



Rules, Calendar & Ethics Committee

January 14, 2016

10:30 AM

404 HOB

Meeting Packet

**Steve Crisafulli
Speaker**

**Ritch Workman
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Rules, Calendar & Ethics Committee

Start Date and Time: Thursday, January 14, 2016 10:30 am

End Date and Time: Thursday, January 14, 2016 12:00 pm

Location: Sumner Hall (404 HOB)

Duration: 1.50 hrs

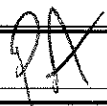
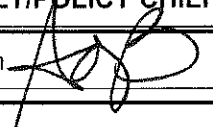
Consideration of the following proposed committee bill(s):

PCB RCEC 16-05 -- Public Corruption

NOTICE FINALIZED on 01/12/2016 3:47PM by Jones.Missy

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB RCEC 16-05 Public Corruption
SPONSOR(S): Rules, Calendar & Ethics Committee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 582

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Rules, Calendar & Ethics Committee		Aziz 	Birtman 

SUMMARY ANALYSIS

Chapter 838, F.S., establishes a number of criminal offenses related to public officials or employees and the performance of their official duties, including bribery, unlawful compensation for official behavior, official misconduct, and bid tampering. In order to be convicted of an offense under ch. 838, F.S., one must act "corruptly" or "with corrupt intent," which is defined as "acting knowingly and dishonestly for a wrongful purpose."

The offenses defined in ch. 838, F.S., only apply to the following persons and those who solicit such persons:

- Any officer or employee of a state, county, municipal, or special district agency or entity;
- Any legislative or judicial officer or employee;
- Any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function; or
- A candidate for election or appointment to any of the positions listed in this subsection, or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

The bill expands the applicability of offenses in ch. 838, F.S., to officers and employees of a public entity created or authorized by law. Also, the bill makes public contractors eligible for prosecution of official misconduct. The bill defines public contractors as any person, or any officer or employee of a person, who has entered into a contract with a governmental entity. Additionally, the bill widens the scope of bid tampering to include public servants and public contractors who have contracted with a governmental entity to assist in a competitive procurement.

The bill also revises the level of intent for offenses under ch. 838, F.S., from "corruptly" or "with corrupt intent" to "knowingly and intentionally."

Furthermore, the bill provides that public servants and public contractors may be reimbursed in the same manner as provided by common law for any attorney's fees incurred defending public corruption charges.

The bill does not appear to have a fiscal impact on local governments. The bill may have an indeterminate prison bed impact on the Department of Corrections.

The bill is effective October 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public corruption is a breach of trust by a government official often with the aid of a private sector accomplice.¹ From 2003-2013, Florida was ranked third in the country for federal public corruption convictions at the local, state, and federal level.² In 2012, Integrity Florida³ ranked the state as number one in government corruption.⁴

Florida law provides for two methods to fight public corruption in the state. The Code of Ethics applies administrative and civil penalties to government actors. Chapter 838, F.S., provides criminal penalties to both the public servant and those who solicit a public servant. Civil violations under the Code of Ethics require a lesser standard of proof than any criminal penalties under ch. 838, F.S.

Chapter 838, F.S., Bribery; Misuse of Public Office

Chapter 838, F.S., establishes a number of criminal offenses related to public officials or employees and the performance of their official duties, including bribery,⁵ unlawful compensation for official behavior,⁶ official misconduct,⁷ and bid tampering.⁸ An offense under ch. 838, F.S., requires that a person act "corruptly" or "with corrupt intent", which is defined as "acting knowingly and dishonestly for a wrongful purpose."⁹ A person convicted of an offense defined in ch. 838, F.S., is:

- Convicted of a second degree¹⁰ or third degree¹¹ felony, depending on the offense;
- May be ordered to pay restitution; and
- Must perform 250 hours of community service.¹²

The offenses in ch. 838, F.S., apply to both public servants and the private party soliciting the public servant. Chapter 838, F.S., defines public servant as:

- Any officer or employee of a state, county, municipal, or special district agency or entity;
- Any legislative or judicial officer or employee;
- Any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function; or
- A candidate for election or appointment to any of the positions listed in this subsection, or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.¹³

¹ FBI, *Public Corruption: Why It's Our #1 Criminal Priority*, https://www.fbi.gov/news/stories/2010/march/corruption_032610 (last visited Jan. 7, 2016).

² Alan Stonecipher and Ben Wilcox, *Florida's Path to Ethics Reform*, Integrity Florida, available at <http://www.integrityflorida.org/wp-content/uploads/2016/01/Floridas-Path-to-Ethics-Reform-final.pdf>.

³ Founded in 2012, Integrity Florida is a nonpartisan, nonprofit research institute and government watchdog whose mission is to promote integrity in government and expose public corruption. *About Integrity Florida*, <http://www.integrityflorida.org/about-us/> (last visited Jan. 7, 2016).

⁴ William March, *Study ranks Florida No. 1 in government corruption*, THE TAMPA TRIBUNE (May 31, 2012) <http://www.tbo.com/ap/politics/study-ranks-florida-no--in-government-corruption-409916>.

⁵ s. 838.015, F.S.

⁶ s. 838.016, F.S.

⁷ s. 838.022, F.S.

⁸ s. 838.22, F.S.

⁹ s. 833.014(4), F.S.

¹⁰ 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.

¹¹ 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.

¹² s. 838.23, F.S.

Bribery

Section 838.015, F.S., states it is a second degree felony for anyone to corruptly give, offer, or promise to any public servant, or, if a public servant, corruptly to request, solicit, accept, or agree to accept for himself or herself or another, any pecuniary or other benefit not authorized by law with an intent or purpose to influence the performance of any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of a public servant, in violation of a public duty, or in performance of a public duty.

Unlawful Compensation or Reward for Official Behavior

Section 838.016, F.S., pertains to unlawful compensation or reward for official behavior. It is a second degree felony to corruptly give, offer, or promise to any public servant any benefit not authorized by law; or for any public servant to corruptly request, solicit, accept or agree to accept any benefit not authorized by law:

- For the past, present, or future performance, nonperformance or violation of any act or omission; or
 - For the past, present, or future exertion of any influence upon or with any other public servant regarding any act or omission
- which the person believes to have been or the public servant represents to have been either within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.

Official Misconduct

Section 838.022(1), F.S., provides that it "is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause harm to another to:

- Falsify, or cause another person to falsify, any official record or official document;
- Conceal, cover up, destroy, mutilate, or alter any official record or official document or cause another person to perform such an act; or
- Obstruct, delay, or prevent the communication of information relating to the commission of a felony that directly involves or affects the public agency or public entity served by the public servant.

An official record or official document includes only public records.¹⁴ Any person who violates this section commits a felony of the third degree.

Bid Tampering

Section 838.22(1), F.S., provides that it is a second degree felony for a public servant, with corrupt intent to influence or attempt to influence the competitive bidding process undertaken by any state, county, municipal, or special district agency, or any other public entity, for the procurement of commodities or services, to:

- Disclose material information concerning a bid or other aspects of the competitive bidding process when such information is not publicly disclosed; or
- Alter or amend a submitted bid, documents or other materials supporting a submitted bid, or bid results for the purpose of intentionally providing a competitive advantage to any person who submits a bid.

Additionally, s. 838.22(2), F.S., provides that it is a second degree felony for a public servant, with corrupt intent to obtain a benefit for any person or to cause unlawful harm to another, to circumvent a competitive bidding process required by law or rule by using a sole-source contract for commodities or

¹³ s. 838.014(6), F.S.

¹⁴ s. 838.022(2)(b), F.S.

services. Any person who knowingly agrees, conspires, combines, or confederates, directly or indirectly, with a public servant to tamper bids through these actions commits a second degree felony.¹⁵

2010 Statewide Grand Jury Recommendations

In 2010, upon the petition of then Governor Charlie Crist, a state-wide grand jury was impaneled to examine criminal activity of public officials who abused their office and whether prosecutors have sufficient resources to combat corruption.¹⁶ The grand jury identified deficiencies in current laws and made detailed recommendations to improve anti-corruption initiatives. Their recommendations included expanding the definition of “public servant” under ch. 838, F.S., and removing the requirement of “corrupt intent” from offenses in ch. 838, F.S. and replacing it with “knowingly or intentionally.”

Definition of Public Servant

The Statewide Grand Jury found that “many of our governmental duties have been shifted to private or semi-private entities and actors who do not fall within the existing narrow definition and thus escape prosecution under anti-corruption laws.”¹⁷ The grand jury listed examples of when non-governmental entities, performing governmental functions, acted corruptly but evaded charges due to them not fitting within the definition of public servant in ch. 838, F.S., such as a private, nonprofit corporation that was accepting cash to falsify community service hours of probationers.¹⁸

Effect of the Bill — Definition of Public Servant

The bill expands the population of persons subject to criminal sanction under ch. 838, F.S., by amending the definition of public servant, creating a new definition of public contractor applicable to official misconduct, and including public contractors who contract with a governmental entity to assist in competitive procurement in bid tampering offenses. The bill redefines the term “public servant” as any officer or employee of a governmental entity, including any executive, legislative, or judicial branch. The bill creates a new definition for governmental entity, which is defined as:

- An agency or entity of the state,
- A county,
- A municipality,
- A special district, or
- Any other public entity created or authorized by law.

Thus, the bill makes the criminal offenses of bribery, unlawful compensation, official misconduct, and other offenses in ch. 838, F.S., applicable to officers or employees of public entities created or authorized by law, which includes but is not limited to officers and employees of Citizens Property Insurance Corporation,¹⁹ Prison Rehabilitative Industries and Diversified Enterprises, Inc.,²⁰ and Enterprise Florida, Inc.²¹

Additionally, the bill expands who may be prosecuted for official misconduct. The bill creates a new definition of public contractor, which is defined as any person, officer, or employee of a person, who has entered into a contract with a governmental entity. The term “person” in the definition of public contractor means individuals, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.²² Under the amended offense of official misconduct, it is unlawful for a public servant or a public contractor to

¹⁵ s. 838.22(3), F.S.

¹⁶ Nineteenth Statewide Grand Jury, A Study of Public Corruption in Florida and Recommended Solutions, Case No. SC 09-1910, December 17, 2010. Available online at: [http://myfloridalegal.com/webfiles.nsf/WF/JFAO-8CLT9A/\\$file/19thSWGJInterimReport.pdf](http://myfloridalegal.com/webfiles.nsf/WF/JFAO-8CLT9A/$file/19thSWGJInterimReport.pdf) (last visited on Jan. 7, 2016).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ s. 627.351(6), F.S.

²⁰ s. 946.5025, F.S.

²¹ s. 288.901, F.S.

²² s. 1.01(3), F.S.

falsify, or cause another person to falsify any official record or official document or to conceal, cover up, destroy, mutilate, or alter any official record or official document, except as authorized by law or contract.

The bill expands the offense of bid tampering to public contractors who have contracted with a governmental entity to assist in a competitive procurement. If a public contractor who has contracted with a governmental entity to assist in competitive procurement attempts to influence a competitive solicitation by making a disclosure, except as authorized by law, of material information concerning a vendor's response when such information is not public disclosed, then that public contractor commits a second degree felony. The same prohibition applies to public contractors who alter or amend any evaluation results relating to the competitive solicitation for the purpose of intentionally providing a competitive advantage to any person who submits a bid.

The bill reenacts several sections of law to incorporate amendments by the bill to the definition of public servant.

Mens Rea

Mens rea is "the state of mind that the prosecution, to secure a conviction, must prove that a defendant had when committing a crime."²³ At common law, all crimes consisted of both an act or omission coupled with a requisite guilty knowledge or mens rea.²⁴ The general rule was that a scienter²⁵ or mens rea was a necessary element in the indictment and proof of every crime.²⁶ Subsequently, this rule is generally followed in regard to statutory crimes.²⁷ Standard criminal mens rea requirements include intentionally, knowingly, recklessly, or negligently.²⁸

The Statewide Grand Jury recommended removing the additional element of "corruptly" or "with corrupt intent" from the offenses of bribery, unlawful compensation, official misconduct and bid tampering.²⁹ The grand jury found the scienter of "acting knowingly and dishonestly for a wrongful purpose"³⁰ limits the "effectiveness of Florida's criminal anti-corruption laws by placing an extra burden beyond the requirement of criminal intent that is standard in criminal offenses."³¹ Often, by requiring "corrupt intent," the prosecution must provide testimony from one of the actors involved in order to prove they acted with a wrongful purpose. The grand jury suggested the standard criminal burden of intentionally or knowingly be used in place of corrupt intent.

Effect of the Bill — Mens Rea

The bill repeals the element of corrupt intent from the offenses of bribery, unlawful compensation for official behavior, official misconduct, and bid tampering. The bill replaces the corrupt element with the standard element of "knowingly and intentionally." Under the bill, a prosecutor will no longer have to show a defendant acted dishonestly for a wrongful purpose by accepting a bribe but rather that the defendant knowingly and intentionally accepted the bribe.

Attorney's Fees

Under common law, a public officer who successfully defends charges of misconduct while in office is entitled to be reimbursed for his or her attorney's fees accrued defending said charges.³² The

²³ BLACK'S LAW DICTIONARY (10th ed. 2014).

²⁴ *State v. Giorgetti*, 868 So. 2d 512, 515 (Fla. 2004).

²⁵ Black's Law Dictionary defines scienter as "a degree of knowledge that makes a person legally responsible for the consequences of his or her act or omission; the fact of an act's having been done knowingly, esp. as a ground for civil damages or criminal punishment." BLACK'S LAW DICTIONARY (10th ed. 2014).

²⁶ *Chicone v. State*, 684 So. 2d 736, 741 (Fla. 1996).

²⁷ *Id.*

²⁸ § 2.02. General Requirements of Culpability., Model Penal Code § 2.02.

²⁹ Nineteenth Statewide Grand Jury, *supra* note 26.

³⁰ s. 838.014(4), F.S.

³¹ Nineteenth Statewide Grand Jury, *supra* note 26.

³² *Thorner v. City of Ft. Walton Beach*, 568 So. 2d 914, 916 (Fla. 1990).

reimbursement applies regardless if the official is defending their conduct in either civil or criminal proceedings.³³ However, in order to be entitled to attorney's fees, the litigation must arise out of or in connection with the performance of their official duties and serve a public purpose.³⁴ Inherent in the requirement of a "public purpose" is that the public officer was not advancing their own private pecuniary interests.³⁵ Thus, in order to be reimbursed, the public officer must successfully defend themselves against charges and demonstrate their actions were for a public purpose.

Effect of the Bill — Attorney's Fees

The bill provides public servants and public contractors may recover attorney fees in the same manner as provided by general law for public officers and employees with respect to the enforcement of public corruption offenses in ch. 838, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 838.014, F.S., relating to definitions.

Section 2. Amends s. 838.015, F.S., relating to bribery.

Section 3. Amends s. 838.016, F.S., relating to unlawful compensation or reward for official behavior.

Section 4. Amends s. 838.022, F.S., relating to official misconduct.

Section 5. Amends s. 838.22, F.S., relating to bid tampering.

Section 6. Creating s. 838.24, F.S., relating to attorney fees.

Section 7. Reenacts s. 112.534, F.S., relating to failure to comply; official misconduct.

Section 8. Reenacts s. 117.01, F.S., relating to appointment, application, suspension, revocation, application fee, bond, and oath.

Section 9. Reenacts s. 817.568, F.S., relating to criminal use of personal identification information.

Section 10 -11. Reenacts s. 921.0022, F.S., relating to the Criminal Punishment Code; offense severity ranking chart.

Section 12. Provides an effective date of October 1, 2016.

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 expands those who are eligible for prosecution for felony offenses in ch. 838, F.S., and thus the bill may have an indeterminate prison bed impact on the Department of Corrections.

³³ *Chavez v. City of Tampa*, 560 So. 2d 1214, 1217 (Fla. 2d DCA 1990).

³⁴ *Thornber*, 568 So. 2d at 916.

³⁵ *Chavez*, 560 So. 2d at 1217.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill 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 public corruption; amending s.
 3 838.014, F.S.; revising and providing definitions;
 4 amending s. 838.015, F.S.; revising the definition of
 5 the term "bribery"; revising requirements for
 6 prosecution; amending s. 838.016, F.S.; revising the
 7 prohibition against unlawful compensation or reward
 8 for official behavior to conform to changes made by
 9 the act; amending s. 838.022, F.S.; revising the
 10 prohibition against official misconduct to conform to
 11 changes made by the act; revising applicability of the
 12 offense to include public contractors; amending s.
 13 838.22, F.S.; revising the prohibition against bid
 14 tampering to conform to changes made by the act;
 15 revising applicability of the offense to include
 16 specified public contractors; creating s. 838.24,
 17 F.S.; authorizing the award of attorney fees to public
 18 servants and public contractors under certain
 19 conditions; reenacting s. 112.534(2)(a), F.S.,
 20 relating to official misconduct; reenacting s.
 21 117.01(4)(d), F.S., relating to appointment,
 22 application, suspension, revocation, application fee,
 23 bond, and oath; reenacting s. 817.568(11), F.S.,
 24 relating to criminal use of personal identification
 25 information; reenacting ss. 921.0022(3)(d) and (g),
 26 F.S., relating to the Criminal Punishment Code offense

27 | severity ranking chart; providing an effective date.

28 |

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

30 |

31 | Section 1. Subsection (7) of section 838.014, Florida
 32 | Statutes, is renumbered as subsection (8), present subsections
 33 | (4) and (6) are amended, and a new subsection (6) is added to
 34 | that section, to read:

35 | 838.014 Definitions.—As used in this chapter, the term:

36 | (4) "Governmental entity" means an agency or entity of the
 37 | state, a county, municipality, or special district or any other
 38 | public entity created or authorized by law ~~"Corruptly" or "with~~
 39 | ~~corrupt intent"~~ ~~means acting knowingly and dishonestly for a~~
 40 | ~~wrongful purpose.~~

41 | (6) "Public contractor" means, for purposes of ss. 838.022
 42 | and 838.22 only:

43 | (a) Any person, as defined in s. 1.01(3), who has entered
 44 | into a contract with a governmental entity; or

45 | (b) Any officer or employee of a person, as defined in s.
 46 | 1.01(3), who has entered into a contract with a governmental
 47 | entity.

48 | ~~(7)-(6)~~ "Public servant" means:

49 | (a) Any officer or employee of a governmental state,
 50 | ~~county, municipal, or special district agency or entity,~~
 51 | including

52 | ~~(b)~~ any executive, legislative, or judicial branch officer

53 or employee;

54 ~~(b)(e)~~ Any person, except a witness, who acts as a general
 55 or special magistrate, receiver, auditor, arbitrator, umpire,
 56 referee, consultant, or hearing officer while performing a
 57 governmental function; or

58 ~~(c)(d)~~ A candidate for election or appointment to any of
 59 the officer positions listed in this subsection, or an
 60 individual who has been elected to, but has yet to officially
 61 assume the responsibilities of, public office.

62 Section 2. Subsection (1) of section 838.015, Florida
 63 Statutes, is amended to read:

64 838.015 Bribery.—

65 (1) "Bribery" means ~~corruptly~~ to knowingly and
 66 intentionally give, offer, or promise to any public servant, or,
 67 if a public servant, ~~corruptly~~ to knowingly and intentionally
 68 request, solicit, accept, or agree to accept for himself or
 69 herself or another, any pecuniary or other benefit not
 70 authorized by law with an intent or purpose to influence the
 71 performance of any act or omission which the person believes to
 72 be, or the public servant represents as being, within the
 73 official discretion of a public servant, in violation of a
 74 public duty, or in performance of a public duty.

75 Section 3. Subsections (1) and (2) of section 838.016,
 76 Florida Statutes, are amended to read:

77 838.016 Unlawful compensation or reward for official
 78 behavior.—

79 (1) It is unlawful for any person ~~corruptly~~ to knowingly
 80 and intentionally give, offer, or promise to any public servant,
 81 or, if a public servant, ~~corruptly~~ to knowingly and
 82 intentionally request, solicit, accept, or agree to accept, any
 83 pecuniary or other benefit not authorized by law, for the past,
 84 present, or future performance, nonperformance, or violation of
 85 any act or omission which the person believes to have been, or
 86 the public servant represents as having been, either within the
 87 official discretion of the public servant, in violation of a
 88 public duty, or in performance of a public duty. This section
 89 may not ~~Nothing herein shall~~ be construed to preclude a public
 90 servant from accepting rewards for services performed in
 91 apprehending any criminal.

92 (2) It is unlawful for any person ~~corruptly~~ to knowingly
 93 and intentionally give, offer, or promise to any public servant,
 94 or, if a public servant, ~~corruptly~~ to knowingly and
 95 intentionally request, solicit, accept, or agree to accept, any
 96 pecuniary or other benefit not authorized by law for the past,
 97 present, or future exertion of any influence upon or with any
 98 other public servant regarding any act or omission which the
 99 person believes to have been, or which is represented to him or
 100 her as having been, either within the official discretion of the
 101 other public servant, in violation of a public duty, or in
 102 performance of a public duty.

103 Section 4. Subsection (1) of section 838.022, Florida
 104 Statutes, is amended, and subsection (2) of that section is

105 republished, to read:

106 838.022 Official misconduct.—

107 (1) It is unlawful for a public servant or public
 108 contractor, ~~with corrupt intent~~ to knowingly and intentionally
 109 obtain a benefit for any person or to cause unlawful harm to
 110 another, by ~~to~~:

111 (a) Falsifying ~~Falsify~~, or causing ~~cause~~ another person to
 112 falsify, any official record or official document;

113 (b) Concealing, covering up, destroying, mutilating, or
 114 altering ~~Conceal, cover up, destroy, mutilate, or alter~~ any
 115 official record or official document, except as authorized by
 116 law or contract, or causing ~~cause~~ another person to perform such
 117 an act; or

118 (c) Obstructing, delaying, or preventing ~~Obstruct, delay,~~
 119 ~~or prevent~~ the communication of information relating to the
 120 commission of a felony that directly involves or affects the
 121 government ~~public agency or public~~ entity served by the public
 122 servant or public contractor.

123 (2) For the purposes of this section:

124 (a) The term "public servant" does not include a candidate
 125 who does not otherwise qualify as a public servant.

126 (b) An official record or official document includes only
 127 public records.

128 Section 5. Section 838.22, Florida Statutes, is amended to
 129 read:

130 838.22 Bid tampering.—

131 | (1) It is unlawful for a public servant or a public
 132 | contractor who has contracted with a governmental entity to
 133 | assist in a competitive procurement, ~~with corrupt intent to~~
 134 | knowingly and intentionally influence or attempt to influence
 135 | the competitive solicitation bidding process undertaken by any
 136 | governmental state, county, municipal, or special district
 137 | agency, or any other public entity, for the procurement of
 138 | commodities or services, by ~~to~~:

139 | (a) Disclosing, except as authorized by law, Disclose
 140 | material information concerning a vendor's response, any
 141 | evaluation results, bid or other aspects of the competitive
 142 | solicitation bidding process when such information is not
 143 | publicly disclosed.

144 | (b) Altering or amending ~~Alter or amend~~ a submitted
 145 | response bid, documents or other materials supporting a
 146 | submitted response bid, or any evaluation bid results relating
 147 | to the competitive solicitation for the purpose of intentionally
 148 | providing a competitive advantage to any person who submits a
 149 | response bid.

150 | (2) It is unlawful for a public servant or a public
 151 | contractor who has contracted with a governmental entity to
 152 | assist in a competitive procurement, ~~with corrupt intent to~~
 153 | knowingly and intentionally obtain a benefit for any person or
 154 | to cause unlawful harm to another, ~~to circumvent~~ by
 155 | circumventing a competitive solicitation bidding process
 156 | required by law or rule through the use of ~~by using~~ a sole-

157 source contract for commodities or services.

158 (3) It is unlawful for any person to knowingly agree,
 159 conspire, combine, or confederate, directly or indirectly, with
 160 a public servant or a public contractor who has contracted with
 161 a governmental entity to assist in a competitive procurement to
 162 violate subsection (1) or subsection (2).

163 (4) It is unlawful for any person to knowingly enter into
 164 a contract for commodities or services which was secured by a
 165 public servant or a public contractor who has contracted with a
 166 governmental entity to assist in a competitive procurement
 167 acting in violation of subsection (1) or subsection (2).

168 (5) Any person who violates this section commits a felony
 169 of the second degree, punishable as provided in s. 775.082, s.
 170 775.083, or s. 775.084.

171 Section 6. Section 838.24, Florida Statutes, is created to
 172 read:

173 838.24 Attorney Fees.—Public servants and public
 174 contractors prosecuted for a violation under this act may
 175 recover attorney fees in the same manner as provided by common
 176 law for public officers and employees with respect to the
 177 enforcement of public corruption laws.

178 Section 7. For the purpose of incorporating the amendment
 179 made by this act to section 838.022, Florida Statutes, in a
 180 reference thereto, paragraph (a) of subsection (2) of section
 181 112.534, Florida Statutes, is reenacted to read:

182 112.534 Failure to comply; official misconduct.—

183 (2)(a) All the provisions of s. 838.022 shall apply to
184 this part.

185 Section 8. For the purpose of incorporating the amendment
186 made by this act to section 838.022, Florida Statutes, in a
187 reference thereto, paragraph (d) of subsection (4) of section
188 117.01, Florida Statutes, is reenacted to read:

189 117.01 Appointment, application, suspension, revocation,
190 application fee, bond, and oath.—

191 (4) The Governor may suspend a notary public for any of
192 the grounds provided in s. 7, Art. IV of the State Constitution.
193 Grounds constituting malfeasance, misfeasance, or neglect of
194 duty include, but are not limited to, the following:

195 (d) Official misconduct as defined in s. 838.022.

196 Section 9. For the purpose of incorporating the amendment
197 made by this act to section 838.014, Florida Statutes, in a
198 reference thereto, subsection (11) of section 817.568, Florida
199 Statutes, is reenacted to read:

200 817.568 Criminal use of personal identification
201 information.—

202 (11) A person who willfully and without authorization
203 fraudulently uses personal identification information concerning
204 an individual who is 60 years of age or older; a disabled adult
205 as defined in s. 825.101; a public servant as defined in s.
206 838.014; a veteran as defined in s. 1.01; a first responder as
207 defined in s. 125.01045; an individual who is employed by the
208 State of Florida; or an individual who is employed by the

209 Federal Government without first obtaining the consent of that
 210 individual commits a felony of the second degree, punishable as
 211 provided in s. 775.082, s. 775.083, or s. 775.084.

212 Section 10. For the purpose of incorporating the amendment
 213 made by this act to sections 838.015, 838.016, and 838.22,
 214 Florida Statutes, in references thereto, paragraph (g) of
 215 subsection (3) of section 921.0022, Florida Statutes, is
 216 reenacted to read:

217 921.0022 Criminal Punishment Code; offense severity
 218 ranking chart.—

219 (3) OFFENSE SEVERITY RANKING CHART

220 (g) LEVEL 7

221

Florida Statute	Felony Degree	Description
316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety

222

223

224

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while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.

225

327.35(3)(c)2. 3rd Vessel BUI resulting in serious bodily injury.

226

402.319(2) 2nd Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.

227

409.920 3rd Medicaid provider fraud;
(2)(b)1.a. \$10,000 or less.

228

409.920 2nd Medicaid provider fraud; more
(2)(b)1.b. than \$10,000, but less than \$50,000.

229

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

230

456.065(2) 2nd Practicing a health care profession without a license

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which results in serious bodily injury.

231

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

232

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

233

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

234

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

235

462.17 3rd Practicing naturopathy without a license.

236

463.015(1) 3rd Practicing optometry without a license.

237

464.016(1) 3rd Practicing nursing without a license.

238

465.015(2) 3rd Practicing pharmacy without a license.

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239

466.026 (1) 3rd Practicing dentistry or dental hygiene without a license.

240

467.201 3rd Practicing midwifery without a license.

241

468.366 3rd Delivering respiratory care services without a license.

242

483.828 (1) 3rd Practicing as clinical laboratory personnel without a license.

243

483.901 (9) 3rd Practicing medical physics without a license.

244

484.013 (1) (c) 3rd Preparing or dispensing optical devices without a prescription.

245

484.053 3rd Dispensing hearing aids without a license.

246

494.0018 (2) 1st Conviction of any violation of chapter 494 in which the total money and property unlawfully

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obtained exceeded \$50,000 and there were five or more victims.

247

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.

248

560.125(5)(a) 3rd Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.

249

655.50(10)(b)1. 3rd Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.

250

775.21(10)(a) 3rd Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.

251

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252	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
253	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
254	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
255	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
256	782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
	782.072	2nd	Killing of a human being by the

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operation of a vessel in a reckless manner (vessel homicide).

257

784.045(1)(a)1. 2nd Aggravated battery; intentionally causing great bodily harm or disfigurement.

258

784.045(1)(a)2. 2nd Aggravated battery; using deadly weapon.

259

784.045(1)(b) 2nd Aggravated battery; perpetrator aware victim pregnant.

260

784.048(4) 3rd Aggravated stalking; violation of injunction or court order.

261

784.048(7) 3rd Aggravated stalking; violation of court order.

262

784.07(2)(d) 1st Aggravated battery on law enforcement officer.

263

784.074(1)(a) 1st Aggravated battery on sexually violent predators facility staff.

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264	784.08 (2) (a)	1st	Aggravated battery on a person 65 years of age or older.
265	784.081 (1)	1st	Aggravated battery on specified official or employee.
266	784.082 (1)	1st	Aggravated battery by detained person on visitor or other detainee.
267	784.083 (1)	1st	Aggravated battery on code inspector.
268	787.06 (3) (a) 2.	1st	Human trafficking using coercion for labor and services of an adult.
269	787.06 (3) (e) 2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
270	790.07 (4)	1st	Specified weapons violation subsequent to previous

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			conviction of s. 790.07(1) or (2).
271	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
272	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
273	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
274	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
275	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
276	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the

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penalty enhancements provided
for in s. 874.04.

277

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.

278

796.05 (1) 1st Live on earnings of a
prostitute; 2nd offense.

279

796.05 (1) 1st Live on earnings of a
prostitute; 3rd and subsequent
offense.

280

800.04 (5) (c) 1. 2nd Lewd or lascivious molestation;
victim younger than 12 years of
age; offender younger than 18
years of age.

281

800.04 (5) (c) 2. 2nd Lewd or lascivious molestation;
victim 12 years of age or older
but younger than 16 years of
age; offender 18 years of age
or older.

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282	800.04 (5) (e)	1st	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.
283	806.01 (2)	2nd	Maliciously damage structure by fire or explosive.
284	810.02 (3) (a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
285	810.02 (3) (b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
286	810.02 (3) (d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
287	810.02 (3) (e)	2nd	Burglary of authorized emergency vehicle.
288	812.014 (2) (a) 1.	1st	Property stolen, valued at

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\$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.

289

812.014 (2) (b) 2. 2nd Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.

290

812.014 (2) (b) 3. 2nd Property stolen, emergency medical equipment; 2nd degree grand theft.

291

812.014 (2) (b) 4. 2nd Property stolen, law enforcement equipment from authorized emergency vehicle.

292

812.0145 (2) (a) 1st Theft from person 65 years of age or older; \$50,000 or more.

293

812.019 (2) 1st Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.

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294	812.131(2)(a)	2nd	Robbery by sudden snatching.
295	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
296	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
297	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
298	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
299	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
300	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

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insolvency of that entity.

301

817.535(2)(a) 3rd Filing false lien or other
unauthorized document.

302

825.102(3)(b) 2nd Neglecting an elderly person or
disabled adult causing great
bodily harm, disability, or
disfigurement.

303

825.103(3)(b) 2nd Exploiting an elderly person or
disabled adult and property is
valued at \$10,000 or more, but
less than \$50,000.

304

827.03(2)(b) 2nd Neglect of a child causing
great bodily harm, disability,
or disfigurement.

305

827.04(3) 3rd Impregnation of a child under
16 years of age by person 21
years of age or older.

306

837.05(2) 3rd Giving false information about
alleged capital felony to a law
enforcement officer.

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307	838.015	2nd	Bribery.
308	838.016	2nd	Unlawful compensation or reward for official behavior.
309	838.021(3)(a)	2nd	Unlawful harm to a public servant.
310	838.22	2nd	Bid tampering.
311	843.0855(2)	3rd	Impersonation of a public officer or employee.
312	843.0855(3)	3rd	Unlawful simulation of legal process.
313	843.0855(4)	3rd	Intimidation of a public officer or employee.
314	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
315	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.

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316

872.06 2nd Abuse of a dead human body.

317

874.05 (2) (b) 1st Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.

318

874.10 1st,PBL Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.

319

893.13 (1) (c) 1. 1st Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.

320

893.13 (1) (e) 1. 1st Sell, manufacture, or deliver

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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.

321

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).

322

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

323

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

324

893.135(1)(c)1.a. 1st Trafficking in illegal drugs, more than 4 grams, less than 14 grams.

325

893.135(1)(c)2.a. 1st Trafficking in hydrocodone, 14

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			grams or more, less than 28 grams.
326	893.135(1)(c)2.b.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
327	893.135(1)(c)3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
328	893.135(1)(c)3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
329	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
330	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
331	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.

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332	893.135(1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
333	893.135(1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
334	893.135(1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
335	893.135(1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
336	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
337	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
338			

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339	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
340	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
341	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
342	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
343	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
	943.0435(14)	3rd	Sexual offender; failure to

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report and reregister; failure to respond to address verification; providing false registration information.

344

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

345

944.607(10)(a) 3rd Sexual offender; failure to submit to the taking of a digitized photograph.

346

944.607(12) 3rd Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

347

944.607(13) 3rd Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

348

985.4815(10) 3rd Sexual offender; failure to submit to the taking of a

digitized photograph.

349

985.4815(12) 3rd Failure to report or providing
false information about a
sexual offender; harbor or
conceal a sexual offender.

350

985.4815(13) 3rd Sexual offender; failure to
report and reregister; failure
to respond to address
verification; providing false
registration information.

351

352 Section 11. For the purpose of incorporating the amendment
353 made by this act to section 838.022, Florida Statutes, in a
354 reference thereto, paragraph (d) of subsection (3) of section
355 921.0022, Florida Statutes, is reenacted to read:

356 921.0022 Criminal Punishment Code; offense severity
357 ranking chart.—

358 (3) OFFENSE SEVERITY RANKING CHART

359 (d) LEVEL 4

360

Florida	Felony	
Statute	Degree	Description

361

316.1935(3)(a) 2nd Driving at high speed or with

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wanton disregard for safety
 while fleeing or attempting to
 elude law enforcement officer
 who is in a patrol vehicle with
 siren and lights activated.

362

499.0051(1) 3rd Failure to maintain or deliver
 pedigree papers.

363

499.0051(2) 3rd Failure to authenticate
 pedigree papers.

364

499.0051(6) 2nd Knowing sale or delivery, or
 possession with intent to sell,
 contraband prescription drugs.

365

517.07(1) 3rd Failure to register securities.

366

517.12(1) 3rd Failure of dealer, associated
 person, or issuer of securities
 to register.

367

784.07(2)(b) 3rd Battery of law enforcement
 officer, firefighter, etc.

368

784.074(1)(c) 3rd Battery of sexually violent

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predators facility staff.

369

784.075 3rd Battery on detention or
commitment facility staff.

370

784.078 3rd Battery of facility employee by
throwing, tossing, or expelling
certain fluids or materials.

371

784.08 (2) (c) 3rd Battery on a person 65 years of
age or older.

372

784.081 (3) 3rd Battery on specified official
or employee.

373

784.082 (3) 3rd Battery by detained person on
visitor or other detainee.

374

784.083 (3) 3rd Battery on code inspector.

375

784.085 3rd Battery of child by throwing,
tossing, projecting, or
expelling certain fluids or
materials.

376

787.03 (1) 3rd Interference with custody;

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wrongly takes minor from
appointed guardian.

377

787.04 (2) 3rd Take, entice, or remove child
beyond state limits with
criminal intent pending custody
proceedings.

378

787.04 (3) 3rd Carrying child beyond state
lines with criminal intent to
avoid producing child at
custody hearing or delivering
to designated person.

379

787.07 3rd Human smuggling.

380

790.115 (1) 3rd Exhibiting firearm or weapon
within 1,000 feet of a school.

381

790.115 (2) (b) 3rd Possessing electric weapon or
device, destructive device, or
other weapon on school
property.

382

790.115 (2) (c) 3rd Possessing firearm on school
property.

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383

800.04 (7) (c) 3rd Lewd or lascivious exhibition;
offender less than 18 years.

384

810.02 (4) (a) 3rd Burglary, or attempted
burglary, of an unoccupied
structure; unarmed; no assault
or battery.

385

810.02 (4) (b) 3rd Burglary, or attempted
burglary, of an unoccupied
conveyance; unarmed; no assault
or battery.

386

810.06 3rd Burglary; possession of tools.

387

810.08 (2) (c) 3rd Trespass on property, armed
with firearm or dangerous
weapon.

388

812.014 (2) (c) 3. 3rd Grand theft, 3rd degree \$10,000
or more but less than \$20,000.

389

812.014 (2) (c) 4.- 3rd Grand theft, 3rd degree, a
10. will, firearm, motor vehicle,
livestock, etc.

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390

812.0195(2) 3rd Dealing in stolen property by use of the Internet; property stolen \$300 or more.

391

817.563(1) 3rd Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.

392

817.568(2)(a) 3rd Fraudulent use of personal identification information.

393

817.625(2)(a) 3rd Fraudulent use of scanning device or reencoder.

394

828.125(1) 2nd Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.

395

837.02(1) 3rd Perjury in official proceedings.

396

837.021(1) 3rd Make contradictory statements in official proceedings.

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397

838.022 3rd Official misconduct.

398

839.13 (2) (a) 3rd Falsifying records of an individual in the care and custody of a state agency.

399

839.13 (2) (c) 3rd Falsifying records of the Department of Children and Families.

400

843.021 3rd Possession of a concealed handcuff key by a person in custody.

401

843.025 3rd Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.

402

843.15 (1) (a) 3rd Failure to appear while on bail for felony (bond estreature or bond jumping).

403

847.0135 (5) (c) 3rd Lewd or lascivious exhibition using computer; offender less

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than 18 years.

404

874.05 (1) (a) 3rd Encouraging or recruiting another to join a criminal gang.

405

893.13 (2) (a) 1. 2nd Purchase of cocaine (or other s. 893.03 (1) (a), (b), or (d), (2) (a), (2) (b), or (2) (c) 4. drugs).

406

914.14 (2) 3rd Witnesses accepting bribes.

407

914.22 (1) 3rd Force, threaten, etc., witness, victim, or informant.

408

914.23 (2) 3rd Retaliation against a witness, victim, or informant, no bodily injury.

409

918.12 3rd Tampering with jurors.

410

934.215 3rd Use of two-way communications device to facilitate commission of a crime.

411

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412 Section 12. This act shall take effect October 1, 2016.