are violated shall have a cause  
 60 of action. A passive investor is not liable under this section.  
 61 An action against any other individual or entity may be brought  
 62 only pursuant to subsection (3).

63 (a) The action may be brought by the resident or his or  
 64 her guardian, by a person or organization acting on behalf of a  
 65 resident with the consent of the resident or his or her  
 66 guardian, or by the personal representative of the estate of a  
 67 deceased resident regardless of the cause of death.

68 (b) If the action alleges a claim for the resident's  
 69 rights or for negligence that caused the death of the resident,  
 70 the claimant shall, after the verdict, but before the judgment  
 71 is entered, be required to elect either survival damages  
 72 pursuant to s. 46.021 or wrongful death damages pursuant to s.  
 73 768.21. If the action alleges a claim for the resident's rights  
 74 or for negligence that did not cause the death of the resident,  
 75 the personal representative of the estate may recover damages  
 76 for the negligence that caused injury to the resident.

77 (c) The action may be brought in any court of competent  
 78 jurisdiction to enforce such rights and to recover actual and

79 punitive damages for the ~~any~~ violation of the rights of a  
 80 resident or for negligence.

81 (d) A ~~Any~~ resident who prevails in seeking injunctive  
 82 relief or ~~a claim for~~ an administrative remedy is entitled to  
 83 recover the costs of the action, and a reasonable attorney  
 84 ~~attorney's~~ fee assessed against the defendant of up to ~~not to~~  
 85 ~~exceed~~ \$25,000. Fees shall be awarded solely for the injunctive  
 86 or administrative relief and not for any claim or action for  
 87 damages whether such claim or action is brought ~~together~~ with a  
 88 request for an injunction or administrative relief or as a  
 89 separate action, except as provided under s. 768.79 or the  
 90 Florida Rules of Civil Procedure. ~~Sections 400.023-400.0238~~  
 91 ~~provide the exclusive remedy for a cause of action for recovery~~  
 92 ~~of damages for the personal injury or death of a nursing home~~  
 93 ~~resident arising out of negligence or a violation of rights~~  
 94 ~~specified in s. 400.022.~~

95 (e) This section does not preclude theories of recovery  
 96 not arising out of negligence or s. 400.022 which are available  
 97 to a resident or to the agency. ~~The provisions of Chapter 766~~  
 98 does ~~de~~ not apply to a ~~any~~ cause of action brought under ss.  
 99 400.023-400.0238.

100 (2) As used in this section, the term:

101 (a) "Licensee" means an individual, corporation,  
 102 partnership, firm, association, governmental entity, or other  
 103 entity that is issued a permit, registration, certificate, or  
 104 license by the agency, and that is legally responsible for all

105 aspects of the operation of the nursing home facility.

106 (b) "Management or consulting company" means an individual  
 107 or entity who contracts with, or receives a fee from a licensee  
 108 to provide any of the following services for a nursing home  
 109 facility:

110 1. Hiring or firing of the administrator or director of  
 111 nursing;

112 2. Controlling or having control over the staffing levels  
 113 at the facility;

114 3. Having control over the budget of the facility; or

115 4. Implementing and enforcing the policies and procedures  
 116 of the facility.

117 (c) "Passive investor" means an individual or entity that  
 118 does not participate in the decisionmaking or operations of a  
 119 facility.

120 (3) A cause of action may not be asserted against an  
 121 individual or entity, other than the licensee, the licensee's  
 122 management or consulting company, the licensee's managing  
 123 employees, and any direct caregivers, whether employees or  
 124 contractors, unless, after a motion for leave to amend hearing,  
 125 the court or an arbitration panel determines that there is  
 126 sufficient evidence in the record or proffered by the claimant  
 127 to establish a reasonable showing that:

128 (a) The individual or entity owed a duty of reasonable  
 129 care to the resident and the individual or entity breached that  
 130 duty; and

131 (b) The breach of that duty is a legal cause of loss,  
 132 injury, or damage to or death of the resident.

133  
 134 For purposes of this subsection, if, in a proposed amended  
 135 pleading, it is asserted that such cause of action arose out of  
 136 the conduct, transaction, or occurrence set forth or attempted  
 137 to be set forth in the original pleading, the proposed amendment  
 138 relates back to the original pleading.

139 ~~(4)(2)~~ In a ~~any~~ claim brought pursuant to this part  
 140 alleging a violation of residents' ~~resident's~~ rights or  
 141 negligence causing injury to or the death of a resident, the  
 142 claimant has ~~shall have~~ the burden of proving, by a  
 143 preponderance of the evidence, that:

- 144 (a) The defendant owed a duty to the resident;
- 145 (b) The defendant breached the duty to the resident;
- 146 (c) The breach of the duty is a legal cause of loss,  
 147 injury, death, or damage to the resident; and
- 148 (d) The resident sustained loss, injury, death, or damage  
 149 as a result of the breach.

150  
 151 ~~Nothing in~~ This part does not ~~shall be interpreted to~~ create  
 152 strict liability. A violation of the rights set forth in s.  
 153 400.022, ~~or~~ in any other standard or guidelines specified in  
 154 this part, or in any applicable administrative standard or  
 155 guidelines of this state or a federal regulatory agency is ~~shall~~  
 156 ~~be~~ evidence of negligence but is ~~shall~~ not ~~be~~ considered

157 negligence per se.

158 ~~(5)(3)~~ In a ~~any~~ claim brought pursuant to this section, a  
 159 licensee, individual person, or entity has ~~shall have~~ a duty to  
 160 exercise reasonable care. Reasonable care is that degree of care  
 161 which a reasonably careful licensee, individual person, or  
 162 entity would use under like circumstances.

163 ~~(6)(4)~~ In a ~~any~~ claim for a residents' ~~resident's~~ rights  
 164 violation or negligence by a nurse licensed under part I of  
 165 chapter 464, such nurse has ~~shall have~~ the duty to exercise care  
 166 consistent with the prevailing professional standard of care for  
 167 a nurse. The prevailing professional standard of care for a  
 168 nurse is ~~shall be~~ that level of care, skill, and treatment  
 169 which, in light of all relevant surrounding circumstances, is  
 170 recognized as acceptable and appropriate by reasonably prudent  
 171 similar nurses.

172 ~~(7)(5)~~ A licensee is ~~shall~~ not ~~be~~ liable for the medical  
 173 negligence of a ~~any~~ physician rendering care or treatment to the  
 174 resident except for the administrative services of a medical  
 175 director as required under ~~in~~ this part. ~~Nothing in~~ This  
 176 subsection does not ~~shall be construed to~~ protect a licensee,  
 177 individual person, or entity from liability for failure to  
 178 provide a resident with appropriate observation, assessment,  
 179 nursing diagnosis, planning, intervention, and evaluation of  
 180 care by nursing staff.

181 ~~(8)(6)~~ The resident or the resident's legal representative  
 182 shall serve a copy of a ~~any~~ complaint alleging in whole or in

183 part a violation of any rights specified in this part to the  
 184 agency ~~for Health Care Administration~~ at the time of filing the  
 185 initial complaint with the clerk of the court for the county in  
 186 which the action is pursued. The requirement of providing a copy  
 187 of the complaint to the agency does not impair the resident's  
 188 legal rights or ability to seek relief for his or her claim.

189 ~~(9)(7)~~ An action under this part for a violation of rights  
 190 or negligence recognized herein is not a claim for medical  
 191 malpractice, and ~~the provisions of s. 768.21(8)~~ does ~~de~~ not  
 192 apply to a claim alleging death of the resident.

193 Section 2. Section 400.0237, Florida Statutes, is amended  
 194 to read:

195 400.0237 Punitive damages; pleading; burden of proof.—

196 (1) ~~A In any action for damages brought under this part,~~  
 197 ~~no~~ claim for punitive damages may not be brought under this part  
 198 ~~shall be permitted~~ unless there is a ~~reasonable~~ showing by  
 199 admissible evidence in the record or proffered by the parties  
 200 which provides claimant which would provide a reasonable basis  
 201 for recovery of such damages when the criteria in this section  
 202 are applied.

203 (a) The claimant may move to amend her or his complaint to  
 204 assert a claim for punitive damages as allowed by the rules of  
 205 civil procedure in accordance with evidentiary requirements set  
 206 forth in this section.

207 (b) The court shall conduct a hearing to determine whether  
 208 there is sufficient admissible evidence submitted by the parties



209 to ensure that there is a reasonable basis to believe that the  
 210 claimant, at trial, will be able to demonstrate by clear and  
 211 convincing evidence that the recovery of such damages is  
 212 warranted under a claim for direct liability as specified in  
 213 subsection (2), or a claim for vicarious liability as specified  
 214 in subsection (3).

215 (c) The rules of civil procedure shall be liberally  
 216 construed so as to allow the claimant discovery of evidence  
 217 which appears reasonably calculated to lead to admissible  
 218 evidence on the issue of punitive damages. ~~No~~ Discovery of  
 219 financial worth may not shall proceed until ~~after~~ the pleading  
 220 on ~~concerning~~ punitive damages is approved by the court  
 221 permitted.

222 (2) A defendant may be held liable for punitive damages  
 223 only if the trier of fact, by ~~based on~~ clear and convincing  
 224 evidence, finds that a specific person or corporate defendant  
 225 actively and knowingly participated in intentional misconduct or  
 226 engaged in conduct that constitutes gross negligence and  
 227 contributed to the loss, damages, or injury suffered by the  
 228 claimant ~~the defendant was personally guilty of intentional~~  
 229 misconduct or gross negligence. As used in this section, the  
 230 term:

231 (a) "Intentional misconduct" means that the defendant  
 232 against whom punitive damages are sought had actual knowledge of  
 233 the wrongfulness of the conduct and the high probability that  
 234 injury or damage to the claimant would result and, despite that

235 knowledge, intentionally pursued that course of conduct,  
 236 resulting in injury or damage.

237 (b) "Gross negligence" means that a ~~the~~ defendant's  
 238 conduct was so reckless or wanting in care that it constituted a  
 239 conscious disregard or indifference to the life, safety, or  
 240 rights of persons exposed to such conduct.

241 (3) In the case of vicarious liability of an individual,  
 242 employer, principal, corporation, or other legal entity,  
 243 punitive damages may not be imposed for the conduct of an  
 244 employee or agent unless ~~only if~~ the conduct of the employee or  
 245 agent meets the criteria specified in subsection (2) and an  
 246 officer, director, or manager of the actual employer,  
 247 corporation, or legal entity condoned, ratified, or consented to  
 248 the specific conduct as provided in subsection (2)+

249 ~~(a) The employer, principal, corporation, or other legal~~  
 250 ~~entity actively and knowingly participated in such conduct;~~

251 ~~(b) The officers, directors, or managers of the employer,~~  
 252 ~~principal, corporation, or other legal entity condoned,~~  
 253 ~~ratified, or consented to such conduct; or~~

254 ~~(c) The employer, principal, corporation, or other legal~~  
 255 ~~entity engaged in conduct that constituted gross negligence and~~  
 256 ~~that contributed to the loss, damages, or injury suffered by the~~  
 257 ~~claimant.~~

258 (4) The plaintiff shall ~~must~~ establish at trial, by clear  
 259 and convincing evidence, its entitlement to an award of punitive  
 260 damages. The "greater weight of the evidence" burden of proof

261 applies to a determination of the amount of damages.

262 ~~(5) This section is remedial in nature and shall take~~  
 263 ~~effect upon becoming a law.~~

264 Section 3. Section 400.024, Florida Statutes, is created  
 265 to read:

266 400.024 Failure to satisfy a judgment or settlement  
 267 agreement.-

268 (1) Upon the entry of an adverse final judgment arising  
 269 from an award, including an arbitration award, from a claim of  
 270 negligence or violation of residents' rights, in contract or  
 271 tort, or from noncompliance with the terms of a settlement  
 272 agreement arising from a claim pursuant to s. 400.023, as  
 273 determined by a court or arbitration panel, the licensee, as  
 274 defined in s. 400.023(2), shall pay the judgment creditor the  
 275 entire amount of the judgment and all accrued interest within 60  
 276 days after the date such judgment becomes final and subject to  
 277 execution, unless otherwise mutually agreed to in writing by the  
 278 parties. Failure to pay shall provide grounds for the agency to  
 279 suspend a nursing home facility license, deny a license renewal  
 280 application, or deny a change of ownership application as  
 281 provided in this section.

282 (2) Upon notification of the existence of an unsatisfied  
 283 judgment or settlement pursuant to subsection (1), the agency  
 284 shall notify the licensee by certified mail that it is subject  
 285 to disciplinary action unless, within 30 days after receipt of  
 286 the notification, the licensee:

287        (a) Provides proof that the unsatisfied judgment or  
 288 settlement has been paid in the amount specified;

289        (b) Provides proof of the existence of a payment plan  
 290 mutually agreed upon by the parties in writing;

291        (c) Furnishes the agency with a copy of a timely filed  
 292 notice of appeal;

293        (d) Furnishes the agency with a copy of a court order  
 294 staying execution of the final judgment; or

295        (e) Provides written proof from a court or an arbitration  
 296 panel overseeing the action that it is seeking indemnification  
 297 from an insurance carrier or any other party that it believes is  
 298 required to pay the award.

299        (3) If, after 30 days, the licensee fails to demonstrate  
 300 compliance in accordance with subsection (2), the agency shall  
 301 issue an emergency order finding that the nursing home facility  
 302 lacks financial ability to operate and that the agency is in the  
 303 process of suspending the facility's license.

304        (4) Following or during the period of suspension, an  
 305 individual or entity identified as having a controlling interest  
 306 in the facility whose license is being suspended, as identified  
 307 on the facility's licensee application, may not file an  
 308 application for licensure of the facility at issue. Further, if  
 309 a judgment at trial or arbitration occurs, the agency may not  
 310 approve a change of ownership application to a related party  
 311 until the requirements of subsection (1) or subsection (2) are  
 312 met.

313 Section 4. Section 400.145, Florida Statutes, is amended  
 314 to read:

315 (Substantial rewording of section. See  
 316 s. 400.145, F.S., for present text.)

317 400.145 Copies of records of care and treatment of  
 318 resident.-

319 (1) Upon receipt of a written request that complies with  
 320 the federal Health Insurance Portability and Accountability Act  
 321 of 1996 (HIPAA) and this section, a nursing home facility shall  
 322 furnish to a competent resident or to a representative of that  
 323 resident who is authorized to make requests for the resident's  
 324 records under HIPAA or subsection (2) copies of the resident's  
 325 paper and electronic records that are in possession of the  
 326 facility. Such records must include any medical records and  
 327 records concerning the care and treatment of the resident  
 328 performed by the facility, except for progress notes and  
 329 consultation report sections of a psychiatric nature. The  
 330 facility shall provide the requested records within 14 working  
 331 days after receipt of a request relating to a current resident  
 332 or within 30 working days after receipt of a request relating to  
 333 a former resident.

334 (2) Requests for a deceased resident's medical records  
 335 under this section may be made by:

336 (a) Any person appointed by a court to act as the personal  
 337 representative, executor, administrator, or temporary  
 338 administrator of the deceased resident's estate.

339 (b) If a judicial appointment has not been made as  
 340 provided in paragraph (a), any person designated by the resident  
 341 to act as his or her representative in a legally valid will; or

342 (c) If there is no judicially appointed representative or  
 343 person designated by the resident in a valid will, by only the  
 344 following individuals:

345 1. A surviving spouse;

346 2. If there is no surviving spouse, a surviving child of  
 347 the resident; or

348 3. If there is no surviving spouse or child, a parent of  
 349 the resident.

350 (3) All requests for a deceased resident's records made by  
 351 a person authorized under:

352 (a) Paragraph (2)(a) must include a copy of the court  
 353 order appointing such person as the representative of the  
 354 resident's estate.

355 (b) Paragraph (2)(b) must include a copy of the will  
 356 designating the person as the resident's representative.

357 (c) Paragraph (2)(c) must be accompanied by a letter from  
 358 the person's attorney verifying the person's relationship to the  
 359 resident and the absence of a court-appointed representative and  
 360 will.

361 (4) A nursing home facility may charge a reasonable fee  
 362 for the copying of resident records. Such fee may not exceed \$1  
 363 per page for the first 25 pages and 25 cents per page for each  
 364 additional page. The facility shall allow a person who is

365 authorized to act on behalf of the resident to examine the  
 366 original records, microfilms, or other suitable reproductions of  
 367 the records in its possession upon any reasonable terms imposed  
 368 by the facility to ensure that the records are not damaged,  
 369 destroyed, or altered.

370 (5) If a nursing home facility determines that disclosure  
 371 of the records to the resident would be detrimental to the  
 372 physical or mental health of the resident, the facility may  
 373 refuse to furnish the record; however, upon such refusal, the  
 374 resident's record shall, upon written request by the resident,  
 375 be furnished to any other medical provider designated by the  
 376 resident.

377 (6) A nursing home facility that in good faith and in  
 378 reliance upon this section releases copies of records shall be  
 379 indemnified by the requesting party, and may not be found to  
 380 have violated any criminal or civil laws, and is not civilly  
 381 liable to the resident, the resident's estate, or any other  
 382 person for any damages resulting from such release.

383 (7) A nursing home facility is not required to provide  
 384 copies of a resident's records requested pursuant to this  
 385 section more than once per month, except that copies of  
 386 physician reports in the resident's records must be provided as  
 387 often as necessary to allow the effective monitoring of the  
 388 resident's condition.

389 (8) A nursing home facility may not be cited by the agency  
 390 through the survey process for any alleged or actual

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391 noncompliance with any of the requirements of this section.

392       Section 5. The amendments made by this act to ss. 400.023

393 and 400.0237, Florida Statutes, apply to causes of action

394 accruing on or after the effective date of this act.

395       Section 6. This act shall take effect upon becoming a law.





Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Gaetz offered the following:

3  
 4 **Amendment (with title amendment)**  
 5 Remove everything after the enacting clause and insert:  
 6 Section 1. Section 400.023, Florida Statutes, is amended  
 7 to read:

8 400.023 Civil enforcement.—

9 (1) An exclusive cause of action for negligence or a  
 10 violation of residents' Any resident whose rights as specified  
 11 under in this part which alleges direct or vicarious liability  
 12 for the personal injury or death of a nursing home resident  
 13 arising from such negligence or violation of rights and which  
 14 seeks damages for such injury or death may be brought only  
 15 against the licensee, the licensee's management or consulting  
 16 company, the licensee's managing employees, and any direct  
 17 caregivers, whether employees or contractors are violated shall



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18 ~~have a cause of action. A passive investor is not liable under~~  
19 ~~this section. An action against any other individual or entity~~  
20 ~~may be brought only pursuant to subsection (3).~~

21 (a) The action may be brought by the resident or his or  
22 her guardian, by a person or organization acting on behalf of a  
23 resident with the consent of the resident or his or her  
24 guardian, or by the personal representative of the estate of a  
25 deceased resident regardless of the cause of death.

26 (b) If the action alleges a claim for the resident's  
27 rights or for negligence that caused the death of the resident,  
28 the claimant shall, after the verdict, but before the judgment  
29 is entered, be required to elect either survival damages  
30 pursuant to s. 46.021 or wrongful death damages pursuant to s.  
31 768.21. If the action alleges a claim for the resident's rights  
32 or for negligence that did not cause the death of the resident,  
33 the personal representative of the estate may recover damages  
34 for the negligence that caused injury to the resident.

35 (c) The action may be brought in any court of competent  
36 jurisdiction to enforce such rights and to recover actual and  
37 punitive damages for the any violation of the rights of a  
38 resident or for negligence.

39 (d) A Any resident who prevails in seeking injunctive  
40 relief or ~~a claim for~~ an administrative remedy is entitled to  
41 recover the costs of the action, and a reasonable attorney fees  
42 ~~attorney's fee~~ assessed against the defendant of up to not to  
43 ~~exceed~~ \$25,000. Fees shall be awarded solely for the injunctive

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Amendment No. 1

44 or administrative relief and not for any claim or action for  
45 damages whether such claim or action is brought ~~together~~ with a  
46 request for an injunction or administrative relief or as a  
47 separate action, except as provided under s. 768.79 or the  
48 Florida Rules of Civil Procedure. ~~Sections 400.023-400.0238~~  
49 ~~provide the exclusive remedy for a cause of action for recovery~~  
50 ~~of damages for the personal injury or death of a nursing home~~  
51 ~~resident arising out of negligence or a violation of rights~~  
52 ~~specified in s. 400.022.~~

53 (e) This section does not preclude theories of recovery  
54 not arising out of negligence or s. 400.022 which are available  
55 to a resident or to the agency. ~~The provisions of Chapter 766~~  
56 does ~~de~~ not apply to a any cause of action brought under ss.  
57 400.023-400.0238.

58 (2) As used in this section, the term:

59 (a) "Licensee" means an individual, corporation,  
60 partnership, firm, association, governmental entity, or other  
61 entity that is issued a permit, registration, certificate, or  
62 license by the agency, and that is legally responsible for all  
63 aspects of the operation of the nursing home facility.

64 (b) "Management or consulting company" means an individual  
65 or entity who contracts with, or receives a fee from, a licensee  
66 to provide any of the following services for a nursing home  
67 facility:

68 1. Hiring or firing of the administrator or director of  
69 nursing;



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70 2. Controlling or having control over the staffing levels  
71 at the facility;

72 3. Having control over the budget of the facility; or

73 4. Implementing and enforcing the policies and procedures  
74 of the facility.

75 (c) "Passive investor" means an individual or entity that  
76 has an interest in a facility but does not participate in the  
77 decisionmaking or operations of the facility.

78 (3) A cause of action may not be asserted against an  
79 individual or entity other than the licensee, the licensee's  
80 management or consulting company, the licensee's managing  
81 employees, and any direct caregivers, whether employees or  
82 contractors, unless, after a motion for leave to amend hearing,  
83 the court or an arbitration panel determines that there is  
84 sufficient evidence in the record or proffered by the claimant  
85 to establish a reasonable showing that:

86 (a) The individual or entity owed a duty of reasonable  
87 care to the resident and that the individual or entity breached  
88 that duty; and

89 (b) The breach of that duty is a legal cause of loss,  
90 injury, death, or damage to the resident.

91

92 For purposes of this subsection, if, in a proposed amended  
93 pleading, it is asserted that such cause of action arose out of  
94 the conduct, transaction, or occurrence set forth or attempted



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95 to be set forth in the original pleading, the proposed amendment  
96 relates back to the original pleading.

97 ~~(4)(2)~~ In a ~~any~~ claim brought pursuant to this part  
98 alleging a violation of residents' ~~resident's~~ rights or  
99 negligence causing injury to or the death of a resident, the  
100 claimant has ~~shall~~ have the burden of proving, by a  
101 preponderance of the evidence, that:

- 102 (a) The defendant owed a duty to the resident;  
103 (b) The defendant breached the duty to the resident;  
104 (c) The breach of the duty is a legal cause of loss,  
105 injury, death, or damage to the resident; and  
106 (d) The resident sustained loss, injury, death, or damage  
107 as a result of the breach.

108

109 ~~Nothing in~~ This part does not ~~shall be interpreted to~~ create  
110 strict liability. A violation of the rights set forth in s.  
111 400.022, ~~or~~ in any other standard or guidelines specified in  
112 this part, or in any applicable administrative standard or  
113 guidelines of this state or a federal regulatory agency is ~~shall~~  
114 ~~be~~ evidence of negligence but is ~~shall~~ not be considered  
115 negligence per se.

116 ~~(5)(3)~~ In a ~~any~~ claim brought pursuant to this section, a  
117 licensee, individual ~~person~~, or entity has ~~shall~~ have a duty to  
118 exercise reasonable care. Reasonable care is that degree of care  
119 which a reasonably careful licensee, individual ~~person~~, or  
120 entity would use under like circumstances.

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Amendment No. 1

121        ~~(6)(4)~~ In a ~~any~~ claim for a residents' ~~resident's~~ rights  
122 violation or negligence by a nurse licensed under part I of  
123 chapter 464, such nurse has ~~shall have~~ the duty to exercise care  
124 consistent with the prevailing professional standard of care for  
125 a nurse. The prevailing professional standard of care for a  
126 nurse is ~~shall be~~ that level of care, skill, and treatment  
127 which, in light of all relevant surrounding circumstances, is  
128 recognized as acceptable and appropriate by reasonably prudent  
129 similar nurses.

130        ~~(7)(5)~~ A licensee is ~~shall~~ not be liable for the medical  
131 negligence of a ~~any~~ physician rendering care or treatment to the  
132 resident except for the administrative services of a medical  
133 director as required under ~~in~~ this part. ~~Nothing in This~~  
134 subsection does not ~~shall be construed to~~ protect a licensee,  
135 individual ~~person~~, or entity from liability for failure to  
136 provide a resident with appropriate observation, assessment,  
137 nursing diagnosis, planning, intervention, and evaluation of  
138 care by nursing staff.

139        ~~(8)(6)~~ The resident or the resident's legal representative  
140 shall serve a copy of a ~~any~~ complaint alleging in whole or in  
141 part a violation of any rights specified in this part to the  
142 agency ~~for Health Care Administration~~ at the time of filing the  
143 initial complaint with the clerk of the court for the county in  
144 which the action is pursued. The requirement of providing a copy  
145 of the complaint to the agency does not impair the resident's  
146 legal rights or ability to seek relief for his or her claim.

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147 ~~(9)(7)~~ An action under this part for a violation of rights  
148 or negligence recognized herein is not a claim for medical  
149 malpractice, and ~~the provisions of s. 768.21(8)~~ does ~~de~~ not  
150 apply to a claim alleging death of the resident.

151 Section 2. Section 400.0237, Florida Statutes, is amended  
152 to read:

153 400.0237 Punitive damages; pleading; burden of proof.—

154 (1) ~~A In any action for damages brought under this part,~~  
155 ~~no~~ claim for punitive damages may not be brought under this part  
156 ~~shall be permitted~~ unless there is a reasonable showing by  
157 admissible evidence that has been submitted by the parties that  
158 provides in the record or proffered by the claimant which would  
159 provide a reasonable basis for recovery of such damages when the  
160 criteria in this section are applied.

161 (a) The claimant may move to amend her or his complaint to  
162 assert a claim for punitive damages as allowed by the rules of  
163 civil procedure in accordance with evidentiary requirements set  
164 forth in this section.

165 (b) The court shall conduct a hearing to determine whether  
166 there is sufficient admissible evidence submitted by the parties  
167 to ensure that there is a reasonable basis to believe that the  
168 claimant, at trial, will be able to demonstrate by clear and  
169 convincing evidence that the recovery of such damages is  
170 warranted under a claim for direct liability as specified in  
171 subsection (2) or under a claim for vicarious liability as  
172 specified in subsection (3).

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173       (c) The rules of civil procedure shall be liberally  
174 construed so as to allow the claimant discovery of evidence  
175 which appears reasonably calculated to lead to admissible  
176 evidence on the issue of punitive damages. ~~No~~ Discovery of  
177 financial worth may not shall proceed until after the pleading  
178 on concerning punitive damages is approved by the court  
179 permitted.

180       (2) A defendant may be held liable for punitive damages  
181 only if the trier of fact, by based on clear and convincing  
182 evidence, finds that a specific person or corporate defendant  
183 actively and knowingly participated in intentional misconduct or  
184 engaged in conduct that constitutes gross negligence and  
185 contributed to the loss, damages, or injury suffered by the  
186 claimant the defendant was personally guilty of intentional  
187 misconduct or gross negligence. As used in this section, the  
188 term:

189       (a) "Intentional misconduct" means that the defendant  
190 against whom punitive damages are sought had actual knowledge of  
191 the wrongfulness of the conduct and the high probability that  
192 injury or damage to the claimant would result and, despite that  
193 knowledge, intentionally pursued that course of conduct,  
194 resulting in injury or damage.

195       (b) "Gross negligence" means that a the defendant's  
196 conduct was so reckless or wanting in care that it constituted a  
197 conscious disregard or indifference to the life, safety, or  
198 rights of persons exposed to such conduct.

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199 (3) In the case of vicarious liability of an individual,  
200 employer, principal, corporation, or other legal entity,  
201 punitive damages may not be imposed for the conduct of an  
202 employee or agent unless ~~only if~~ the conduct of the employee or  
203 agent meets the criteria specified in subsection (2) and an  
204 officer, director, or manager of the actual employer,  
205 corporation, or legal entity condoned, ratified, or consented to  
206 the specific conduct as provided in subsection (2):

207 ~~(a) The employer, principal, corporation, or other legal~~  
208 ~~entity actively and knowingly participated in such conduct;~~

209 ~~(b) The officers, directors, or managers of the employer,~~  
210 ~~principal, corporation, or other legal entity condoned,~~  
211 ~~ratified, or consented to such conduct; or~~

212 ~~(c) The employer, principal, corporation, or other legal~~  
213 ~~entity engaged in conduct that constituted gross negligence and~~  
214 ~~that contributed to the loss, damages, or injury suffered by the~~  
215 ~~claimant.~~

216 (4) The plaintiff shall ~~must~~ establish at trial, by clear  
217 and convincing evidence, its entitlement to an award of punitive  
218 damages. The "greater weight of the evidence" burden of proof  
219 applies to a determination of the amount of damages.

220 ~~(5) This section is remedial in nature and shall take~~  
221 ~~effect upon becoming a law.~~

222 Section 3. Section 400.024, Florida Statutes, is created  
223 to read:



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224 400.024 Failure to satisfy a judgment or settlement  
225 agreement.-

226 (1) Upon the entry by a Florida court of an adverse final  
227 judgment against a licensee as defined in s. 400.023(2) which  
228 arises from an award pursuant to s. 400.023, including an  
229 arbitration award, for a claim of negligence or a violation of  
230 residents' rights, in contract or tort, or from noncompliance  
231 with the terms of a settlement agreement as determined by a  
232 court or arbitration panel, which arises from a claim pursuant  
233 to s. 400.023, the licensee shall pay the judgment creditor the  
234 entire amount of the judgment, award, or settlement and all  
235 accrued interest within 60 days after the date such judgment,  
236 award, or settlement becomes final and subject to execution  
237 unless otherwise mutually agreed to in writing by the parties.  
238 Failure to make such payment shall result in additional grounds  
239 that may be used by the agency for revoking a license or for  
240 denying a renewal application or a related party change of  
241 ownership application as provided in this section.

242 (2) The agency is deemed notified of an unsatisfied  
243 judgment or settlement under subsection (1) when a certified  
244 copy of the judgment and a certified copy of a valid judgment  
245 lien certificate, filed in accordance with ss. 55.202 and  
246 55.203, are served to the agency by process server or received  
247 by certified mail, return receipt requested. Within 60 days  
248 after receiving such documents, the agency shall notify the  
249 licensee by certified mail, return receipt requested, that it is

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250 subject to disciplinary action unless, within 30 days after the  
251 date of mailing the notice, the licensee:

252 (a) Shows proof that the unsatisfied judgment or  
253 settlement has been paid in the amount specified;

254 (b) Shows proof of the existence of a payment plan  
255 mutually agreed upon by the parties in writing;

256 (c) Furnishes the agency with a copy of a timely filed  
257 notice of appeal;

258 (d) Furnishes the agency with a copy of a court order  
259 staying execution of the final judgment; or

260 (e) Shows proof by submitting an order from a court or  
261 arbitration panel that is overseeing any action seeking  
262 indemnification from an insurance carrier or other party that  
263 the licensee believes is required to pay the award.

264 (3) If the agency is placed on notice pursuant to  
265 subsection (2) and proof pursuant to subsection (2) is not  
266 provided by the licensee, the agency shall issue an emergency  
267 order pursuant to s. 120.60 declaring that the facility lacks  
268 financial ability to operate and a notice of intent to revoke or  
269 deny a license.

270 (4) If, after the agency is placed on notice pursuant to  
271 subsection (2) and:

272 (a) The license is subject to renewal, the agency may deny  
273 the license renewal unless compliance with this section is  
274 achieved; and



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275 (b) A change of ownership application for the facility at  
276 issue is submitted by the licensee, by a person or entity  
277 identified as having a controlling interest in the licensee, or  
278 by a related party, the agency shall deny the change of  
279 ownership application unless compliance with this section is  
280 achieved.

281 Section 4. Section 400.145, Florida Statutes, is amended  
282 to read:

283 (Substantial rewording of section. See  
284 s. 400.145, F.S., for present text.)

285 400.145 Copies of records of care and treatment of  
286 resident.-

287 (1) Upon receipt of a written request that complies with  
288 the federal Health Insurance Portability and Accountability Act  
289 of 1996 (HIPAA) and this section, a nursing home facility shall  
290 furnish to a competent resident, or to a representative of that  
291 resident who is authorized to make requests for the resident's  
292 records under HIPAA or subsection (2), copies of the resident's  
293 paper and electronic records that are in possession of the  
294 facility. Such records must include any medical records and  
295 records concerning the care and treatment of the resident  
296 performed by the facility, except for progress notes and  
297 consultation report sections of a psychiatric nature. The  
298 facility shall provide the requested records within 14 working  
299 days after receipt of a request relating to a current resident



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300 or within 30 working days after receipt of a request relating to  
301 a former resident.

302 (2) Requests for a deceased resident's medical records  
303 under this section may be made by:

304 (a) A person appointed by a court to act as the personal  
305 representative, executor, administrator, curator, or temporary  
306 administrator of the deceased resident's estate;

307 (b) If a judicial appointment has not been made as  
308 provided in paragraph (a), a person designated by the resident  
309 to act as his or her personal representative in a last will that  
310 is self-proved under s. 732.503; or

311 (c) If no judicial appointment has been made as provided  
312 in paragraph (a) or no person has been designated by the  
313 resident in a last will as provided in paragraph (b), only the  
314 following individuals:

315 1. A surviving spouse.

316 2. If there is no surviving spouse, a surviving child of  
317 the resident.

318 3. If there is no surviving spouse or child, a parent of  
319 the resident.

320 (3) All requests for a deceased resident's records made by  
321 a person authorized under:

322 (a) Paragraph (2) (a) must include a copy of the letter of  
323 administration and a copy of the court order appointing such  
324 person as the representative of the resident's estate.



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325 (b) Paragraph (2)(b) must include a copy of the self-  
326 proved last will designating the person as the resident's  
327 representative.

328 (c) Paragraph (2)(c) must be accompanied by a letter from  
329 the person's attorney verifying the person's relationship to the  
330 resident and the absence of a court-appointed representative and  
331 self-proved last will.

332 (4) A nursing home facility may charge a reasonable fee  
333 for the copying of resident records. Such fee may not exceed \$1  
334 per page for the first 25 pages and 25 cents per page for each  
335 additional page. The facility shall allow a person who is  
336 authorized to act on behalf of the resident to examine the  
337 original records, microfilms, or other suitable reproductions of  
338 the records in its possession upon any reasonable terms imposed  
339 by the facility to ensure that the records are not damaged,  
340 destroyed, or altered.

341 (5) If a nursing home facility determines that disclosure  
342 of the records to the resident would be detrimental to the  
343 physical or mental health of the resident, the facility may  
344 refuse to furnish the record directly to the resident; however,  
345 upon such refusal, the resident's records shall, upon written  
346 request by the resident, be furnished to any other medical  
347 provider designated by the resident.

348 (6) A nursing home facility that in good faith and in  
349 reliance upon this section releases copies of records shall be  
350 indemnified by the party who requested the records pursuant to



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351 subsection (2) for any damages resulting from such release, and  
352 may not be found to have violated any criminal or civil laws,  
353 and is not civilly liable to the resident, the resident's  
354 estate, or any other person for any damages resulting from such  
355 release.

356 (7) A nursing home facility is not required to provide  
357 copies of a resident's records requested pursuant to this  
358 section more than once per month, except that copies of  
359 physician reports in the resident's records must be provided as  
360 often as necessary to allow the effective monitoring of the  
361 resident's condition.

362 (8) A nursing home facility may not be cited by the agency  
363 through the survey process for any alleged or actual  
364 noncompliance with any of the requirements of this section.

365 (9) This section does not limit any right to obtain  
366 records by subpoena or other court process.

367 Section 5. The amendments to ss. 400.023 and 400.0237,  
368 Florida Statutes, made by this act apply to causes of action  
369 accruing on or after the effective date of this act.

370 Section 6. This act shall take effect upon becoming a law.

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374

**T I T L E   A M E N D M E N T**

375

Remove everything before the enacting clause and insert:

376

A bill to be entitled



## Amendment No. 1

377 An act relating to nursing home litigation; amending s. 400.023,  
378 F.S.; specifying that a cause of action for negligence or  
379 violation of residents' rights alleging direct or vicarious  
380 liability for the injury or death of a nursing home resident may  
381 be brought against a licensee, its management or consulting  
382 company, its managing employees, and any direct caregiver  
383 employees or contractors; providing that a cause of action may  
384 not be asserted against other individuals or entities except  
385 under certain circumstances; revising related judicial  
386 procedures; defining terms; amending s. 400.0237, F.S.;  
387 providing that a claim for punitive damages may not be brought  
388 unless there is a showing of evidence that provides a reasonable  
389 basis for recovery of such damages when certain criteria are  
390 applied; requiring the court to conduct a hearing to determine  
391 whether there is sufficient evidence to demonstrate that the  
392 recovery of punitive damages is warranted; requiring the trier  
393 of fact to find that a specific person or corporate defendant  
394 participated in or engaged in conduct that constituted gross  
395 negligence and contributed to the damages or injury suffered by  
396 the claimant before a defendant may be held liable for punitive  
397 damages; requiring an officer, director, or manager of the  
398 employer, corporation, or legal entity to condone, ratify, or  
399 consent to specified conduct before holding such person or  
400 entity vicariously liable for punitive damages; creating s.  
401 400.024, F.S.; authorizing the Agency for Health Care  
402 Administration to revoke the license or deny a license renewal

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## Amendment No. 1

403 or change of ownership application of a nursing home facility  
404 that fails to pay a judgment or settlement agreement; providing  
405 for notification to the agency of such failure and for agency  
406 notification to the licensee of disciplinary action; providing  
407 licensee grounds for overcoming failure to pay; authorizing the  
408 agency to issue an emergency order and notice of intent to  
409 revoke or deny a license; authorizing the agency to deny a  
410 license renewal and requiring the agency to deny a change of  
411 ownership; amending s. 400.145, F.S.; revising procedures for  
412 obtaining the records of a resident; specifying which records  
413 may be obtained and who may obtain them; providing immunity from  
414 liability to a facility that provides such records in good  
415 faith; providing that the agency may not cite a facility that  
416 does not meet these records requirements; providing  
417 applicability; providing an effective date.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 609 Article V Constitutional Convention  
**SPONSOR(S):** Civil Justice Subcommittee; Wood and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1008

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	8 Y, 3 N, As CS	Aziz	Bond
2) Ethics & Elections Subcommittee	8 Y, 3 N	Davison	Marino
3) Judiciary Committee		Aziz PA	Havlicak RH

**SUMMARY ANALYSIS**

One method of proposing amendments to the United States Constitution is through a constitutional convention pursuant to Article V, which requires Congress to call a convention for proposing amendments when two-thirds of the state legislatures make application to Congress for a convention. No convention has ever been convened under the current constitution. Florida law does not provide for appointment or governing of Florida's delegates if a convention was called .

The bill creates the Article V Constitutional Convention Act, which includes the following provisions:

- Requires the Florida House and Senate to appoint delegates and alternate delegates to an Article V constitutional convention.
- Requires the Legislature to adopt a concurrent resolution to provide instructions to the delegates.
- Requires the delegates and alternate delegates to execute an oath to support the constitutions of the United States and the state, abide by the instructions of the Legislature, and faithfully discharge the duty of a delegate or alternate delegate.
- Provides penalties for a delegate or alternate delegate who votes outside the scope of the instructions of the Legislature.
- Provides that a delegate who knowingly or intentionally votes or attempts to vote outside the scope of the instructions of the Legislature commits a third-degree felony.
- Provides for an advisory group who must advise the delegates and alternate delegate whether a delegate or alternate delegate's action would violate the instructions set forth by the Legislature.

The bill has an undetermined but likely minimal fiscal impact on state government that would only apply if a convention were called. The bill does not appear to have a fiscal impact on local governments.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Article V of the United States Constitution provides two methods for proposing amendments to the Constitution. The first method authorizes Congress to propose amendments to the states that are approved by two-thirds vote of both houses of Congress.<sup>1</sup> Amendments approved in this manner do not require the President's signature and are transmitted to each state for ratification.<sup>2</sup> Starting with the Bill of Rights in 1789, Congress has used this method to submit 33 amendments to the states.<sup>3</sup> Of those 33 proposals, 27 amendments to the Constitution have been approved by the states.<sup>4</sup>

The second method, which has never been used,<sup>5</sup> requires Congress to call a convention for proposing amendments when two-thirds of the state legislatures make application to Congress for a convention.<sup>6</sup> Thirty-four states would need to make applications to meet the two-thirds requirement to call an Article V Convention. Though the form of a convention is not specified in the Constitution, Congress has historically taken on broad responsibilities in connection with a convention by administering state applications; establishing procedures to summon a convention; setting the amount of time allotted to its deliberations, determining the number and selection process of its delegates; setting internal convention procedures, and providing arrangement for the formal transmission of any proposed amendments to the states.<sup>7</sup>

Nothing in Florida law gives guidance to how delegates are chosen if an Article V Convention is called.

##### **Effect of the bill**

The bill creates ss. 11.93-11.9352, F.S., known as the "Article V Constitutional Convention Act," which applies should an Article V Convention be called. The bill provides guidance on eligibility, appointment and restrictions of delegates. The bill also creates an advisory group to advise the delegates.

##### *Delegates*

##### Appointment and Qualifications

The bill provides that the House of Representatives and Senate will appoint the number of delegates allocated to represent Florida and an equal number of alternate delegates. In order to be a delegate, a person must reside in Florida, be a registered voter in Florida, not be registered or required to be registered as a lobbyist, and not hold federal office. Unless provided elsewhere, it is presumed that there will only be two delegates and two alternate delegates. Each alternate delegate will be paired with

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<sup>1</sup> U.S. CONST. art. V.

<sup>2</sup> *The Constitutional Amendment Process*, U.S. National Archives and Records Administration, <http://www.archives.gov/federal-register/constitution> (last visited February 21, 2014).

<sup>3</sup> *Proposed Amendments Not Ratified by the States*, U.S. Government Printing Office, <http://www.gpo.gov/fdsys/pkg/GPO-CONAN-1992/pdf/GPO-CONAN-1992-8.pdf> (last visited February 21, 2014).

<sup>4</sup> Thomas H. Neale, Cong. Research Serv., RL 7-7883, *The Article V Convention for Proposing Constitutional Amendments: Historical Perspectives for Congress 1* (2012).

<sup>5</sup> See Sara R. Ellis et al., *Article V Constitutional Conventions: A Primer*, 78 Tenn. L. Rev. 663, 665 (2011) ("Despite the submission of approximately 750 applications for an Article V convention, including applications by all fifty states, no constitutional convention has ever been called.")

<sup>6</sup> U.S. CONST. art. V. Florida would "make application" via a resolution. In 2010, SCR 10 passed in both the Florida House of Representatives and the Senate. SCR 10 urged Congress to call an Article V convention for the purpose of proposing an amendment to the U.S. Constitution to provide for a balanced federal budget and to limit the ability of Congress to dictate states requirements for the expenditure of federal funds.

<sup>7</sup> Thomas H. Neale, Cong. Research Serv., RL 7-7883, *The Article V Convention for Proposing Constitutional Amendments: Historical Perspectives for Congress 1* (2012).

a delegate. An alternate delegate must act in the place of the paired delegate when the paired delegate is absent from the Article V convention. An alternate delegate replaces the paired delegate if the paired delegate vacates office.

The delegates will be appointed by a majority vote by each chamber and can be recalled at any time. The Legislature must appoint delegates or alternate delegates by concurrent resolution. If the Legislature is not in session, the presiding officers must call the Legislature into special session for the purpose of appointing delegates and alternate delegates.

The bill requires the House of Representatives and the Senate to appoint delegates and alternate delegates under rules adopted jointly.

#### Vacancy

The bill provides that the Legislature may, at any time, fill a vacancy in the office of delegate or alternate delegate with another eligible person. If the Legislature is not in session, then the presiding officers must call the Legislature into a special session for the purpose of filling the vacancy.

#### Compensation

Delegates will not receive compensation. However, delegates may be reimbursed for per diem and travel expenses pursuant to Florida law.

#### Oath; Instructions to Delegates

Delegates must execute an oath, in the state and in writing, before exercising any function of the position, to support the constitutions of the United States and the state, abide by the instructions of the Legislature, and otherwise faithfully discharge the duties of a delegate or alternate delegate. The executed oath of a delegate or alternate delegate must be filed with the Secretary of State. After the oath is filed, the Governor must issue a commission to the delegate or alternate delegate.

After delegates are appointed, the Legislature must adopt a concurrent resolution to provide instructions to the delegates and alternate delegates regarding the rules of procedure and any other matter the Legislature considers necessary. The Legislature may amend the instructions at any time by concurrent resolution.

#### Votes Cast Outside the Scope of Instructions

The bill provides that, if a delegate or alternate delegate votes outside the scope of the instructions of the Legislature, then:

- The vote is void; and
- The delegate's appointment is forfeited.

If a delegate forfeits an appointment, the paired alternate delegate becomes the delegate at the time of the forfeiture.

If a delegate or alternate delegate knowingly or intentionally votes or attempts to vote outside the scope of the instructions of the Legislature, the delegate or alternate delegate commits a third-degree felony.

If all of the delegates and alternate delegates vote outside the scope of the instructions of the Legislature, then the application of the Legislature to call an Article V Convention ceases to be a continuing application.

#### *Advisory Group*

The bill creates an Article V convention delegate advisory group ("advisory group") that consists of an attorney appointed by the President of the Senate, an attorney appointed by the Speaker of the House of Representatives, and an attorney selected by agreement of the attorneys appointed by the Senate President and the Speaker of the House who will serve as chair. Upon call of the chair, the advisory

group must meet to establish the policies and procedures that the advisory group determines necessary to carry it out its function.

#### Advisory Determinations

Upon request of a delegate or alternate delegate, the advisory group must advise the delegate or alternate delegate whether there is reason to believe that an action or attempt to take an action by the delegate or alternate delegate would violate the instructions set forth by the Legislature.

The advisory group must render the advisory determination within twenty-four hours after receiving a request in any summary manner considered appropriate by the advisory group. The advisory group must transmit a copy of the advisory determination as quickly as possible to the delegate or alternate delegate who made the request.

Upon request by the President of the Senate, the Speaker of the House of Representatives, or the Attorney General, the advisory group must render a determination on whether a delegate or alternate delegate's vote or attempt to vote would violate the Legislature's instructions. The advisory group can issue the advisory determination either without notice or an evidentiary proceeding; or after a hearing conducted by the advisory group. Any determination must be delivered within twenty-four hours after receiving the request. The advisory group must transmit a copy of an advisory determination as quickly as possible to the Attorney General. Upon receipt of an advisory determination that finds that a vote or attempt to vote by a delegate or alternate delegate is in excess of the authority given by the Legislature, the Attorney General must inform the delegates, alternate delegates, the President of the Senate, the Speaker of the House of Representatives, and the Article V convention that: the vote or attempt to vote did not comply with Florida law, is void, and has no effect; and the credentials of the delegate or alternate delegate who is the subject of the determination are revoked.

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

#### B. SECTION DIRECTORY:

Section 1 creates s. 11.93, F.S., creating a short title of the "Article V Constitutional Convention Act."

Section 2 creates s. 11.931, F.S., relating to the applicability of the Act.

Section 3 creates s. 11.932, F.S., relating to definitions.

Section 4 creates s. 11.933, F.S., relating to qualifications of delegates and alternate delegates.

Section 5 creates s. 11.9331, F.S., relating to the appointment of delegates.

Section 6 creates s. 11.9332, F.S., relating to the appointment of delegates.

Section 7 creates s. 11.9333, F.S., relating to the recall of delegates.

Section 8 creates s. 11.9334, F.S., relating to the method of appointment and recall of delegates.

Section 9 creates s. 11.9335, F.S., relating to the reimbursement of delegates.

Section 10 creates s. 11.9336, F.S., relating to the oath for delegates.

Section 11 creates s. 11.9337, F.S., relating to the filing of the oath for delegates.

Section 12 creates s. 11.934, F.S., relating to the instructions to the delegates.

Section 13 creates s. 11.9341, F.S., relating to the duties of the alternate delegates.

Section 14 creates s. 11.9342, F.S., relating to votes cast outside the scope of instructions.

Section 15 creates s. 11.9343, F.S., relating to votes cast outside the scope of instructions.

Section 16 creates s. 11.9344, F.S., relating to votes cast outside the scope of instructions.

Section 17 creates s. 11.9345, F.S., relating to votes cast outside the scope of instructions.

Section 18 creates s. 11.935, F.S., relating to the Article V Convention advisory group.

Section 19 creates s. 11.9351, F.S., relating to the oversight of delegates with respect to instructions.

Section 20 creates s. 11.9352, F.S., relating to advisory determination concerning a vote outside the scope of instructions.

Section 21 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:**

The bill appears to have a minimal impact on state expenditures. If an Article V Constitutional Convention were convened, the state would reimburse delegates for travel expenses, as well as, incur the cost of calling a special session or sessions to appoint delegates and take other actions contemplated by this bill.

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

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

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

#### **2. Expenditures:**

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

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

The bill does not appear to have any direct economic impact on the private sector.

### **D. FISCAL COMMENTS:**

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

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

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

The bill provides that a delegate's vote that is beyond the instructions is void (lines 178-188). Also, the bill provides that if all of Florida's delegates vote beyond the instructions, then the Legislature's application for a convention ceases to be a continuing application (lines 208-221). It is unclear how this statute would or could bind the convention once a vote is cast and is final according to the rules of the convention. In addition, it is unclear who is authorized to determine that a delegate or alternate delegate's vote is beyond the scope of the Legislature's instructions or what procedures must be followed.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 19, 2014, the Civil Justice Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments provide that the presiding officers of both chambers, not the Governor, will call a special session to appoint delegates; an attorney, not the Chief Justice of the Florida Supreme Court, will serve as chair of the advisory group; and the delegates' oath must be executed in the state. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.



1                                   A bill to be entitled  
2       An act relating to Article V constitutional  
3       conventions; creating s. 11.93, F.S.; providing a  
4       short title; creating s. 11.931, F.S.; providing for  
5       applicability; creating s. 11.932, F.S.; providing  
6       definitions; creating s. 11.933, F.S.; establishing  
7       qualifications of delegates and alternate delegates to  
8       an Article V constitutional convention; creating s.  
9       11.9331, F.S.; providing for the appointment of  
10      delegates by the Legislature; creating s. 11.9332,  
11      F.S.; requiring majority vote approval in each chamber  
12      for the appointment of delegates; creating s. 11.9333,  
13      F.S.; authorizing the Legislature to recall a delegate  
14      and fill a vacancy; authorizing the presiding officers  
15      of the Legislature to call for a special legislative  
16      session to fill a vacancy; creating s. 11.9334, F.S.;  
17      establishing a legislative method for appointments and  
18      recalls; creating s. 11.9335, F.S.; providing for the  
19      reimbursement of delegates and alternate delegates for  
20      per diem and travel expenses; creating s. 11.9336,  
21      F.S.; requiring delegates and alternate delegates to  
22      execute a written oath of responsibilities; creating  
23      s. 11.9337, F.S.; providing for the filing of  
24      delegates' oaths and the issuance of commissions;  
25      creating s. 11.934, F.S.; providing for instructions  
26      to delegates and alternate delegates; creating s.

27 11.9341, F.S.; establishing duties of alternate  
 28 delegates; creating s. 11.9342, F.S.; establishing  
 29 circumstances under which a convention vote is  
 30 declared void; creating s. 11.9343, F.S.; providing  
 31 circumstances under which a delegate or alternate  
 32 delegate's appointment is forfeited; creating s.  
 33 11.9344, F.S.; establishing circumstances under which  
 34 the application to call an Article V convention ceases  
 35 to be a continuing application and is deemed to have  
 36 no effect; creating s. 11.9345, F.S.; providing  
 37 penalties for a delegate or alternate delegate who  
 38 votes or attempts to vote outside the scope of the  
 39 Legislature's instructions or the limits of the call  
 40 for a constitutional convention; creating ss. 11.935,  
 41 11.9351, and 11.9352, F.S.; establishing a delegate  
 42 advisory group, its membership, duties, and  
 43 responsibilities; providing an effective date.

44

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

46

47 Section 1. Section 11.93, Florida Statutes, is created to  
 48 read:

49 11.93 Short title.—Sections 11.93-11.9352 may be cited as  
 50 the "Article V Constitutional Convention Act."

51 Section 2. Section 11.931, Florida Statutes, is created to  
 52 read:

53 11.931 Applicability.—Sections 11.93-11.9352 shall apply  
 54 when an Article V convention is called for the purpose of  
 55 proposing amendments to the Constitution of the United States.

56 Section 3. Section 11.932, Florida Statutes, is created to  
 57 read:

58 11.932 Definitions.—As used in ss. 11.93-11.9352, the  
 59 term:

60 (1) "Alternate delegate" means an individual who is  
 61 appointed as an alternate delegate as provided by law.

62 (2) "Article V convention" means a convention called for  
 63 by the states under Article V of the Constitution of the United  
 64 States for the purpose of proposing amendments to the  
 65 Constitution of the United States.

66 (3) "Chamber" means either the Senate or the House of  
 67 Representatives.

68 (4) "Delegate" means an individual appointed to represent  
 69 Florida at an Article V convention.

70 (5) "Paired delegate" means the delegate with whom an  
 71 alternate delegate is paired.

72 Section 4. Section 11.933, Florida Statutes, is created to  
 73 read:

74 11.933 Qualifications of delegates and alternate  
 75 delegates.—

76 (1) To be appointed as a delegate or alternate delegate to  
 77 an Article V convention, a person must:

78 (a) Reside in this state.

79 (b) Be a registered voter in this state.

80 (c) Not be registered or required to be registered as a  
 81 lobbyist under the laws of this state.

82 (2) A person may not be appointed as a delegate if he or  
 83 she holds a federal office.

84 Section 5. Section 11.9331, Florida Statutes, is created  
 85 to read:

86 11.9331 Appointment of delegates by Legislature.-

87 (1) Whenever an Article V convention is called, the Senate  
 88 and House of Representatives shall appoint, under rules adopted  
 89 jointly by the Senate and House of Representatives;

90 (a) The number of delegates allocated to represent  
 91 Florida.

92 (b) An equal number of alternate delegates.

93 (2) Unless otherwise established by the rules of procedure  
 94 of an Article V convention, it is presumed that Florida has two  
 95 delegates and two alternate delegates designated to represent  
 96 the state.

97 (3) If the Legislature is not in session when delegates  
 98 must be appointed, the President of the Senate and the Speaker  
 99 of the House of Representatives shall call the Legislature into  
 100 special session pursuant to s. 11.011 for the purpose of  
 101 appointing delegates and alternate delegates.

102 Section 6. Section 11.9332, Florida Statutes, is created  
 103 to read:

104 11.9332 Appointment by majority vote of each chamber;

105 pairing delegates and alternate delegates.-

106 (1) To be appointed as a delegate or an alternate  
 107 delegate, a person must receive, in each chamber, the vote of a  
 108 majority of all the members elected to that chamber.

109 (b) At the time of appointment, each alternate delegate  
 110 must be paired with a delegate as provided by a concurrent  
 111 resolution adopted by the Legislature.

112 Section 7. Section 11.9333, Florida Statutes, is created  
 113 to read:

114 11.9333 Recall; filling a vacancy; special legislative  
 115 session.-

116 (1) The Legislature may, at any time, recall a delegate or  
 117 alternate delegate and replace that delegate or alternate  
 118 delegate with an individual appointed under ss.11.93-11.9352.

119 (2) The Legislature may, at any time, fill a vacancy in  
 120 the office of delegate or alternate delegate with a person  
 121 appointed under ss. 11.93-11.9352. If the Legislature is not in  
 122 session when a vacancy occurs with respect to both a delegate  
 123 and the paired alternate delegate, the President of the Senate  
 124 and the Speaker of the House of Representatives shall call the  
 125 Legislature into special session pursuant to s. 11.011 for the  
 126 purpose of appointing a delegate and an alternate delegate to  
 127 fill the vacancies.

128 Section 8. Section 11.9334, Florida Statutes, is created  
 129 to read:

130 11.9334 Method of appointment and recall.-The Legislature

131 shall appoint or recall delegates or alternate delegates by  
 132 concurrent resolution.

133 Section 9. Section 11.9335, Florida Statutes, is created  
 134 to read:

135 11.9335 Reimbursement of per diem and travel expenses.—A  
 136 delegate or alternate delegate shall serve without compensation  
 137 but may be reimbursed for per diem and travel expenses pursuant  
 138 to s. 112.061.

139 Section 10. Section 11.9336, Florida Statutes, is created  
 140 to read:

141 11.9336 Oath.—Each delegate and alternate delegate shall,  
 142 before exercising any function of the position, execute an oath  
 143 in the state and in writing that the delegate or alternative  
 144 delegate will:

145 (1) Support the Constitution of the United States and the  
 146 State Constitution.

147 (2) Faithfully abide by and execute any instructions to  
 148 delegates and alternate delegates adopted by the Legislature.

149 (3) Otherwise faithfully discharge the duties of a  
 150 delegate or alternate delegate.

151 Section 11. Section 11.9337, Florida Statutes, is created  
 152 to read:

153 11.9337 Filing of oath; issuance of commission.—The  
 154 executed oath of a delegate or alternate delegate shall be filed  
 155 with the Secretary of State. After the oath is filed, the  
 156 Governor shall issue a commission to the delegate or alternate

157 delegate.

158 Section 12. Section 11.934, Florida Statutes, is created  
159 to read:

160 11.934 Instructions to delegates.-

161 (1) When delegates and alternate delegates are appointed,  
162 the Legislature shall adopt a concurrent resolution to provide  
163 instructions to the delegates and alternate delegates regarding  
164 the rules of procedure and any other matter relating to the  
165 Article V convention that the Legislature considers necessary.

166 (2) The Legislature may amend the instructions at any time  
167 by concurrent resolution.

168 Section 13. Section 11.9341, Florida Statutes, is created  
169 to read:

170 11.9341 Duties of alternate delegates.-An alternate  
171 delegate:

172 (1) Shall act in the place of the paired delegate when the  
173 paired delegate is absent from the Article V convention.

174 (2) Replaces the paired delegate if the alternate  
175 delegate's paired delegate vacates the office.

176 Section 14. Section 11.9342, Florida Statutes, is created  
177 to read:

178 11.9342 Vote cast outside the scope of instructions or  
179 limits; status of vote.-A vote cast by a delegate or an  
180 alternate delegate at an Article V convention is void if the  
181 vote is outside the scope of:

182 (1) The instructions established by a concurrent

183 resolution adopted pursuant to ss. 11.93-11.9352; or  
 184 (2) The limits placed by the Legislature in a concurrent  
 185 resolution or memorial that calls for an Article V convention  
 186 for the purpose of proposing one or more amendments to the  
 187 Constitution of the United States on the subjects and amendments  
 188 that may be considered by the Article V Convention.

189 Section 15. Section 11.9343, Florida Statutes, is created  
 190 to read:

191 11.9343 Vote cast outside the scope of instructions or  
 192 limits; appointment forfeited.-

193 (1) A delegate or alternate delegate forfeits his or her  
 194 appointment by virtue of a vote or attempt to vote that is  
 195 outside the scope of:

196 (a) The instructions established by a concurrent  
 197 resolution adopted pursuant to ss. 11.93-11.9352; or

198 (b) The limits placed by the Legislature in a concurrent  
 199 resolution or memorial that calls for an Article V convention  
 200 for the purpose of proposing one or more amendments to the  
 201 Constitution of the United States on the subjects and amendments  
 202 that may be considered by the Article V convention.

203 (2) If a delegate forfeits an appointment under subsection  
 204 (1), the paired alternate delegate of the delegate becomes the  
 205 delegate at the time the forfeiture of the appointment occurs.

206 Section 16. Section 11.9344, Florida Statutes, is created  
 207 to read:

208 11.9344 Vote cast outside the scope of instructions or



209 limits; status of application.—The application of the  
 210 Legislature to call an Article V convention for proposing  
 211 amendments to the Constitution of the United States ceases to be  
 212 a continuing application and shall be treated as having no  
 213 effect if all of the delegates and alternate delegates vote or  
 214 attempt to vote outside the scope of:

215 (1) The instructions established by a concurrent  
 216 resolution adopted pursuant to ss. 11.93-11.9352; or

217 (2) The limits placed by the Legislature in a concurrent  
 218 resolution or memorial that calls for an Article V convention  
 219 for the purpose of proposing one or more amendments to the  
 220 Constitution of the United States on the subjects and amendments  
 221 that may be considered by the Article V convention.

222 Section 17. Section 11.9345, Florida Statutes, is created  
 223 to read:

224 11.9345 Vote cast outside the scope of instructions;  
 225 criminal liability.—A delegate or alternate delegate commits a  
 226 felony of the third degree, punishable as provided in s. 775.082  
 227 or s. 775.083, who signs an oath of office as required by s.  
 228 11.9336 in the state and who thereafter violates the oath by  
 229 knowingly or intentionally voting or attempting to vote outside  
 230 the scope of:

231 (1) The instructions established by a concurrent  
 232 resolution adopted pursuant to ss. 11.93-11.9352; or

233 (2) The limits placed by the Legislature in a concurrent  
 234 resolution or memorial that calls for an Article V convention

235 for the purpose of proposing one or more amendments to the  
 236 Constitution of the United States on the subjects and amendments  
 237 that may be considered by the Article V convention.

238 Section 18. Section 11.935, Florida Statutes, is created  
 239 to read:

240 11.935 Article V convention advisory group.-

241 (1) As used in this section, the term "advisory group"  
 242 means the Article V convention delegate advisory group.

243 (2) The advisory group consists of the following members:

244 (a) An attorney appointed by the President of the Senate.

245 (b) An attorney appointed by the Speaker of the House of  
 246 Representatives.

247 (c) An attorney selected by agreement of the attorneys  
 248 appointed under paragraphs (a) and (b), who shall serve as chair  
 249 of the advisory group.

250 (3) The advisory group shall meet at the call of the chair  
 251 and shall establish the policies and procedures that the  
 252 advisory group determines necessary to carry out ss. 11.93-  
 253 11.9352.

254 (4) Upon the request of a delegate or alternate delegate,  
 255 the advisory group shall advise the delegate or alternate  
 256 delegate whether there is reason to believe that an action or an  
 257 attempt to take an action by a delegate or alternate delegate  
 258 would:

259 (a) Violate the instructions established by a concurrent  
 260 resolution adopted by the Legislature under ss. 11.93-11.9352;

261 or

262 (b) Exceed the limits placed by the Legislature in a  
 263 concurrent resolution or memorial that calls for an Article V  
 264 convention for the purpose of proposing one or more amendments  
 265 to the Constitution of the United States on the subjects and  
 266 amendments that may be considered by the Article V convention.

267 (5) The advisory group:

268 (a) May render an advisory determination under this  
 269 section in any summary manner considered appropriate by the  
 270 advisory group.

271 (b) Shall render an advisory determination under this  
 272 section within 24 hours after receiving a request for a  
 273 determination.

274 (c) Shall transmit a copy of an advisory determination  
 275 under this section in the most expeditious manner possible to  
 276 the delegate or alternate delegate who requested the advisory  
 277 determination.

278 (c) If the advisory group renders an advisory  
 279 determination under this section, the advisory group may also  
 280 take an action permitted under s. 11.9351.

281 Section 19. Section 11.9351, Florida Statutes, is created  
 282 to read:

283 11.9351 Oversight of delegates with respect to  
 284 instructions.—

285 (1) The advisory group, on its own motion, or upon the  
 286 request of the President of the Senate, the Speaker of the House

287 of Representatives, or the Attorney General, shall advise the  
 288 Attorney General whether there is reason to believe that a vote  
 289 or an attempt to vote by a delegate or alternate delegate has:

290 (a) Violated the instructions established by a concurrent  
 291 resolution adopted by the Legislature under ss. 11.93-11.9352;  
 292 or

293 (b) Exceeded the limits placed by the Legislature in a  
 294 concurrent resolution or memorial that calls for an Article V  
 295 convention for the purpose of proposing one or more amendments  
 296 to the Constitution of the United States on the subjects and  
 297 amendments that may be considered by the Article V convention.

298 (2) The advisory group shall issue the advisory  
 299 determination under this section by one of the following summary  
 300 procedures:

301 (a) Without notice or an evidentiary proceeding; or

302 (b) After a hearing conducted by the advisory group.

303 (3) The advisory group shall render an advisory  
 304 determination under this section within 24 hours after receiving  
 305 a request for an advisory determination.

306 (4) The advisory group shall transmit a copy of an  
 307 advisory determination in the most expeditious manner possible  
 308 to the Attorney General.

309 Section 20. Section 11.9352, Florida Statutes, is created  
 310 to read:

311 11.9352 Advisory determination concerning a vote outside  
 312 the scope of instructions.—Immediately, upon receipt of an

313 advisory determination that finds that a vote or attempt to vote  
 314 by a delegate or alternate delegate is a violation as described  
 315 in s. 11.9351 or in excess of the authority of the delegate or  
 316 alternate delegate, the Attorney General shall inform the  
 317 delegates, alternate delegates, the President of the Senate, the  
 318 Speaker of the House of Representatives, and the Article V  
 319 convention that:

320       (1) The vote or attempt to vote did not comply with  
 321 Florida law, is void, and has no effect.

322       (2) The credentials of the delegate or alternate delegate  
 323 who is the subject of the determination are revoked.

324       Section 21. This act shall take effect July 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: CS/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	13 Y, 0 N	McAuliffe	Lloyd
3) Judiciary Committee		Jones <i>JJ</i>	Havlicak <i>RN</i>

### 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”<sup>1</sup> 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.<sup>2</sup> Cannabis and heroin are examples of Schedule I drugs.<sup>3</sup>

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.<sup>4</sup> According to the Florida Department of Law Enforcement (FDLE), synthetic drugs “have no legitimate medical use and have a high potential for abuse.”<sup>5</sup>

###### *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).<sup>6</sup> The chemicals are a white powder that is often applied to a plant material to mimic marijuana.<sup>7</sup> Synthetic cannabinoids have been developed over the last 30 years for research purposes to investigate the cannabinoid system.<sup>8</sup> 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.<sup>9</sup>

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<sup>1</sup> 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.

<sup>2</sup> See, s. 893.03, F.S.

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

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

<sup>5</sup> FDLE HB 697 Analysis (on file with the Criminal Justice Subcommittee).

<sup>6</sup> *Supra* note 4.

<sup>7</sup> *Id.*

<sup>8</sup> *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).

<sup>9</sup> *Supra* note 4.



### *Synthetic Phenethylamines*

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

### *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."<sup>14</sup> They can be found on the Internet, specialty smoke shops, and convenience stores.<sup>15</sup> 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.<sup>16</sup>

### *Recent Legislation*

In 2011, 2012, and 2013, numerous synthetic cannabinoids, cathinones, and phenethylamines were added to Schedule I of Florida's controlled substances schedules.<sup>17</sup> 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<sup>18, 19</sup>; and
- It is a third degree felony<sup>20</sup> for a person knowingly sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, listed synthetic cannabinoids or phenethylamines.<sup>21</sup>

### *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.<sup>22</sup>

On October 9, 2013, Attorney General Pam Bondi filed an emergency rule<sup>23</sup> that temporarily scheduled four synthetic cannabinoids, in s. 893.03(1)(c), F.S.<sup>24</sup> 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

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

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

<sup>14</sup> *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](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).

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

<sup>16</sup> *Supra* note 4.

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

<sup>18</sup> 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.

<sup>19</sup> Section 893.13(6)(b), F.S.

<sup>20</sup> 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.

<sup>21</sup> Section 893.13(1)(a)2., F.S.

<sup>22</sup> *Supra* note 5.

<sup>23</sup> 2ER 13-1, Office of the Attorney General,

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

<sup>24</sup> 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.<sup>25</sup>

#### 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 more 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,<sup>26</sup> 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 felony<sup>27</sup> 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.<sup>28</sup> In Florida, "Molly" is most often composed of:

- Methylone (3,4-methylenedioxymethcathinone);
- 3,4-Methylenedioxypyrovalerone (MDPV); and
- Methylenedioxymethcathinone.

Molly is often sold as "bath salts" compounds and are similar in chemical structure to "Ecstasy."<sup>29</sup> These substances pose significant health risks to users and are commonly imported from overseas via

<sup>25</sup> FDLE HB 697 Analysis (on file with the Criminal Justice Subcommittee).

<sup>26</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>27</sup> 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.

<sup>28</sup> *Id.*

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.<sup>30</sup>

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-Methylenedioxypropylone (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.<sup>31</sup> The lab system will need to acquire all of the required standards necessary to test the proposed chemical substances.<sup>32</sup> However, FDLE's fiscal analysis states that the bill will have a minimal fiscal impact on FDLE and absorbed within their current budget.<sup>33</sup>

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

<sup>30</sup> *Id.*

<sup>31</sup> FDLE HB 697 Analysis (on file with the Criminal Justice Subcommittee).

<sup>32</sup> *Id.*

<sup>33</sup> *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.<sup>34</sup> 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'.<sup>35</sup>

**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.

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*



27 purchases, manufactures, delivers, or brings into this  
 28 state specified quantities of 3,4-  
 29 Methylenedioxymethcathinone, 3,4-  
 30 Methylenedioxyprovalerone (MDPV), or  
 31 Methylnmethcathinone, or who is knowingly in actual or  
 32 constructive possession of specified quantities of  
 33 3,4-Methylenedioxymethcathinone, 3,4-  
 34 Methylenedioxyprovalerone (MDPV), or  
 35 Methylnmethcathinone, 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-Phencyclohexyl)-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-Methylenedioxymethcathinone.
- 127 |       41. 3,4-Methylenedioxypyrovalerone (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[3.3.1.13,7]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[3.3.1.13,7]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. ~~r~~  
 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)4.7  
 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.  
 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:

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;~~;~~
- 619 p. 3,4-Methylenedioxyamphetaminone;
- 620 q. 3,4-Methylenedioxypropylamphetamine (MDPV); or
- 621 r. Methylmethcathinone,
- 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.-e.~~, 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;;
- 659 p. 3,4-Methylenedioxymethcathinone;
- 660 q. 3,4-Methylenedioxypropylone (MDPV); or
- 661 r. Methylenedioxymethcathinone,

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 (1) (e) 3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
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683

379.2431 (1) (e) 4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
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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.
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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



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691			furthering burglary.
691	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			

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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

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			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

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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			marine turtle nests in violation of the Marine Turtle Protection Act.
729	379.2431 (1) (e) 6.	3rd	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

			without a certificate of authority.
734	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.
745	817.034(4)(a)3.	3rd	Engages in scheme to

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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 driver ~~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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	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.
763	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
764	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
765	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
766			

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

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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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controlled substance.

770

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

3rd

Introduce contraband to correctional facility.

(1)(a)1.-2.

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



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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

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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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	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
800	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
801	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
802	812.131(2)(b)	3rd	Robbery by sudden snatching.
803	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
804	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
805	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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			violence.
814	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

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820	893.13(1)(c)2.	2nd	<p>s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).</p> <p>Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.</p>
821	893.13(1)(d)1.	1st	<p>Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.</p>
822			



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.
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830

316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
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831

316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving
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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.

832

327.35 (3) (c) 2.

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

			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

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			individual from outside Florida to within the state.
877	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
878	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
879	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
880	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
881	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
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.
886	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.
896	812.014 (2) (b) 4.	2nd	Property stolen, law enforcement equipment

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from authorized  
emergency vehicle.

897

812.0145(2) (a)

1st Theft from person  
65 years of age or  
older; \$50,000 or  
more.

898

812.019(2)

1st Stolen property;  
initiates, organizes,  
plans, etc., the theft of  
property and traffics in  
stolen property.

899

812.131(2) (a)

2nd Robbery by sudden  
snatching.

900

812.133(2) (b)

1st Carjacking; no firearm,  
deadly weapon, or other  
weapon.

901

817.034(4) (a) 1.

1st Communications fraud,  
value greater than  
\$50,000.

902

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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.

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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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.
921	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	state, county, or municipal park or publicly owned recreational facility or community center.
926	893.13(4)(a)	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.
927	893.135(1)(a)1.	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).
928			Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.

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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.
933	893.135 (1) (g) 1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14

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	943.0435(13)	3rd	Failure to report or providing false information about a

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



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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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	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.
962	655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
963	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

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>

970	787.06(3)(f)	1st	<p>unauthorized alien.</p> <p>Human trafficking using coercion for commercial sexual activity by the transfer or transport of any individual from outside Florida to within the state.</p>
971	790.161(3)	1st	<p>Discharging a destructive device which results in bodily harm or property damage.</p>
972	794.011(5)	2nd	<p>Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.</p>
973	794.08(3)	2nd	<p>Female genital mutilation, removal of a victim younger than 18 years of age from</p>

			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

985	817.535(5) (a)	2nd	incarcerated or under supervision.
986	817.568(6)	2nd	Filing false lien or other unauthorized document; owner of the property incurs financial loss as a result of the false instrument.
987	825.102(2)	1st	Fraudulent use of personal identification information of an individual under the age of 18.
988	825.1025(2)	2nd	Aggravated abuse of an elderly person or disabled adult.
989	825.103(2) (a)	1st	Lewd or lascivious battery upon an elderly person or disabled adult.
			Exploiting an elderly person or disabled



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			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

			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.
1011	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

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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	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.
1051	827.03(2)(a)	1st	Aggravated child abuse.
1052	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
1053			

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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.

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**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 757 Estates  
**SPONSOR(S):** Civil Justice Subcommittee and Spano  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 998

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Ward	Bond
2) Judiciary Committee		Ward <i>JW</i>	Havlicak <i>RH</i>

**SUMMARY ANALYSIS**

A decedent's property may be disposed of according to a will or a trust, or a combination of the two. Property may effectively transfer at death by operation of law as well. Wills and trusts may be contested on several grounds, including undue influence of a beneficiary over the decedent. Other transfers during the life of a decedent may be set aside on the basis of undue influence as well.

The Florida Probate Code and the Florida Trust Code provide that all or any part of a will or trust is void if it is procured by fraud, duress, mistake, or undue influence. While both codes specify grounds for a will contest or trust contest, only the Probate Code contains a provision designating which party has the burden of proof. The bill amends the Trust Code to be consistent with the Probate Code so that the contestant in a trust contest has the burden of proof on all issues, including proving that the trust was not properly executed. The bill also applies the concept of undue influence to all challenges to gifts made during the lifetime of a decedent.

Life insurance proceeds are generally exempt from administration expenses and the claims of creditors. However, the exemption is lost if the insurance proceeds are paid to the insured or the insured's estate. The bill provides that a waiver of the statutory exemption from creditor's claims applicable to insurance proceeds paid to a trust established by the insured must be explicit. The bill provides that the waiver of the exemption cannot be inferred from general language in a trust instrument directing that all debts of the decedent be paid.

An "antilapse" statute prevents a devise from failing, or "lapsing," when the designated beneficiary does not survive the decedent. The Probate Code provides that in the event the will is silent, the share to which a beneficiary who predeceases the testator belongs to his or her heirs as long as those heirs are related no more distantly than descendants of grandparents. The antilapse provision of the Trust Code saves all devises, regardless of familial relationship, for administrative convenience. The bill changes the Trust Code's antilapse provision to make it consistent with the Probate Code, allowing outright devises to be treated more consistently with the settlor or testator's presumed intent. The bill provides that the changes are intended to clarify existing law, are remedial in nature, and apply retroactively.

In 2013, the Legislature added a new section to the Florida Probate Code making void any part of a written instrument that makes a gift to a lawyer or the lawyer's relatives if the lawyer prepared or supervised the execution of the written instrument. The bill adds a section to the amended statute providing that it applies only to written instruments executed on or after the effective date of the 2013 bill, which was October 1, 2013.

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

The bill has an effective date of July 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### *Undue Influence*

The Florida Probate Code<sup>1</sup> and Florida Trust Code<sup>2</sup> anticipate that both wills<sup>3</sup> and trusts<sup>4</sup> can be documents that make testamentary disposition of a decedent's assets. Further, some transactions during life<sup>5</sup> are effective upon death outside of a will or a trust. Both codes provide that all or any part of a will or trust is void if it is procured by fraud, duress, mistake, or undue influence.<sup>6</sup>

Although both codes specify grounds for a will contest<sup>7</sup> or trust contest,<sup>8</sup> only the Probate Code contains a provision designating which party has the burden of proof. The proponent of the will has the initial burden of proving due execution of the will. Thereafter, the burden shifts to the will contestant to prove the grounds for the will contest.<sup>9</sup> There is no analogous provision in the Trust Code designating who has the burden of proof in a trust contest.

A presumption<sup>10</sup> of undue influence will arise with respect to a transaction if the contestant can show that a person in a confidential relationship was active in procuring a document under which the contestant is a substantial beneficiary.<sup>11</sup> The presumption of undue influence in will contests is a policy-based presumption that shifts the burden of proof.<sup>12</sup> Courts have recognized that the burden-shifting nature of the presumption of undue influence is applicable whenever that presumption is established.<sup>13</sup> However, because the burden shifting presumption is located in the Florida Probate Code, it could be argued that it only applies in will contests. The current statute does not apply to other undue influence proceedings, including trust contests and challenges to the validity of inter vivos transactions.

The bill amends s. 736.0207, F.S., to provide that the contestant in a trust contest has the burden of proof on all issues, including proving that the trust was not properly executed. The bill also amends s. 733.107(2), F.S., to provide that a presumption of undue influence, once it arises, applies to all testamentary challenges including trust contests and challenges to inter vivos gifts.<sup>14</sup> The bill codifies what many practitioners express as the accepted current state of Florida case law. Thus, the bill provides that it is remedial in nature and retroactive because it is intended to clarify existing law.<sup>15</sup>

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<sup>1</sup> Chapters 731 through 735, F.S.

<sup>2</sup> Chapter 736, F.S.

<sup>3</sup> Section 731.201(40), F.S.

<sup>4</sup> Sections 736.0403(2) and 736.1106, F.S.

<sup>5</sup> These are called "inter vivos transfers."

<sup>6</sup> Sections 732.5165 and 736.0406, F.S.

<sup>7</sup> Section 733.107, F.S.

<sup>8</sup> Section 736.0207, F.S.

<sup>9</sup> Section 733.107, F.S.

<sup>10</sup> "A presumption is an assumption of fact . . ." s. 90.301(1), F.S.

<sup>11</sup> *In re Carpenter's Estate*, 253 So.2d 697, 703 (Fla. 1971).

<sup>12</sup> Section 733.107(2), F.S.

<sup>13</sup> *See, Newman v. Brecher*, 887 So.2d 384 (Fla. 4th DCA 2004); and *RBC Ministries v. Tompkins*, 974 So.2d 569, 571-72 (Fla. 2d DCA 2008).

<sup>14</sup> The Supreme Court of Florida has expressed its approval of statutes explicitly incorporating s. 90.304, F.S., into a statutory presumption. *See, Universal Ins. Co. of North America v. Warfel*, 82 So.3d 47, 55-60 (Fla. 2012).

<sup>15</sup> Retroactive statutes expressly stated by the Legislature to be remedial in nature are not unconstitutional unless they interfere with a vested right. *Maronda Homes, Inc. of Florida, v. Lakeview Reserve Homeowners Association, Inc.*, 127 So.3d 1258 (Fla. 2013), *American Optical Corporation v. Spiewak*, 73 So.3d 120 (Fla. 2011).

## *Exempt Nature of Life Insurance Proceeds*

Life insurance proceeds are generally exempt from estate administration expenses and the claims of creditors.<sup>16</sup> However, the exemption is lost if the insurance proceeds are paid to the insured or the insured's estate.<sup>17</sup>

Death benefits of any kind, including life insurance proceeds, may be made payable to the trustee of an inter vivos trust.<sup>18</sup> If the insurance proceeds are paid to a trustee of a trust, the statute provides that the insurance proceeds "shall be held and disposed of . . . in accordance with the terms of the trust . . ." <sup>19</sup> Likewise, insurance proceeds may be made payable to the trustee named in a last will that is admitted to probate.<sup>20</sup> The death benefits are not deemed to be part of the decedent's estate and are not subject to obligation to pay creditors of the decedent or probate estate administration until estate assets are depleted.<sup>21</sup>

In the recent case of *Morey v. Everbank*<sup>22</sup> the insured designated his revocable trust as the beneficiary of a life insurance policy. After the insured's death, the trustee filed a petition requesting a court determination that life insurance proceeds payable to the trust were exempt from all "death obligations" and, therefore, unavailable to the estate or the estate's creditors. The trust instrument in *Morey* directed the trustee to pay to the personal representative such amounts certified by the personal representative to be required to pay the settlor's "death obligations," including estate administration expenses, all the settlor's enforceable debts, and all estate taxes.<sup>23</sup>

The court focused on the language in s. 733.808(1), F.S., which provides that life insurance proceeds paid to a trustee "shall be *held and disposed of by the trustee in accordance with the terms of the trust . . .*" The court concluded that the language of the trust together with the entire structure of the trust evidenced an "apparent intent and practical result" that would be the same if the life insurance proceeds were paid directly to the estate.<sup>24</sup> The court ruled that the settlor waived the statutory exemption in s. 222.13, F.S.<sup>25</sup>

The holding in *Morey* is contrary to the generally accepted interpretations of ss. 222.13(1) and 733.808(4), F.S. Practitioners have treated insurance proceeds payable to a trustee of a revocable trust as exempt from the claims of the creditors of the insured's estate unless the trust specifically directs their payment. Practitioners report particular concern that the holding in *Morey* may be interpreted too broadly, and that the case will be construed to erode the long-standing understanding that s. 733.808(4), F.S., was clear in its meaning that proceeds of insurance payable to a trust established by the insured are exempt from creditors' claims in most instances. Before *Morey*, few thought that insurance proceeds to the insured's revocable trust would expose the proceeds of insurance to creditor claims. Practitioners report that the language of s. 733.808(4), F.S., is insufficient to provide protection for both existing and new testamentary plans in light of the *Morey* decision.

The bill provides that a waiver of the statutory exemption from creditor's claims applicable to insurance proceeds paid to a trust established by the insured must be explicit. The proposed language prevents an unintentional waiver by providing that the statutory exemption may only be waived with trust language that specifically refers to s. 733.808(4), F.S. The waiver of the exemption cannot be inferred from general "pay all my debts" type language in a trust instrument. The bill conforms s. 736.05053(1),

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<sup>16</sup> Section 222.13(1), F.S.

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

<sup>18</sup> Section 733.808(1), F.S.

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

<sup>20</sup> Section 733.808(2), F.S.

<sup>21</sup> Sections 733.808(4), and 733.607(2), F.S.

<sup>22</sup> 93 So.3d 482 (Fla. 2012).

<sup>23</sup> *Id.* at 484-85 (quoting Article V of the trust instrument).

<sup>24</sup> *Id.* at 487.

<sup>25</sup> *Id.*

F.S., to match this change, and provides that the changes in this provision are intended to clarify existing law, are remedial in nature, and apply retroactively.

### *Antilapse*

An "antilapse" statute prevents a devise from failing, or "lapsing," when the designated beneficiary does not survive the decedent. The Probate Code provides that a gift to only a "grandparent, or a descendant of a grandparent" is saved from lapse.<sup>26</sup> Currently, the Trust Code's antilapse provision applies to all gifts regardless of familial relationship to the creator of the gift.<sup>27</sup> The statute applies to a "future interest," and does not contain any qualification that the beneficiary of that interest be a blood relative of the settlor. The statute defines "future interest" for purposes of determining lapse.<sup>28</sup> There are inconsistencies between the Probate and Trust Codes on this point. Florida's previous Trust Code, which was amended in 2007, contained an antilapse provision that saved only gifts to grandparents or descendants of grandparents from lapse.<sup>29</sup> A new Trust Code was enacted in 2008, but that Code's antilapse statute does not contain a broad savings clause for gifts made to grandparents or descendants of grandparents. Instead, the current Trust Code's antilapse statute applies to a "future interest," and does not contain any qualification that the beneficiary of that interest be a blood relative of the settlor.

The bill amends s. 736.1106, F.S., to make an outright devise to a deceased beneficiary in a revocable trust or testamentary trust lapse unless the beneficiary was a grandparent, or a lineal descendant of a grandparent of the settlor of a revocable trust or the testator of a testamentary trust. As with wills, this is a default provision, meaning that the settlor or testator can always provide to the contrary in his or her testamentary documents. This would make the Probate Code and Trust Code's antilapse statutes more consistent, which is important given that many people use revocable trust agreements as substitutes for wills. Also, testamentary trusts, which are created under wills, are not covered by the Probate Code's antilapse statute. Instead, the definition of "future interest" under the Trust Code encompasses those devises which create a testamentary trust. Thus, changing the Trust Code's antilapse provision to make it more consistent with the Probate Code allows outright devises to be treated more consistently with the settlor or testator's presumed intent. The bill provides that this provision applies to trusts which become irrevocable after June 30, 2014.<sup>30</sup>

### *Gifts to Lawyers*

In 2013, the Legislature amended s. 732.806, F.S., adding a new section to the Florida Probate Code.<sup>31</sup> The new provision made void any part of a written instrument that makes a gift to a lawyer or a person related to the lawyer void if the lawyer prepared or supervised the execution of the written instrument, or solicited the gift, unless the lawyer or other recipient of the gift is related to the person making the gift. It is noted that the provision makes the gift void rather than voidable,<sup>32</sup> avoiding proof requirements in the event of a contest. The effective date of that bill was October 1, 2013.

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<sup>26</sup> Section 732.603, F.S.

<sup>27</sup> Section 736.1106, F.S.

<sup>28</sup> "Future interest" includes an alternative future interest and a future interest in the form of a class gift. See, s. 736.1106(1)(c), F.S. "Future interest under the terms of a trust" means a future interest created by an inter vivos or testamentary trust to an existing trust or creating a trust or by an exercise of a power of appointment to an existing trust directing the continuance of an existing trust, designating a beneficiary of an existing trust, or creating a trust. See, s. 736.1106(1)(d), F.S.

<sup>29</sup> Section 737.6035, F.S. (2007).

<sup>30</sup> A "Living Trust" is a testamentary document after the settlor dies, and thus, while it is revocable during the life of the settlor, it becomes irrevocable upon the settlor's death. *In re Guardianship of Trost*, 100 So.3d 1205 (Fla. 2d DCA 2012).

<sup>31</sup> Section 732.806, F.S.

<sup>32</sup> A voidable event is arguable, and facts may be presented to challenge it. In contrast, a void event requires no proof of fact because it is a legal nullity. See, eg., *McMurrer v. Marion County*, 936 So.2d 19 (Fla. 5th DCA 2006).

The bill adds a subsection to the amended statute providing that it applies only to written instruments executed on or after the effective date of the 2013 bill, October 1, 2013. The bill also provides that the change is remedial in nature and intended to clarify existing law.

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

**B. SECTION DIRECTORY:**

Section 1 amends s. 732.806, F.S., relating to gifts to lawyers and other disqualified persons.

Section 2 provides that the changes to s. 732.806, F.S., are intended to clarify existing law and are remedial in nature.

Section 3 amends s. 733.107, F.S., relating to burden of proof in contests; presumption of undue influence.

Section 4 amends s. 733.808, F.S., relating to death benefits; disposition of proceeds.

Section 5 provides a statement of legislative intent that the changes made regarding s. 733.808, F.S., clarify existing law, are remedial in nature, and apply retroactively.

Section 6 amends s. 736.0207, F.S., relating to trust contests.

Section 7 amends s. 736.05053, F.S., relating to trustee's duty to pay expenses and obligations of settlor's estate.

Section 8 provides a statement of legislative intent that the changes made regarding s. 736.05053, F.S., clarify existing law, are remedial in nature, and apply retroactively.

Section 9 amends s. 736.1106, F.S., relating to antilapse; survivorship with respect to future interests under terms of inter vivos and testamentary trusts; substitute takers.

Section 10 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:

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

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

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

"A statute is presumed not to have retroactive application, but the presumption is rebuttable by clear evidence that the legislature intended that the statute be applied retroactively."<sup>33</sup> The bill provides that some changes are intended to clarify existing law, are remedial in nature, and apply retroactively, making the legislative intent clear.

While the Florida Constitution guarantees to all persons the right to acquire, possess and protect property. Article I, s. 9 provides that "[n]o person shall be deprived of life, liberty or property without due process of law."<sup>34,35</sup> "In determining whether a statute applies retroactively, we [the Supreme Court of Florida] consider two factors: (1) whether the statute itself expresses an intent that it apply retroactively; and, if so, (2) whether retroactive application is constitutional."<sup>36</sup>

In this bill, first prong of the test is met. The second prong looks to see if a vested right is impaired.

A statute is not unconstitutionally retrospective in its operation unless it impairs a substantive, vested right. A substantive vested right is an immediate right of present enjoyment, or a present fixed right of future enjoyment. To be vested a right must be more than a mere expectation based on an anticipation of the continuance of an existing law; it must have become a title, legal or equitable, to the present or future enforcement of a demand.<sup>37</sup>

"Remedial statutes or statutes relating to remedies or modes of procedure, which do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the legal conception of a retrospective law, or the general rule against retrospective operation of statutes"<sup>38</sup>

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<sup>33</sup> *Essex Ins. Co. v. Integrated Drainage Solutions, Inc.*, 124 So.3d 947, 951 (Fla. 2d DCA 2013).

<sup>34</sup> Art. I, s. 9, FLA. CONST.

<sup>35</sup> Note that *res judicata*, the final adjudication of rights in a court proceeding, precludes the setting aside of existing probate decrees unless they were procured by fraud. See, Fla. R. Civ. P. 1.540; 32A Fla. Jur 2d Judgments and Decrees §1.

<sup>36</sup> 10A Fla. Jur 2d Constitutional Law §394, citing *Old Port Cove Holdings, Inc. v. Old Port Cove Condominium Ass'n One, Inc.*, 986 So.2d 1279 (Fla. 2008).

<sup>37</sup> *School Bd. Of Miami-Dade County v. Carralero*, 992 So.2d 353 (Fla. 3d DCA 2008)(internal citations omitted).

<sup>38</sup> *City of Lakeland v. Catinella*, 129 So.2d 133 (Fla. 1961).

**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 March 12, 2014, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides that the provision enacted in 2013 which made void certain gifts to lawyers and their relatives is applicable only to written instruments made on or after October 1, 2013.

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

1                   A bill to be entitled  
 2           An act relating to estates; amending s. 732.806, F.S.;  
 3           specifying that certain restrictions on gifts to  
 4           lawyers and persons related to such lawyers apply only  
 5           to written instruments executed on or after a  
 6           specified date; providing applicability; amending s.  
 7           733.107, F.S.; providing circumstances under which a  
 8           burden of proof shifts in cases involving undue  
 9           influence; amending s. 733.808, F.S.; requiring that a  
 10          directive to apply certain death benefits for the  
 11          payment of claims and administration expenses be  
 12          specified in certain instruments; providing for  
 13          retroactive applicability; amending s. 736.0207, F.S.;  
 14          establishing which party bears the burden of proof in  
 15          an action to contest the validity or revocation of a  
 16          trust; amending s. 736.05053, F.S.; requiring a  
 17          specific directive for certain assets and death  
 18          benefits to be used to pay estate expenses; providing  
 19          for retroactive applicability; amending s. 736.1106,  
 20          F.S.; providing for the vesting of outright devises in  
 21          certain trust documents; providing applicability;  
 22          providing an effective date.

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

25  
 26          Section 1.   Subsection (9) is added to section 732.806,



27 Florida Statutes, to read:

28 732.806 Gifts to lawyers and other disqualified persons.—

29 (9) This section applies only to written instruments  
 30 executed on or after October 1, 2013.

31 Section 2. The changes made by this act to s. 732.806,  
 32 Florida Statutes, are intended to clarify existing law and are  
 33 remedial in nature.

34 Section 3. Section 733.107, Florida Statutes, is amended  
 35 to read:

36 733.107 Burden of proof in contests; presumption of undue  
 37 influence.—

38 (1) In all proceedings contesting the validity of a will,  
 39 the burden shall be upon the proponent of the will to establish  
 40 prima facie its formal execution and attestation. A self-proving  
 41 affidavit executed in accordance with s. 732.503 or an oath of  
 42 an attesting witness executed as required in s. 733.201(2) is  
 43 admissible and establishes prima facie the formal execution and  
 44 attestation of the will. Thereafter, the contestant shall have  
 45 the burden of establishing the grounds on which the probate of  
 46 the will is opposed or revocation is sought.

47 (2) In any transaction or event to which the presumption  
 48 of undue influence applies, the presumption ~~of undue influence~~  
 49 implements public policy against abuse of fiduciary or  
 50 confidential relationships and is therefore a presumption  
 51 shifting the burden of proof under ss. 90.301-90.304.

52 Section 4. Subsection (4) of section 733.808, Florida

53 Statutes, is amended to read:

54 733.808 Death benefits; disposition of proceeds.—

55 (4) Unless the trust agreement, declaration of trust, or  
 56 will expressly refers to this subsection and directs that it  
 57 does not apply, death benefits payable as provided in subsection  
 58 (1), subsection (2), or subsection (3), unless paid to a  
 59 personal representative under the provisions of subsection (3),  
 60 shall not be deemed to be part of the decedent's estate, and  
 61 shall not be subject to any obligation to pay the expenses of  
 62 the administration and obligations of the decedent's estate or  
 63 for contribution required from a trust under s. 733.607(2) to  
 64 any greater extent than if the proceeds were payable directly to  
 65 the beneficiaries named in the trust.

66 Section 5. The changes made by this act to s. 733.808,  
 67 Florida Statutes, are intended to clarify existing law, are  
 68 remedial in nature, and apply retroactively without regard to  
 69 the date of the decedent's death.

70 Section 6. Section 736.0207, Florida Statutes, is amended  
 71 to read:

72 736.0207 Trust contests.—

73 (1) In an action to contest the validity or revocation of  
 74 all or part of a trust, the contestant has the burden of  
 75 establishing the grounds for invalidity.

76 (2) An action to contest the validity of all or part of a  
 77 revocable trust, or the revocation of part of a revocable trust,  
 78 may not be commenced until the trust becomes irrevocable by its

79 terms or by the settlor's death. If all of a revocable trust has  
 80 been revoked, an action to contest the revocation may not be  
 81 commenced until after the settlor's death. This section does not  
 82 prohibit such action by the guardian of the property of an  
 83 incapacitated settlor.

84 Section 7. Subsection (1) of section 736.05053, Florida  
 85 Statutes, is amended to read:

86 736.05053 Trustee's duty to pay expenses and obligations  
 87 of settlor's estate.-

88 (1) A trustee of a trust described in s. 733.707(3) shall  
 89 pay to the personal representative of a settlor's estate any  
 90 amounts that the personal representative certifies in writing to  
 91 the trustee are required to pay the expenses of the  
 92 administration and obligations of the settlor's estate. Payments  
 93 made by a trustee, unless otherwise provided in the trust  
 94 instrument, must be charged as expenses of the trust without a  
 95 contribution from anyone. The interests of all beneficiaries of  
 96 such a trust are subject to the provisions of this subsection;  
 97 however, the payments must be made from assets, property, or the  
 98 proceeds of the assets or property that are included in the  
 99 settlor's gross estate for federal estate tax purposes and may  
 100 not be made from, other than assets proscribed in s. 733.707(3)  
 101 or death benefits described in s. 733.808(4) unless the trust  
 102 instrument expressly refers to s. 733.808(4) and directs that it  
 103 does not apply, that are included in the settlor's gross estate  
 104 for federal estate tax purposes.

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105           Section 8. The changes made by this act to s. 736.05053,  
 106 Florida Statutes, are intended to clarify existing law, are  
 107 remedial in nature, and apply retroactively without regard to  
 108 the date of the settlor's death.

109           Section 9. Subsection (5) of section 736.1106, Florida  
 110 Statutes, is renumbered as subsection (6) and amended, and a new  
 111 subsection (5) is added to that section, to read:

112           736.1106 Antilapse; survivorship with respect to future  
 113 interests under terms of inter vivos and testamentary trusts;  
 114 substitute takers.-

115           (5) Unless a contrary intent appears in the trust  
 116 instrument, subsections (2)-(4) do not apply to an outright  
 117 devise that vests upon the death of the settlor unless the  
 118 beneficiary is a grandparent, or a lineal descendant of a  
 119 grandparent, of the settlor or testator and the beneficiary:

120           (a) Is dead at the time of the execution of the revocable  
 121 trust or will;

122           (b) Fails to survive the settlor or testator; or

123           (c) Is required by the inter vivos trust or by operation  
 124 of law to be treated as having predeceased the settlor or  
 125 testator.

126  
 127 A devise in a revocable trust or a testamentary trust that is to  
 128 take effect at the death of the settlor or testator does not  
 129 vest until the death of the settlor or testator.

130           ~~(6)~~<sup>(5)</sup> Subsections (1)-(4) apply to all trusts other than

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131 trusts that were irrevocable before the effective date of this  
132 code. Sections 732.603, 732.604, and 737.6035, as they exist on  
133 June 30, 2007, continue to apply to other trusts executed on or  
134 after June 12, 2003. Subsection (5) applies to those trusts that  
135 become irrevocable after June 30, 2014.

136 Section 10. This act shall take effect July 1, 2014.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Spano offered the following:

**Amendment (with title amendment)**

Between lines 51 and 52, insert:

6 Section 4. The changes made by this act to s. 733.107,  
 7 Florida Statutes, are intended to clarify existing law, are  
 8 remedial in nature, and shall apply retroactively to all  
 9 proceedings pending on or before this act becomes a law and all  
 10 cases commenced on or after the effective date.

12 -----  
 13 **T I T L E A M E N D M E N T**

14 Remove line 9 and insert:  
 15 influence; providing retroactive applicability; amending s.  
 16 733.808, F.S.; requiring that a



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Spano offered the following:

**Amendment (with title amendment)**

Between lines 83 and 84, insert:

6 Section 7. The changes made by this act to s. 736.0207,  
 7 Florida Statutes, apply to all cases commenced on or after the  
 8 effective date.

10 -----  
 11 **T I T L E A M E N D M E N T**

12 Remove line 16 and insert:

13 trust; providing for application to all cases commenced on or  
 14 after the effective date; amending s. 736.05053, F.S.; requiring  
 15 a





**HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS**

**BILL #:** HB 885 Manatee County  
**SPONSOR(S):** Steube  
**TIED BILLS:** IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	18 Y, 0 N	Kelly	Rojas
2) Judiciary Committee		Westcott <i>AW</i>	Havlicak <i>RH</i>

**SUMMARY ANALYSIS**

HB 885 repeals ch. 30961 (1955), L.O.F. (Act), to remove from state law the requirement for the inclusion of a reversion clause in a lease or conveyance of land between Manatee County (County) and a non-profit organization.

The County states that under current law the requirement for a reversion clause harms the value of the County property and harms a non-profit organization's ability to use the property as collateral on bank loans. As such, these problems hurt the County's ability to do better business with non-profit organizations. Repealing this Act will remedy these problems, giving advantage to both businesses and the local government.

The bill does not appear to have an impact on state or local government expenditures or revenues.

HB 885 will take effect upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Chapter 30961 (1955), L.O.F.

The Florida Legislature enacted ch. 30961 (1955), L.O.F. (Act), in 1955. Section 1 of the Act authorizes the Manatee Board of County Commissioners to lease or convey County lands to any non-profit including charitable, educational, religious, scientific, character building, or patriotic organizations, associations, corporations, or trustees.<sup>1</sup> In turn, the leased or conveyed land must be used for educational, religious, scientific, character building, or patriotic purposes. The Act includes the ability to build and improve a current building on the land for non-profit purposes.

Section 2 of the Act authorizes the Manatee Board of County Commissioners to execute all written instruments necessary to complete the non-profit lease or conveyance of property. Section 3 restates the lease or conveyance of County property under the Act shall be only for charitable, educational, religious, scientific, character building, or patriotic uses. This Section also requires a lease or conveyance to include a reversion clause. Thus, if the lease or conveyance does not fall under one of the non-profit categories or the lease or conveyance is no longer in use by the non-profit entity, the County has the right to re-enter and repossesses the land.<sup>2</sup>

Currently, Manatee County Code codifies provisions of the Act.<sup>3</sup> Therefore, under its home rule power, the County may lease or convey County land to a non-profit organization.<sup>4</sup> Likewise, this lease or conveyance must include a reversion clause to the County if the land is no longer being used for a non-profit organization or a non-profit organization ceases to use the land for a qualifying purpose.

##### Effect of Proposed Changes

HB 885 repeals the Act, to remove the inclusion of the reversion clause if the County chooses to lease or convey County land to a non-profit organization.

The language in the Act will still be codified in the County's Code. However, by removing this language from state law, the County can amend its Code as the County finds appropriate.

HB 885 will take effect upon becoming a law.

#### B. SECTION DIRECTORY:

**Section 1:** Repeals ch. 30961 (1955), L.O.F.

**Section 2:** Provides for an effective date.

### II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? December 31, 2013

<sup>1</sup> Chapter 30961 (1955), L.O.F.

<sup>2</sup> *Id.*

<sup>3</sup> Manatee County Local Laws, Ch. 1-1, Art. II, Div. 3, Sec. 1-1-48.

<sup>4</sup> *Id.*

WHERE?

*Bradenton Herald*, a daily newspaper of general circulation, published in Bradenton, Manatee County, Florida.

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN? Not applicable.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a.

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11

A bill to be entitled  
An act relating to Manatee County; repealing chapter  
30961 (1955), Laws of Florida, relating to mandatory  
nonprofit use conditions in leases and conveyances;  
providing an effective date.

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


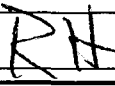
Section 1. Chapter 30961 (1955), Laws of Florida, is  
repealed.

Section 2. This act shall take effect upon becoming a law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1013 Court-Ordered Expunction of Criminal History Records  
**SPONSOR(S):** Criminal Justice Subcommittee and Steube  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 812

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Jones	Cunningham
2) Judiciary Committee		Jones 	Havlicak 

### SUMMARY ANALYSIS

Section 943.0585, F.S., sets forth procedures for expunging a criminal history record. When a criminal history record is expunged, criminal justice agencies other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record.

FDLE must issue a certificate of eligibility for expunction (certificate) if the criminal history record meets certain requirements. Currently, a person cannot obtain a certificate if their criminal history record resulted in a trial, unless the record had been sealed for a minimum of 10 years.

The bill removes the provisions prohibiting a person from obtaining a certificate if their criminal history record resulted in a trial. As a result, a person can obtain a certificate if their criminal history record resulted in a trial, regardless of whether the record had been sealed for a minimum of 10 years. Such persons must submit a written and certified statement from a state attorney or statewide prosecutor indicating that a judge or jury rendered a verdict of not guilty. The bill specifies that the records of a person adjudicated not guilty by reason of insanity are not eligible for expunction.

The bill requires FDLE to disclose an expunged criminal history record of a person who is adjudicated not guilty by reason of insanity or who is found to be incompetent to stand trial to any governmental agency that is authorized by state or federal law to determine eligibility to purchase or possess a firearm or to carry a concealed firearm.

The bill also amends s. 943.0585, F.S., to require a person or entity that publishes, displays, or in any way disseminates information regarding an arrest that has been expunged *to remove* such information from any publication, Internet posting, or credit report upon receipt of a certified copy of an order granting a petition to expunge without further notice or cost to the individual who is the subject of the order.

The bill does not appear to have any fiscal impact on state or local governments. However, the bill may negatively impact private businesses. See fiscal section.

The bill is effective on July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Expunging Criminal History Records**

Section 943.0585, F.S., sets forth procedures for expunging a criminal history record. When a criminal history record<sup>1</sup> is expunged, criminal justice agencies<sup>2</sup> other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record.<sup>3</sup> FDLE is required to retain expunged records.<sup>4</sup> Records that have been expunged are confidential and exempt from the public records law,<sup>5</sup> and it is a first degree misdemeanor<sup>6</sup> to divulge their existence.<sup>7</sup>

Persons who have had their criminal history records expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment,<sup>8</sup> petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.<sup>9</sup>

In 1992, the Legislature amended s. 943.0585, F.S., to require a person petitioning the court for an expunction to first obtain a certificate of eligibility for expunction (certificate) from FDLE.<sup>10</sup> In order to receive a certificate, a person must:

- Submit to FDLE a written, certified statement from the appropriate state attorney or statewide prosecutor indicating that:
  - An indictment, information, or other charging document was not filed or issued in the case; or if filed, was dismissed or nolle prosequi by the state attorney or statewide prosecutor or was dismissed by a court of competent jurisdiction;
  - None of the charges related to the record the person wishes to expunge resulted in a trial, without regard to whether the outcome of the trial was other than an adjudication of guilt; and
  - The criminal history record does not relate to a violation of specified offenses regardless of whether adjudication was withheld;<sup>11</sup>

<sup>1</sup> Section 943.045(6), F.S., defines a "criminal history record" as any nonjudicial record maintained by a criminal justice agency containing criminal history information.

<sup>2</sup> Section 943.045(11), F.S., defines a "criminal justice agency" as: 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; or 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.

<sup>3</sup> Section 943.0585(4), F.S. Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order

<sup>4</sup> *Id.*

<sup>5</sup> Section 943.0585(4)(c), F.S.

<sup>6</sup> 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.

<sup>7</sup> Section 943.0585(4)(c), F.S., requires FDLE to disclose expunged criminal history records to specified entities for specified purposes.

<sup>8</sup> These include candidates for employment with a criminal justice agency; applicants for admission to the Florida Bar; those seeking a sensitive position involving direct contact with children, the developmentally disabled, or the elderly with the Department of Children and Family Services, Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice; persons seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; or a Florida seaport.

<sup>9</sup> Section 943.0585(4)(c), F.S.

<sup>10</sup> Chapter 1992-73, L.O.F.

<sup>11</sup> These offenses include: sexual misconduct with developmentally disabled clients, mental health patients, or forensic clients, or the reporting of such sexual misconduct; luring or enticing a child; sexual battery; procuring a person under 18 years for prostitution; lewd, lascivious, or indecent assault upon a child, lewd or lascivious offenses committed on an elderly or disabled person; communications fraud; sexual performance by a child; unlawful distribution of obscene materials to a minor; unlawful activities involving computer pornography; selling or buying minors for the purpose of engaging in sexually explicit conduct; offenses by public

- Pay a \$75 processing fee;
- Submit a certified copy of the disposition of the record they wish to have expunged;
- Have never been adjudicated guilty or delinquent for committing a felony or misdemeanor specified in s. 943.051(3)(b), F.S.,<sup>12</sup> prior to the date of their application for the certificate;
- Have never been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity of the record they wish to have expunged;
- Have never had a prior sealing or expunction of criminal history record unless an expunction is sought for a record previously sealed for 10 years and the record is otherwise eligible for expunction;
- No longer be under any court supervision related to the disposition of the record they wish to have expunged; and
- Have previously obtained a court order sealing the record for a minimum of 10 years because adjudication was withheld or because all charges related to the record they wish to have expunged were not dismissed prior to trial, without regard to whether the outcome of the trial was other than an adjudication of guilt.<sup>13</sup>

Once a petition to expunge is submitted, it is up to the court to decide whether the sealing or expunction is appropriate.<sup>14</sup>

Due to the requirements above, a person cannot obtain a certificate if their criminal history record resulted in a trial, unless the record had been sealed for a minimum of 10 years.<sup>15</sup>

### **Effect of the Bill**

The bill removes the provisions prohibiting a person from obtaining a certificate if their criminal history record resulted in a trial. As a result, a person can obtain a certificate if their criminal history record resulted in a trial, regardless of whether the record had been sealed for a minimum of 10 years. Such persons must submit a written and certified statement from a state attorney or statewide prosecutor indicating that *a judge or jury rendered a verdict of not guilty*. The bill specifies that the records of a person adjudicated not guilty by reason of insanity are not eligible for expunction.

The bill provides that an expunged criminal history record of a person who is adjudicated not guilty by reason of insanity or who is found to be incompetent to stand trial may be retained by FDLE and:

- Entered in state and national databases for use in determining eligibility to purchase or possess a firearm or to carry a concealed firearm; or
- Accessed or used by any governmental agency that is authorized by state or federal law to determine eligibility to purchase or possess a firearm or to carry a concealed firearm, in the course of such agency's official duties.

The bill requires FDLE to disclose an expunged criminal history record of a person who is adjudicated not guilty by reason of insanity or who is found to be incompetent to stand trial to any governmental agency that is authorized by state or federal law to determine eligibility to purchase or possess a firearm or to carry a concealed firearm.

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officers and employees; drug trafficking; and other dangerous crimes such as arson, aggravated assault or battery, kidnapping, murder, robbery, home invasion robbery, carjacking, stalking, domestic violence, and burglary.

<sup>12</sup> These offenses include: assault, as defined in s. 784.011, F.S.; battery, as defined in s. 784.03, F.S.; carrying a concealed weapon, as defined in s. 790.01(1), F.S.; unlawful use of destructive devices or bombs, as defined in s. 790.1615(1), F.S.; negligent treatment of children, as defined in s. 827.05, F.S.; assault or battery on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a) and (b), F.S.; open carrying of a weapon, as defined in s. 790.053 F.S.; exposure of sexual organs, as defined in s. 800.03, F.S.; unlawful possession of a firearm, as defined in s. 790.22(5), F.S.; petit theft, as defined in s. 812.014(3), F.S.; cruelty to animals, as defined in s. 828.12(1), F.S.; arson, as defined in s. 806.031(1), F.S.; and unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property as defined in s. 790.115, F.S.

<sup>13</sup> The does not apply when a plea was not entered or all charges related to the record they wish to have expunged were dismissed prior to trial. Section 943.0585(2), F.S.

<sup>14</sup> Section 943.0585, F.S.

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



The bill amends s. 943.0585(4), F.S., to require a person or entity that publishes, displays, or in any way disseminates information regarding an arrest that has been expunged to *remove* such information from any publication, Internet posting, or credit report upon receipt of a certified copy of an order granting a petition to expunge without further notice or cost to the individual who is the subject of the order.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

Section 2. 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:

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

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

1. Revenues:

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

2. Expenditures:

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

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

The bill requires certain Florida businesses to remove information regarding an arrest that has been expunged from any publication, Internet posting, or credit report upon receipt of a certified copy of an order granting a petition to expunge. Florida businesses engaged in publishing this type of information may be negatively impacted.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The First Amendment to the United States Constitution and Article I, Section 4, of the Florida Constitution protect the rights of individuals to express themselves in a variety of ways. The

constitutions protect not only speech and the written word, but also conduct intended to communicate. When lawmakers attempt to restrict or burden fundamental and basic rights such as these, the laws must not only be directed toward a legitimate public purpose, but they must be drawn as narrowly as possible. As the United States Supreme Court has noted, "[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity."<sup>16</sup> Put another way, statutes cannot be so broad that they prohibit constitutionally protected conduct as well as unprotected conduct.<sup>17</sup>

In *Reno v. American Civil Liberties Union*, the United States Supreme Court stated:

[T]he growth of the Internet has been and continues to be phenomenal. As a matter of constitutional tradition, in the absence of evidence to the contrary, we presume that governmental regulation of the content of speech is more likely to interfere with the free exchange of ideas than encourage it. The interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship.<sup>18</sup>

The bill requires any person or entity that publishes, displays, or in any way disseminates information regarding an arrest that has been expunged *to remove* such information from any publication, Internet posting, or credit report upon receipt of a certified copy of an order granting a petition to expunge. To the extent that the bill regulates content of speech protected by the First Amendment, it could be challenged as being unconstitutional.

#### B. RULE-MAKING AUTHORITY:

The bill may require FDLE to update its rules, however adequate rulemaking authority appears to exist.

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

The bill does not provide a penalty for businesses that do not remove the records when an expunction order is granted, nor would this prohibition apply to businesses outside of Florida.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2014, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed the provisions prohibiting a person from obtaining a certificate if their criminal history record resulted in a trial. As a result, a person can obtain a certificate if their criminal history record resulted in a trial, regardless of whether the record had been sealed for a minimum of 10 years; and
- Clarified that an expunged criminal history record of a person who is adjudicated not guilty by reason of insanity or who is found to be incompetent to stand trial can be retained and disclosed in certain specified instances to specified entities.

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

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<sup>16</sup> *NAACP v. Button*, 371 U.S. 415, 433 (1963).

<sup>17</sup> *Sult v. State*, 906 So.2d 1013 (Fla. 2005).

<sup>18</sup> 521 U.S. 844 (1997).

1                   A bill to be entitled  
 2           An act relating to court-ordered expunction of  
 3           criminal history records; amending s. 943.0585, F.S.;  
 4           revising the information that must be provided in the  
 5           written statement from the state attorney or statewide  
 6           prosecutor in order for a person to be eligible for a  
 7           criminal history record expunction; revising when a  
 8           certificate of eligibility for expunction shall be  
 9           issued; authorizing the Department of Law Enforcement  
 10          to enter certain expunged records in specified  
 11          databases; requiring the Department of Law Enforcement  
 12          to disclose certain expunged records to specified  
 13          governmental entities; requiring a person or entity  
 14          that publishes, displays, or disseminates information  
 15          regarding an arrest that has been expunged to remove  
 16          such information under certain circumstances;  
 17          providing an effective date.

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

20  
 21           Section 1. Paragraphs (a) and (h) of subsection (2) and  
 22           subsection (4) of section 943.0585, Florida Statutes, are  
 23           amended to read:

24           943.0585 Court-ordered expunction of criminal history  
 25           records.—The courts of this state have jurisdiction over their  
 26           own procedures, including the maintenance, expunction, and

27 correction of judicial records containing criminal history  
 28 information to the extent such procedures are not inconsistent  
 29 with the conditions, responsibilities, and duties established by  
 30 this section. Any court of competent jurisdiction may order a  
 31 criminal justice agency to expunge the criminal history record  
 32 of a minor or an adult who complies with the requirements of  
 33 this section. The court shall not order a criminal justice  
 34 agency to expunge a criminal history record until the person  
 35 seeking to expunge a criminal history record has applied for and  
 36 received a certificate of eligibility for expunction pursuant to  
 37 subsection (2). A criminal history record that relates to a  
 38 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
 39 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
 40 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
 41 893.135, s. 916.1075, a violation enumerated in s. 907.041, or  
 42 any violation specified as a predicate offense for registration  
 43 as a sexual predator pursuant to s. 775.21, without regard to  
 44 whether that offense alone is sufficient to require such  
 45 registration, or for registration as a sexual offender pursuant  
 46 to s. 943.0435, may not be expunged, without regard to whether  
 47 adjudication was withheld, if the defendant was found guilty of  
 48 or pled guilty or nolo contendere to the offense, or if the  
 49 defendant, as a minor, was found to have committed, or pled  
 50 guilty or nolo contendere to committing, the offense as a  
 51 delinquent act. The court may only order expunction of a  
 52 criminal history record pertaining to one arrest or one incident

53 of alleged criminal activity, except as provided in this  
 54 section. The court may, at its sole discretion, order the  
 55 expunction of a criminal history record pertaining to more than  
 56 one arrest if the additional arrests directly relate to the  
 57 original arrest. If the court intends to order the expunction of  
 58 records pertaining to such additional arrests, such intent must  
 59 be specified in the order. A criminal justice agency may not  
 60 expunge any record pertaining to such additional arrests if the  
 61 order to expunge does not articulate the intention of the court  
 62 to expunge a record pertaining to more than one arrest. This  
 63 section does not prevent the court from ordering the expunction  
 64 of only a portion of a criminal history record pertaining to one  
 65 arrest or one incident of alleged criminal activity.  
 66 Notwithstanding any law to the contrary, a criminal justice  
 67 agency may comply with laws, court orders, and official requests  
 68 of other jurisdictions relating to expunction, correction, or  
 69 confidential handling of criminal history records or information  
 70 derived therefrom. This section does not confer any right to the  
 71 expunction of any criminal history record, and any request for  
 72 expunction of a criminal history record may be denied at the  
 73 sole discretion of the court.

74 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to  
 75 petitioning the court to expunge a criminal history record, a  
 76 person seeking to expunge a criminal history record shall apply  
 77 to the department for a certificate of eligibility for  
 78 expunction. The department shall, by rule adopted pursuant to

79 chapter 120, establish procedures pertaining to the application  
 80 for and issuance of certificates of eligibility for expunction.  
 81 A certificate of eligibility for expunction is valid for 12  
 82 months after the date stamped on the certificate when issued by  
 83 the department. After that time, the petitioner must reapply to  
 84 the department for a new certificate of eligibility. Eligibility  
 85 for a renewed certification of eligibility must be based on the  
 86 status of the applicant and the law in effect at the time of the  
 87 renewal application. The department shall issue a certificate of  
 88 eligibility for expunction to a person who is the subject of a  
 89 criminal history record if that person:

90 (a) Has obtained, and submitted to the department, a  
 91 written, certified statement from the appropriate state attorney  
 92 or statewide prosecutor which indicates:

- 93 1. That an indictment, information, or other charging  
 94 document was not filed or issued in the case.
- 95 2. That an indictment, information, or other charging  
 96 document, if filed or issued in the case, was dismissed or nolle  
 97 prosequi ~~prosequi~~ by the state attorney or statewide  
 98 prosecutor, or was dismissed by a court of competent  
 99 jurisdiction, or a judge or jury rendered a verdict of not  
 100 guilty. The records of a person adjudicated not guilty by reason  
 101 of insanity are not eligible for expunction under this section  
 102 ~~and that none of the charges related to the arrest or alleged~~  
 103 ~~criminal activity to which the petition to expunge pertains~~  
 104 ~~resulted in a trial, without regard to whether the outcome of~~

105 ~~the trial was other than an adjudication of guilt.~~

106 3. That the criminal history record does not relate to a  
 107 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
 108 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
 109 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
 110 893.135, s. 916.1075, a violation enumerated in s. 907.041, or  
 111 any violation specified as a predicate offense for registration  
 112 as a sexual predator pursuant to s. 775.21, without regard to  
 113 whether that offense alone is sufficient to require such  
 114 registration, or for registration as a sexual offender pursuant  
 115 to s. 943.0435, where the defendant was found guilty of, or pled  
 116 guilty or nolo contendere to any such offense, or that the  
 117 defendant, as a minor, was found to have committed, or pled  
 118 guilty or nolo contendere to committing, such an offense as a  
 119 delinquent act, without regard to whether adjudication was  
 120 withheld.

121 (h) Has previously obtained a court order sealing the  
 122 record under this section, former s. 893.14, former s. 901.33,  
 123 or former s. 943.058 for a minimum of 10 years because  
 124 adjudication was withheld ~~or because all charges related to the~~  
 125 ~~arrest or alleged criminal activity to which the petition to~~  
 126 ~~expunge pertains were not dismissed prior to trial, without~~  
 127 ~~regard to whether the outcome of the trial was other than an~~  
 128 ~~adjudication of guilt.~~ The requirement for the record to have  
 129 previously been sealed for a minimum of 10 years does not apply  
 130 when a plea was not entered, when ~~or~~ all charges related to the

131 arrest or alleged criminal activity to which the petition to  
 132 expunge pertains were dismissed prior to trial, or when a judge  
 133 or jury rendered a verdict of not guilty. The records of a  
 134 person adjudicated not guilty by reason of insanity are not  
 135 eligible for expunction under this section.

136 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any  
 137 criminal history record of a minor or an adult which is ordered  
 138 expunged by a court of competent jurisdiction pursuant to this  
 139 section must be physically destroyed or obliterated by any  
 140 criminal justice agency having custody of such record; except  
 141 that any criminal history record in the custody of the  
 142 department must be retained in all cases. A criminal history  
 143 record ordered expunged that is retained by the department is  
 144 confidential and exempt from the provisions of s. 119.07(1) and  
 145 s. 24(a), Art. I of the State Constitution and not available to  
 146 any person or entity except upon order of a court of competent  
 147 jurisdiction. A criminal justice agency may retain a notation  
 148 indicating compliance with an order to expunge. If a person is  
 149 adjudicated not guilty by reason of insanity or is found to be  
 150 incompetent to stand trial, the expunction of the criminal  
 151 history record shall not prevent entry of the judgment or  
 152 finding in state and national databases for use in determining  
 153 eligibility to purchase or possess a firearm or to carry a  
 154 concealed firearm, as authorized in s. 790.065(2)(a)4.c. and 18  
 155 U.S.C. s. 922(t), nor shall it prevent a governmental agency  
 156 that is authorized by state or federal law to determine



157 eligibility to purchase or possess a firearm or to carry a  
 158 concealed firearm from accessing or using the record of the  
 159 judgment or finding in the course of such agency's official  
 160 duties.

161 (a) The person who is the subject of a criminal history  
 162 record that is expunged under this section or under other  
 163 provisions of law, including former s. 893.14, former s. 901.33,  
 164 and former s. 943.058, may lawfully deny or fail to acknowledge  
 165 the arrests covered by the expunged record, except when the  
 166 subject of the record:

- 167 1. Is a candidate for employment with a criminal justice  
 168 agency;
- 169 2. Is a defendant in a criminal prosecution;
- 170 3. Concurrently or subsequently petitions for relief under  
 171 this section, s. 943.0583, or s. 943.059;
- 172 4. Is a candidate for admission to The Florida Bar;
- 173 5. Is seeking to be employed or licensed by or to contract  
 174 with the Department of Children and Families, the Division of  
 175 Vocational Rehabilitation within the Department of Education,  
 176 the Agency for Health Care Administration, the Agency for  
 177 Persons with Disabilities, the Department of Health, the  
 178 Department of Elderly Affairs, or the Department of Juvenile  
 179 Justice or to be employed or used by such contractor or licensee  
 180 in a sensitive position having direct contact with children, the  
 181 disabled, or the elderly; or
- 182 6. Is seeking to be employed or licensed by the Department

183 of Education, any district school board, any university  
 184 laboratory school, any charter school, any private or parochial  
 185 school, or any local governmental entity that licenses child  
 186 care facilities.

187 (b) Subject to the exceptions in paragraph (a), a person  
 188 who has been granted an expunction under this section, former s.  
 189 893.14, former s. 901.33, or former s. 943.058 may not be held  
 190 under any provision of law of this state to commit perjury or to  
 191 be otherwise liable for giving a false statement by reason of  
 192 such person's failure to recite or acknowledge an expunged  
 193 criminal history record.

194 (c) Information relating to the existence of an expunged  
 195 criminal history record which is provided in accordance with  
 196 paragraph (a) is confidential and exempt from the provisions of  
 197 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
 198 except that the department shall disclose the existence of a  
 199 criminal history record ordered expunged to the entities set  
 200 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their  
 201 respective licensing, access authorization, and employment  
 202 purposes, ~~and~~ to criminal justice agencies for their respective  
 203 criminal justice purposes, and with respect to a governmental  
 204 agency that is authorized by state or federal law to determine  
 205 eligibility to purchase or possess a firearm or to carry a  
 206 concealed firearm, the department shall disclose the record of  
 207 an adjudication of not guilty by reason of insanity or a finding  
 208 of incompetence to stand trial for use in the course of such

209 agency's official duties. It is unlawful for any employee of an  
210 entity set forth in subparagraph (a)1., subparagraph (a)4.,  
211 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to  
212 disclose information relating to the existence of an expunged  
213 criminal history record of a person seeking employment, access  
214 authorization, or licensure with such entity or contractor,  
215 except to the person to whom the criminal history record relates  
216 or to persons having direct responsibility for employment,  
217 access authorization, or licensure decisions. Any person who  
218 violates this paragraph commits a misdemeanor of the first  
219 degree, punishable as provided in s. 775.082 or s. 775.083.

220 (d) A person or entity that publishes, displays, or in any  
221 way disseminates information regarding an arrest that has been  
222 expunged shall remove such information from any publication,  
223 Internet posting, or credit report upon receipt of a certified  
224 copy of an order granting a petition to expunge without further  
225 notice or cost to the individual who is the subject of the  
226 order.

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Steube offered the following:

4 **Amendment (with title amendment)**

5 Between lines 20 and 21, insert:

6 Section 1. Paragraphs (c), (e), and (f) of subsection (3)  
 7 and subsection (5) of section 943.0582, Florida Statutes, are  
 8 amended to read:

9 943.0582 Prearrest, postarrest, or teen court diversion  
 10 program expunction.—

11 (3) The department shall expunge the nonjudicial arrest  
 12 record of a minor who has successfully completed a prearrest or  
 13 postarrest diversion program if that minor:

14 (c) Submits to the department, with the application, an  
 15 official written statement from the state attorney for the  
 16 county in which the arrest occurred certifying that he or she  
 17 has successfully completed that county's prearrest or postarrest



Amendment No. 1

18 diversion program, that his or her participation in the program  
19 was based on an arrest for a nonviolent misdemeanor, or for a  
20 felony that does not relate to a violation of s. 393.135, s.  
21 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s.  
22 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.  
23 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a  
24 violation enumerated in s. 907.041, or any violation specified  
25 as a predicate offense for registration as a sexual predator  
26 pursuant to s. 775.21, without regard to whether that offense  
27 alone is sufficient to require such registration, or for  
28 registration as a sexual offender pursuant to s. 943.0435, and  
29 that he or she has not otherwise been charged with or found to  
30 have committed any criminal offense or comparable ordinance  
31 violation.

32 (e) ~~Participated in a prearrest or postarrest diversion~~  
33 ~~program based on an arrest for a nonviolent misdemeanor that~~  
34 ~~would not qualify as an act of domestic violence as that term is~~  
35 ~~defined in s. 741.28.~~

36 (f) Has never, prior to filing the application for  
37 expunction, been charged with or been found to have committed  
38 any criminal offense or comparable ordinance violation.

39 (5) In the case of a minor whose completion of the program  
40 occurred before the effective date of this section, the  
41 application for prearrest or postarrest diversion expunction  
42 must be submitted within 6 months after the effective date of  
43 this section.

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Amendment No. 1

44       (6) Expunction or sealing granted under this section does  
45 not prevent the minor who receives such relief from petitioning  
46 for the expunction or sealing of a later criminal history record  
47 as provided for in ss. 943.0583, 943.0585, and 943.059, if the  
48 minor is otherwise eligible under those sections.

49

50

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51

**T I T L E   A M E N D M E N T**

52

Remove lines 2-3 and insert:

53

An act relating to expunction; amending 943.0582, F.S.; allowing  
54 minors who have certain felony arrests to have the Department of  
55 Law Enforcement expunge their nonjudicial arrest record upon  
56 successful completion of a prearrest or postarrest diversion  
57 program; extending the application submission date for minors  
58 who completed the program before a certain date; amending s.  
59 943.0585, F.S.;

60



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Steube offered the following:

**Amendment (with title amendment)**

Remove lines 149-226 and insert:

3  
 4  
 5  
 6 is found to be incompetent to stand trial, the expunction of the  
 7 criminal history record shall not prevent entry of the finding  
 8 in state and national databases for use in determining  
 9 eligibility to purchase or possess a firearm or to carry a  
 10 concealed firearm, as authorized in s. 790.065(2)(a)4.c. and 18  
 11 U.S.C. s. 922(t), nor shall it prevent a governmental agency  
 12 that is authorized by state or federal law to determine  
 13 eligibility to purchase or possess a firearm or to carry a  
 14 concealed firearm from accessing or using the record of the  
 15 finding in the course of such agency's official duties.

16 (a) The person who is the subject of a criminal history  
 17 record that is expunged under this section or under other



## Amendment No. 2

18 provisions of law, including former s. 893.14, former s. 901.33,  
19 and former s. 943.058, may lawfully deny or fail to acknowledge  
20 the arrests covered by the expunged record, except when the  
21 subject of the record:

22 1. Is a candidate for employment with a criminal justice  
23 agency;

24 2. Is a defendant in a criminal prosecution;

25 3. Concurrently or subsequently petitions for relief under  
26 this section, s. 943.0583, or s. 943.059;

27 4. Is a candidate for admission to The Florida Bar;

28 5. Is seeking to be employed or licensed by or to contract  
29 with the Department of Children and Families, the Division of  
30 Vocational Rehabilitation within the Department of Education,  
31 the Agency for Health Care Administration, the Agency for  
32 Persons with Disabilities, the Department of Health, the  
33 Department of Elderly Affairs, or the Department of Juvenile  
34 Justice or to be employed or used by such contractor or licensee  
35 in a sensitive position having direct contact with children, the  
36 disabled, or the elderly; or

37 6. Is seeking to be employed or licensed by the Department  
38 of Education, any district school board, any university  
39 laboratory school, any charter school, any private or parochial  
40 school, or any local governmental entity that licenses child  
41 care facilities.

42 (b) Subject to the exceptions in paragraph (a), a person  
43 who has been granted an expunction under this section, former s.





## Amendment No. 2

44 893.14, former s. 901.33, or former s. 943.058 may not be held  
45 under any provision of law of this state to commit perjury or to  
46 be otherwise liable for giving a false statement by reason of  
47 such person's failure to recite or acknowledge an expunged  
48 criminal history record.

49 (c) Information relating to the existence of an expunged  
50 criminal history record which is provided in accordance with  
51 paragraph (a) is confidential and exempt from the provisions of  
52 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
53 except that the department shall disclose the existence of a  
54 criminal history record ordered expunged to the entities set  
55 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their  
56 respective licensing, access authorization, and employment  
57 purposes, and to criminal justice agencies for their respective  
58 criminal justice purposes, and with respect to a governmental  
59 agency that is authorized by state or federal law to determine  
60 eligibility to purchase or possess a firearm or to carry a  
61 concealed firearm, the department shall disclose the record of a  
62 finding of incompetence to stand trial for use in the course of  
63 such agency's official duties. It is unlawful for any employee  
64 of an entity set forth in subparagraph (a)1., subparagraph  
65 (a)4., subparagraph (a)5., subparagraph (a)6., or subparagraph  
66 (a)7. to disclose information relating to the existence of an  
67 expunged criminal history record of a person seeking employment,  
68 access authorization, or licensure with such entity or  
69 contractor, except to the person to whom the criminal history



Amendment No. 2

70 record relates or to persons having direct responsibility for  
71 employment, access authorization, or licensure decisions. Any  
72 person who violates this paragraph commits a misdemeanor of the  
73 first degree, punishable as provided in s. 775.082 or s.  
74 775.083.

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

Remove lines 13-16 and insert:  
governmental entities;



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7035      PCB CRJS 14-08      Juvenile Sentencing

**SPONSOR(S):** Criminal Justice Subcommittee and 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	11 Y, 2 N	deNagy	Lloyd
2) Judiciary Committee		Cox <i>flaa</i>	Havlicak <i>RH</i>

### 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 the judge determines 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.<sup>1</sup> 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.<sup>2</sup> More recently, the Court expanded constitutional doctrine regarding punishment of juvenile offenders in *Graham v. Florida*<sup>3</sup> and *Miller v. Alabama*.<sup>4</sup>

#### ***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.<sup>5</sup>

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

Because Florida has abolished parole<sup>7</sup> and the Court deems the possibility of executive clemency to be remote,<sup>8</sup> 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.<sup>9</sup>

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<sup>1</sup> 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.

<sup>2</sup> 125 S.Ct. 1183 (2005).

<sup>3</sup> 130 S.Ct. 2011 (2010).

<sup>4</sup> 132 S.Ct. 2455 (2012).

<sup>5</sup> *Graham*, 130 S.Ct. 2011 at 2016.

<sup>6</sup> 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. 2d DCA 2012).

<sup>7</sup> 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.

<sup>8</sup> *Graham*, at 2027.

<sup>9</sup> "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.<sup>10</sup>
- 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.<sup>11</sup>

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;<sup>12</sup>
- 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;<sup>13</sup>
- 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.<sup>14</sup>

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.<sup>15</sup> 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.<sup>16</sup> 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*.<sup>17</sup>

Courts also disagree on the number of years that is the functional equivalent of a life sentence for the purposes of *Graham*.<sup>18</sup> 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*.<sup>19</sup> 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.

<sup>10</sup> "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).

<sup>11</sup> "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).

<sup>12</sup> *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.

<sup>13</sup> *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.

<sup>14</sup> *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).

<sup>15</sup> 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.)

<sup>16</sup> *Walle*, at 972.

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

<sup>18</sup> 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 8<sup>th</sup> Amendment.).

<sup>19</sup> 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. Constitution<sup>20</sup> prohibits a sentencing scheme that *mandates* life in prison without the possibility of parole for juvenile offenders.<sup>21</sup> *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.<sup>22</sup> 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.<sup>23,24</sup>

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 retroactively<sup>25</sup> as the ruling is not a “development of fundamental significance.”<sup>26</sup> However, on January 22, 2014, the Second District Court held in *Toye v. State*,<sup>27</sup> 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*.<sup>28</sup> Oral arguments were held on 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 offense<sup>29</sup> 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.

<sup>20</sup> *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 2469.

<sup>23</sup> *Id.* at 2468.

<sup>24</sup> 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.).

<sup>25</sup> *See Geter v. State*, 3D12-1736, 2012 WL 4448860 (Fla. 3d 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).

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

<sup>27</sup> 2014 WL 228639 (Fla. 2nd DCA 2014).

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

<sup>29</sup> 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;<sup>30</sup>
- 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.

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<sup>30</sup> 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,

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:



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

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.





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COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Grant offered the following:

**Amendment**

Remove lines 50-205 and insert:

6 (b)1. A person who is convicted under s. 782.04 of a  
 7 capital felony or an offense that was reclassified as a capital  
 8 felony, which was committed before the person attained 18 years  
 9 of age, who participated in the physical killing of the victim,  
 10 shall be punished by a term of imprisonment for life if, after a  
 11 sentencing hearing conducted by the court in accordance with s.  
 12 921.140, the court finds that life imprisonment is an  
 13 appropriate sentence. If the court finds that life imprisonment  
 14 is not an appropriate sentence, such person shall be punished by  
 15 a term of imprisonment of at least 40 years. A person sentenced  
 16 pursuant to this subsection is entitled to a review of his or  
 17 her sentence in accordance with s. 921.1401.



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18        2. A person who is convicted under s. 782.04 of a capital  
19 felony or an offense that was reclassified as a capital felony,  
20 which was committed before the person attained 18 years of age,  
21 who did not participate in the physical killing of the victim,  
22 may be punished by a term of imprisonment for life or by a term  
23 of years equal to life if, after a sentencing hearing conducted  
24 by the court in accordance with s. 921.140, the court finds that  
25 life imprisonment is an appropriate sentence. A person that is  
26 sentenced to a term of imprisonment of 15 years or more is  
27 entitled to a review of his or her sentence in accordance with  
28 s. 921.1401.

29        3. The court shall make a written finding as to whether a  
30 person is eligible for a sentence review hearing under s.  
31 921.1401(2)(a) or 921.1401(2)(c). Such a finding shall be based  
32 upon whether the defendant participated in the physical killing  
33 of the victim. The court is permitted to find that multiple  
34 defendants contributed to the physical killing of the victim.

35        (3) A person who has been convicted of any other  
36 designated felony may be punished as follows:

37        (a)1. For a life felony committed before ~~prior to~~ October  
38 1, 1983, by a term of imprisonment for life or for a term of at  
39 least years not less than 30 years.

40        2. For a life felony committed on or after October 1,  
41 1983, by a term of imprisonment for life or by a term of  
42 imprisonment not exceeding 40 years.



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43 3. Except as provided in subparagraph 4., for a life  
44 felony committed on or after July 1, 1995, by a term of  
45 imprisonment for life or by imprisonment for a term of years not  
46 exceeding life imprisonment.

47 4.a. Except as provided in sub-subparagraph b., for a life  
48 felony committed on or after September 1, 2005, which is a  
49 violation of s. 800.04(5)(b), by:

50 (I) A term of imprisonment for life; or

51 (II) A split sentence that is a term of at least not less  
52 than 25 years' imprisonment and not exceeding life imprisonment,  
53 followed by probation or community control for the remainder of  
54 the person's natural life, as provided in s. 948.012(4).

55 b. For a life felony committed on or after July 1, 2008,  
56 which is a person's second or subsequent violation of s.  
57 800.04(5)(b), by a term of imprisonment for life.

58 5. Notwithstanding subparagraphs 1.-4., a person who is  
59 convicted under s. 782.04 of an offense that was reclassified as  
60 a life felony, which was committed before the person attained 18  
61 years of age, may be punished by a term of imprisonment for life  
62 or by a term of years equal to life imprisonment if the judge  
63 conducts a sentencing hearing in accordance with s. 921.140 and  
64 finds that life imprisonment or a term of years equal to life  
65 imprisonment is an appropriate sentence.

66 a. A person who participated in the physical killing of  
67 the victim that is sentenced to a term of imprisonment of 20



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68 years or more is entitled to a review of his or her sentence in  
69 accordance with s. 921.1401.

70 b. A person who did not participate in the physical  
71 killing of the victim that is sentenced to a term of  
72 imprisonment of 15 years or more is entitled to a review of his  
73 or her sentence in accordance with s. 921.1401.

74 c. The court shall make a written finding as to whether a  
75 person is eligible for a sentence review hearing under s.  
76 921.1401(2)(b) or 921.1401(2)(c). Such a finding shall be based  
77 upon whether the defendant participated in the physical killing  
78 of the victim. The court is permitted to find that multiple  
79 defendants contributed to the physical killing of the victim.

80 (b)1. For a felony of the first degree, by a term of  
81 imprisonment not exceeding 30 years or, when specifically  
82 provided by statute, by imprisonment for a term of years not  
83 exceeding life imprisonment.

84 2. Notwithstanding subparagraph 1., a person convicted  
85 under s. 782.04 of a first degree felony punishable by a term of  
86 years not exceeding life imprisonment or an offense that was  
87 reclassified as a first degree felony punishable by a term of  
88 years not exceeding life, which was committed before the person  
89 attained 18 years of age, may be punished by a term of years  
90 equal to life imprisonment if the judge conducts a sentencing  
91 hearing in accordance with s. 921.140 and finds that a term of  
92 years equal to life imprisonment is an appropriate sentence.



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93 a. A person who participated in the physical killing of  
94 the victim that is sentenced to a term of imprisonment of 20  
95 years or more is entitled to a review of his or her sentence in  
96 accordance with s. 921.1401.

97 b. A person who did not participate in the physical  
98 killing of the victim that is sentenced to a term of  
99 imprisonment of 15 years or more is entitled to a review of his  
100 or her sentence in accordance with s. 921.1401.

101 c. The court shall make a written finding as to whether a  
102 person is eligible for a sentence review hearing under s.  
103 921.1401(2) (b) or 921.1401(2) (c). Such a finding shall be based  
104 upon whether the defendant participated in the physical killing  
105 of the victim. The court is permitted to find that multiple  
106 defendants contributed to the physical killing of the victim.

107 (c) Notwithstanding paragraphs (a) and (b), a person  
108 convicted of an offense that is not included in s. 782.04, but  
109 which is an offense that is a life felony or is punishable by  
110 term of imprisonment for life or by a term of years not  
111 exceeding life imprisonment, or an offense that was reclassified  
112 as a life felony or an offense punishable by a term of  
113 imprisonment for life or by a term of years not exceeding life  
114 imprisonment, which was committed before the person attained 18  
115 years of age, may be punished by a term of imprisonment for life  
116 or a term of years equal to life imprisonment if the judge  
117 conducts a sentencing hearing in accordance with s. 921.140 and  
118 finds that life imprisonment or a term of years equal to life



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119 imprisonment is an appropriate sentence. A person sentenced to a  
120 term of imprisonment of 20 years or more is entitled to a review  
121 of his or her sentence in accordance with s. 921.1401.

122 (d)(e) For a felony of the second degree, by a term of  
123 imprisonment not exceeding 15 years.

124 (e)(d) For a felony of the third degree, by a term of  
125 imprisonment not exceeding 5 years.

126 Section 2. Section 921.140, Florida Statutes, is created  
127 to read:

128 921.140 Sentence of life imprisonment for persons who are  
129 under the age of 18 years at the time of the offense; sentencing  
130 proceedings.-

131 (1) Upon conviction or adjudication of guilt of an offense  
132 described in ss. 775.082(1)(b), (3)(a)5., (3)(b)2., or (3)(c)  
133 which was committed on or after July 1, 2014, the court may  
134 conduct a separate sentencing hearing to determine if a term of  
135 imprisonment for life or a term of years equal to life  
136 imprisonment is an appropriate sentence.

137 (2) In determining whether life imprisonment or a term of  
138 years equal to life imprisonment is an appropriate sentence, the  
139 court shall consider factors relevant to the offense and the  
140 defendant's youth and attendant circumstances, including, but  
141 not limited to:

142 (a) The nature and circumstances of the offense committed  
143 by the defendant.



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144 (b) The effect of the crime on the victim's family and on  
145 the community.

146 (c) The defendant's age, maturity, intellectual capacity,  
147 and mental and emotional health at the time of the offense.

148 (d) The defendant's background, including his or her  
149 family, home, and community environment.

150 (e) The effect, if any, of immaturity, impetuosity, or  
151 failure to appreciate risks and consequences on the defendant's  
152 participation in the offense.

153 (f) The extent of the defendant's participation in the  
154 offense.

155 (g) The effect, if any, of familial pressure or peer  
156 pressure on the defendant's actions.

157 (h) The nature and extent of the defendant's prior  
158 criminal history.

159 (i) The effect, if any, of characteristics attributable to  
160 the defendant's youth on the defendant's judgment.

161 (j) The possibility of rehabilitating the defendant.

162 Section 3. Section 921.1401, Florida Statutes, is created  
163 to read:

164 921.1401 Review of sentences for persons convicted of  
165 specified offenses committed while under the age of 18 years.-

166 (1) For purposes of this section, the term "juvenile  
167 offender" means a person sentenced to imprisonment in the  
168 custody of the Department of Corrections for an offense



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169 committed on or after July 1, 2014, and committed before he or  
170 she attained 18 years of age.

171 (2) (a) A juvenile offender sentenced to a term of  
172 imprisonment for life, a term of years equal to life  
173 imprisonment, or a term of 40 years or more under s.  
174 775.082(1) (b)1. is entitled to a review of his or her sentence  
175 after 25 years.

176 (b) A juvenile offender sentenced to a term of  
177 imprisonment for life, a term of years equal to life  
178 imprisonment, or a term of 20 years or more under s.  
179 775.082(3) (a)5.a., 775.082(3) (b)2.a., or 775.082(3) (c) is  
180 entitled to a review of his or her sentence after 20 years.

181 (c) A juvenile offender sentenced to a term of  
182 imprisonment for life, a term of years equal to life  
183 imprisonment, or a term of 15 years or more under s.  
184 775.082(1) (b)2., 775.082(3) (a)5.b., or 775.082(3) (b)2.b. is  
185 entitled to a review of his or her sentence after 15 years.

186 (3) (a) A juvenile offender who is not resentenced at the  
187 initial sentence review hearing under paragraph (2) (a) is  
188 eligible for one subsequent sentence review hearing 10 years  
189 after the court's initial review.

190 (b) A juvenile offender who is not resentenced at the  
191 initial sentence review hearing under paragraph (2) (b) is  
192 eligible for two subsequent sentence review hearings to occur 10  
193 years and 15 years after the court's initial review.





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194       (c) A juvenile offender who is not resentenced at the  
195 initial sentence review hearing under paragraph (2)(c) is  
196 eligible for two subsequent sentence review hearings to occur at  
197 5 years and 10 years after the court's initial review.

198       (4) The Department of Corrections shall notify a juvenile  
199 offender of his or her eligibility to request a sentence review  
200 hearing 18 months before the juvenile offender is entitled to a  
201 sentence review hearing under this section.

202       (5) A juvenile offender seeking sentence review pursuant  
203 to subsection (2) must submit an application to the court of  
204 original jurisdiction requesting that a sentence review hearing  
205 be held. The juvenile offender must submit a new application to  
206 the court of original jurisdiction to request subsequent  
207 sentence review hearings pursuant to subsection (3). The  
208 sentencing court shall retain original jurisdiction for the  
209 duration of the sentence for this purpose.

210       (6) A juvenile offender who is eligible for a sentence  
211  
212