

Judiciary Committee

**Thursday, April 6, 2017
8:00 AM
404 HOB**

Meeting Packet

**Richard Corcoran
Speaker**

**Chris Sprowls
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Judiciary Committee

Start Date and Time: Thursday, April 06, 2017 08:00 am
End Date and Time: Thursday, April 06, 2017 11:00 am
Location: Sumner Hall (404 HOB)
Duration: 3.00 hrs

Consideration of the following proposed committee bill(s):

PCB JDC 17-01 -- Arthur G. Dozier School for Boys

Consideration of the following bill(s):

CS/HB 441 Court Records by Civil Justice & Claims Subcommittee, Diamond
CS/HB 477 Controlled Substances by Criminal Justice Subcommittee, Boyd
CS/HB 481 Trusts by Civil Justice & Claims Subcommittee, Moraitis
HB 939 Use or Operation of a Drone by Certain Offenders by Metz
HB 1203 Pub. Rec./DOC/Health Information by Gonzalez
HB 7091 Probation and Community Control by Criminal Justice Subcommittee, Altman

Consideration of the following proposed committee substitute(s):

PCS for HCR 631 -- Groveland Four
PCS for HR 1335 -- Arthur G. Dozier School for Boys

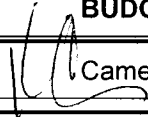
NOTICE FINALIZED on 04/04/2017 4:12PM by Bowen.Erika

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB JDC 17-01 Arthur G. Dozier School for Boys

SPONSOR(S):

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee		Camechis	 Camechis

SUMMARY ANALYSIS

From January 1, 1900, to June 30, 2011, the state operated a reform school in the panhandle town of Marianna, Florida. The school operated under several different names: the Florida State Reform School (1900-1913), the Florida Industrial School for Boys (1914-1957), the Florida School for Boys (1957-1967), and the Arthur G. Dozier School for Boys (1967-2011). In recent years, former students of the school have come forward to report repeated abuse by staff members. These men believe that fellow students may have died from abuse and been buried at the school's cemetery.

In 2012, researchers from the University of South Florida (USF) began an investigation to determine the location of children buried at the school in order to excavate and repatriate the remains to their families. In January 2016, the researchers issued a report of their findings. The researchers analyzed historical records and determined that nearly 100 boys aged 6 to 18 died at the school between 1900 and 1973. During the investigation, the researchers excavated 55 graves and discovered 55 sets of human remains on the school grounds, only 13 of which were located in the school's cemetery. The researchers made 7 positive identifications and 14 presumptive identifications of the remains.

In 2016, the Dozier Task Force, which was created by the Legislature, submitted the following recommendations:

1. The remains of the 1914 dormitory fire victims should be reinterred at Boot Hill Cemetery on Dozier School property.
2. Unidentified or unclaimed remains should be reinterred in Tallahassee, with the location to be determined by the Legislature.
3. Two memorials should be established, one in Jackson County and one in Tallahassee, Florida, dedicated to the memories of the boys who lived and died at Dozier School, as well as the 1914 dormitory fire victims.

The PCB implements the recommendations of the task force and appropriates funding from general revenue to pay for the reinterments of remains exhumed from Dozier School (\$700,000) and establishment of the two memorials (\$500,000).

The PCB also names the Department of Law Enforcement's Forensic Training Center in Pasco County the "Thomas Varnadoe Forensic Center for Education and Research." Thomas Varnadoe died at Dozier School on October 26, 1934, just 34 days after he was admitted to the school. His remains were identified by USF after being exhumed as part of its investigation.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

From January 1, 1900, to June 30, 2011, the state operated a reform school in the panhandle town of Marianna. Over the years, the school operated under several different names: the Florida State Reform School (1900-1913), the Florida Industrial School for Boys (1914-1957), the Florida School for Boys (1957-1967), and, lastly, the Arthur G. Dozier School for Boys (1967-2011).¹ This analysis will refer to the Marianna school as “Dozier School.”

Children were sent to the school for serious crimes, but also for “incorrigibility,” “truancy,” and “dependency.”² Originally, the school housed children as young as 5 years old. As early as 1901, reports surfaced of children being chained to walls in irons, brutal whippings, and peonage (involuntary servitude).³ In the first 13 years of operation, more than 6 state-led investigations took place. Over the years, allegations of severe abuse, including physical and sexual abuse, and suspicious disappearances and death of children in the care of Dozier continued. Of the 100 deaths recorded in historical documents maintained by the school, and available for review up through the year 1960, just two persons who died were staff, and the remaining were boys ranging in age from 6 to 18.⁴ Investigators noted that deaths were significantly underreported.⁵ Also, investigators were able to ascertain a correlation between attempted escapes and mortality of the children.⁶

In 2005, former students of the school began to publish accounts of the abuse they experienced at Dozier.⁷ In 2008, Governor Charlie Crist directed the Florida Department of Law Enforcement (FDLE) to investigate 32 unmarked graves located on the property surrounding the school in response to complaints lodged by former students at Dozier.⁸ Former students of Dozier alleged that fellow students who died as a result of abuse were buried at the school cemetery.⁹ The University of South Florida (USF) subsequently conducted an investigation, which included excavations and exhumations.¹⁰

University of South Florida Investigation

The University of South Florida received funding to determine the location of the children buried at the Dozier School in Marianna.¹¹ Funding was provided by the Legislature, USF, a grant from the National Institute of Justice, the U.S. Department of Justice, and private donations.¹² In January of 2016, the

¹ FDLE Office of Executive Investigations, *Arthur G. Dozier School for Boys, Marianna, Florida, Investigative Summary*, Case No. EI-73-8455 (may 14, 2009).

² Erin H. Kimmerle, Ph.D.; E. Christian Wells, Ph.D.; and Antoinette Jackson, Ph.D.; Florida Institute for Forensic Anthropology & Applied Sciences, University of South Florida, *Report on the Investigation into the Deaths and Burials at the Former Arthur G. Dozier School for Boys in Marianna, Florida*, pg. 12 (Jan. 18, 2016) (on file with the House Judiciary Committee).

³ *Id.*

⁴ *Id.* at 14.

⁵ *Id.* at 22.

⁶ *Id.* at 14.

⁷ *Id.* at 30. The men who had been sent to Dozier from the late 1950’s through the 1960’s organized themselves as “The White House Boys Survivors Organization.”

⁸ Office of Executive Investigations, Florida Department of Law Enforcement, *FDLE Investigative Report* (May 14, 2009); available at <http://thewhitehouseboys.com/fdlereport.html> (last visited March 31, 2017).

⁹ *Id.* at 1.

¹⁰ *Id.* at 4.

¹¹ Erin H. Kimmerle, Ph.D.; E. Christian Wells, Ph.D.; and Antoinette Jackson, Ph.D.; Florida Institute for Forensic Anthropology & Applied Sciences, University of South Florida, *Report on the Investigation into the Deaths and Burials at the Former Arthur G. Dozier School for Boys in Marianna, Florida*, pg. 11 (Jan. 18, 2016) (on file with the Senate Judiciary Committee).

¹² *Id.* at 4.

USF team submitted its report to the Florida Cabinet and Governor, and the Department of Environmental Protection.¹³

Using a forensic team, USF employed a Ground Penetrating Radar at the site of the school to detect graves, followed by archaeological test excavations in those areas.¹⁴ During the course of its investigation, USF excavated 55 graves at Dozier school, discovering 51 sets of human remains.¹⁵ As of April 2017, USF had made 7 positive identifications and 14 presumptive identifications.

1914 Dormitory Fire

During the early morning hours of November 18, 1914, a fatal fire broke out in the dormitory on the south campus.¹⁶ Three investigations followed, each of which shifted the cause of the fire and blame for the deaths; even the number of children who perished differs among the reports.¹⁷ As many as 10 students and guards may have perished in the fire.¹⁸ According to witnesses, the bodies were burned beyond recognition and buried on the school grounds.¹⁹ When graves in the Boot Hill Cemetery on the grounds were excavated by researchers, seven caskets containing burned remains were recovered.²⁰ Remains of other fire victims may have been buried elsewhere on the property.

Thomas Varnadoe²¹

Thomas Varnadoe died on October 26, 1934, 34 days after he was admitted to the school. The school's records indicate Thomas died of pneumonia with a possible contributing cause of anemia. The school's newspaper stated that Thomas was very sickly when he arrived at the school, and that his funeral was well attended by other students. Thomas' family has consistently disputed that Thomas was a sickly child and Thomas' bother, Hubert, who was also an inmate at the school when Thomas died, stated that details in the newspaper article were false, as only he, a preacher, and the man who dug Thomas' grave were present at the funeral.

Similar to the obituary of Varnadoe, USF found that reports in the school's newspaper, *The Yellow Jacket*, the biennial reports to the State from school officials and school issued press releases were often different from witness testimonies (both historical and contemporary testimonies). Therefore, the historical documents were reviewed carefully by USF and generally not considered primary sources of reliable information.

Class Action Lawsuits

In 1983, Dozier was the subject of a class action regarding the conditions of confinement. Plaintiffs alleged that youth continued to be hogtied, shackled, and held in solitary confinement, amidst media reports that continued to emerge of significant abuse perpetrated by staff on the children.²² In 2011, plaintiffs filed another class action lawsuit against the facility alleging abusive and unsafe conditions of confinement.²³

¹³ Erin H. Kimmerle, Ph.D.; E. Christian Wells, Ph.D.; and Antoinette Jackson, Ph.D.; Florida Institute for Forensic Anthropology & Applied Sciences, University of South Florida, *Report on the Investigation into the Deaths and Burials at the Former Arthur G. Dozier School for Boys in Marianna, Florida* (Jan. 18, 2016).

¹⁴ *Id.* at 11.

¹⁵ Erin H. Kimmerle, Ph.D.; E. Christian Wells, Ph.D.; and Antoinette Jackson, Ph.D.; Florida Institute for Forensic Anthropology & Applied Sciences, University of South Florida, *Report on the Investigation into the Deaths and Burials at the Former Arthur G. Dozier School for Boys in Marianna, Florida*, p. 11 (Jan. 18, 2016).

¹⁶ *Id.* at 59.

¹⁷ *Id.*

¹⁸ Kimmerle, *supra* note 2, at 44.

¹⁹ *Id.* at 11.

²⁰ *Id.* at 44.

²¹ *Id.* at 111-112.

²² In the case of *Bobby M v. Chiles*, 907 F.Supp. 368, 372-373 (N.D. Fla. 1995), the court dismissed with prejudice the consent decree that had been entered into by the class and the defendant, on the basis that the Dozier school had remedied the abuse.

²³ *J.B. v. Walters, et al.*, 4:11-cv-00083-RH (N.D. Fla. 2011).

United States Department of Justice Investigation

On April 7, 2010, the U.S. Department of Justice (DOJ) launched its own investigation of practices at Dozier and at the Jackson Juvenile Offender Center (JJOC), which together comprised the North Florida Youth Development Center (NYFDC). The DOJ found reasonable cause that the NYFDC had committed and was continuing to commit unconstitutional practices and violations of federal law protecting youths from harm.

On May 26, 2011, Florida's Department of Juvenile Justice announced the pending closure of the two facilities at the NYFDC, based on budgetary limitations. The DOJ released its report on conditions at Dozier and JJOC on December 1, 2011.²⁴

2016 Legislation - Dozier Task Force and Funeral Expenses

In 2016, the Legislature passed CS/CS/SB 708²⁵ to create the Dozier Task Force under DOS.²⁶ The task force was required to make recommendations to DOS regarding the creation and maintenance of a memorial, and the location of a site for the reinterment of unidentified or unclaimed remains.²⁷ The task force was required to submit, by October 1, 2016, its recommendations to DOS, the Governor and Cabinet, the President of the Senate, the Speaker of the House of Representatives, and the Minority Leaders of the Senate and the House of Representatives.

The task force submitted the following recommendations:

1. The remains of the 1914 dormitory fire should be reinterred at Boot Hill Cemetery on the Dozier property.
2. Unidentified or unclaimed remains should be reinterred in Tallahassee, with the location to be determined by the Legislature.
3. Two memorials should be established, one in Jackson County and one in Tallahassee. Both memorials should be dedicated to the memories of the boys who lived and died at Dozier, as well as the 1914 dormitory fire victims.

The Legislature also approved payment of up to \$7,500 for each child whose body was buried at and exhumed from the Dozier School for Boys, for funeral, reinterment, and grave marker expenses. The legislation requires the Department of State (Department) to contract with the University of South Florida to identify and locate eligible next of kin for the children. By February 1, 2018, the Department must submit a report to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives regarding payments and reimbursements made for these expenses.

To fund these provisions, the bill included an appropriation from the General Revenue Fund in the amount of \$500,000 in nonrecurring funds to the Department. The legislation directed any amount remaining as of July 1, 2017, to revert back to General Revenue and be reappropriated for the same purpose in the 2017-2018 fiscal year.

²⁴ U.S. Department of Justice, *Investigation of the Arthur G. Dozier School for Boys and the Jackson Juvenile Offender Center, Marianna, Florida* (Dec. 1, 2011), <https://www.justice.gov/opa/pr/department-justice-releases-investigative-findings-arthur-g-dozier-school-boys-and-jackson> (last visited March 31, 2017).

²⁵ Chapter 2016-163, Laws of Fla. (CS/CS/SB 708).

²⁶ The Legislature provided for the membership of the task force to include: the Secretary of State, or his or her designee, to serve as chair; an appointee by the President of the Florida State Conference of the National Association for the Advancement of Colored People (NAACP); an appointee from the Florida Council of Churches; an appointee by the Attorney General who is a next of kin of a child buried at Dozier; an appointee by the Chief Financial Officer who promotes the welfare of people who were formerly sent to Dozier; an appointee each by the President of the Senate and the Speaker of the House of Representatives; an appointee by the Jackson County Board of County Commissioners; and an appointee by the Commissioner of Agriculture. *Id.*

²⁷ Ch. 2016-163, Laws of Florida.

Capitol Complex Monuments

A monument²⁸ may not be constructed or placed on the premises of the Capitol Complex unless authorized by general law and unless the design and placement of the monument is approved by the Department of Management Services (DMS) after considering the recommendations of the Florida Historical Commission.²⁹ DMS must coordinate with the Division of Historical Resources of the Department of State regarding a monument's design and placement.³⁰ DMS, in consultation with the Florida Historical Commission, must set aside an area of the Capitol Complex to be dedicated as a memorial garden for the placement of authorized monuments.³¹

Section 281.01, F.S., defines the term "Capitol Complex" as:

[T]hat portion of Tallahassee, Leon County, Florida, commonly referred to as the Capitol, the Historic Capitol, the Senate Office Building, the House Office Building, the Knott Building, the Pepper Building, the Holland Building, and the curtilage of each, including the state-owned lands and public streets adjacent thereto within an area bounded by and including Monroe Street, Jefferson Street, Duval Street, and Gaines Street. The term shall also include the State Capital Circle Office Complex located in Leon County, Florida.

Current law authorizes various memorials for placement at the Capitol Complex, including:

- The Florida Veterans' Walk of Honor;³²
- The Florida Veterans' Memorial Garden;³³
- The POW-MIA Chair of Honor Memorial;³⁴
- Florida Law Enforcement Officers' Hall of Fame;³⁵
- Florida Women's Hall of Fame;³⁶ and
- The Florida Holocaust Memorial.³⁷

Division of Historical Resources

The Division of Historical Resources, which is established within the Department of State,³⁸ in part, is responsible for:

- Developing a comprehensive statewide historic preservation plan.
- Directing and conducting a comprehensive statewide survey of historic resources and maintaining an inventory of such resources.
- Ensuring that historic resources are taken into consideration at all levels of planning and development.
- Providing public information, education, and technical assistance relating to historic preservation programs.³⁹

Florida Historical Commission

The Florida Historical Commission (commission) was established in 2001 to enhance public participation and involvement in the preservation and protection of the state's historic and

²⁸ Section 265.111(1), F.S., defines the term "monument" to mean a permanent structure such as a marker, statue, sculpture, plaque, or other artifice, including living plant material, placed in remembrance or recognition of significant person or event in Florida history. The term does not include any "Official Florida Historical Marker" as defined in s. 267.021, F.S.

²⁹ Section 265.111(2), F.S.

³⁰ *Id.*

³¹ Section 265.111(3), F.S.

³² Section 265.0031, F.S.

³³ *Id.*

³⁴ Section 265.00301, F.S.

³⁵ Section 265.0041, F.S.

³⁶ Section 265.001, F.S.

³⁷ Section 365.005, F.S.

³⁸ Section 20.10(2)(b), F.S.

³⁹ Section 267.031(5), F.S.

archaeological sites and properties.⁴⁰ The commission is part of the Department of State and is tasked with advising and assisting the Division of Historical Resources in carrying out its programs, duties, and responsibilities.⁴¹

The Commission is composed of 11 members. Seven members of the Commission are appointed by the Governor in consultation with the Secretary of State, two by the President of the Senate, and two by the Speaker of the House of Representatives.⁴² The Commission must include:

- A licensed architect with expertise in historic preservation and architectural history;
- A professional historian in the field of American history;
- A professional architectural historian;
- An archaeologist specializing in the field of prehistory;
- An archaeologist specializing in the historic period; and
- Representatives of the public with demonstrated interest in the preservation of Florida's historical and archaeological heritage.⁴³

The Commission must provide assistance, advice, and recommendations to the Division of Historical Resources.⁴⁴ Section 267.0612(9), F.S., also requires the Commission to provide recommendations to DMS on the design and placement of monuments authorized by general law to be placed on the premises of the Capitol Complex.

EFFECT OF PROPOSED CHANGES

Reinterment of Remains

In order to care for the unclaimed remains of victims of the 1914 dormitory fire in a respectful and dignified manner, the Division of Funeral, Cemetery and Consumer Services of the Department of Financial Services, pursuant to chapter 287, F.S., must select a licensed removal service, to transport the unclaimed remains of victims of the 1914 dormitory fire from Tampa, Florida, to a funeral establishment in Jackson County, Florida, for preparation for reinterment. The Division must select a licensed funeral establishment in Jackson County, to prepare the unclaimed remains of victims of the 1914 dormitory fire for burial.

The Division must ensure that the unclaimed remains of victims of the 1914 dormitory fire are reinterred at the Boot Hill Cemetery located at the Arthur G. Dozier School for Boys. The Division, after consulting with the Division of Historical Resources of the Department of State and the University of South Florida, must select and cause to be installed an appropriate and respectful marking of each burial.

In order to care for all remaining unclaimed or unidentified remains in a respectful and dignified manner, the Division must select a licensed removal service to transport all remaining and unidentified remains from Tampa, Florida, to a funeral establishment in Leon County, Florida, for preparation for reinterment. The Division must select a licensed funeral establishment in Leon County to prepare all remaining unclaimed and unidentified remains for burial. The Division must select a licensed cemetery in Leon County, Florida, at which all remaining unclaimed and unidentified remains must be buried. The Division must, after consulting with the Division of Historical Resources of the Department of State and the University of South Florida, select and cause to be installed an appropriate and respectful marking of each burial.

⁴⁰ Chapter 2001-199, L.O.F.; codified as s. 267.0612, F.S.

⁴¹ Section 267.0612, F.S.

⁴² Section 267.0612(1)(a)1., F.S.

⁴³ *Id.*

⁴⁴ *See* s. 267.0612(6), F.S.

If at any time after burial by the licensed cemetery, a legally authorized person as defined in s. 497.005(43), F.S., lawfully claims remains, the Division must direct the process of exhuming the remains in preparation for transport and reinterment at the legally authorized person's direction.

Arthur G. Dozier School for Boys Memorial

The bill provides that it is the intent of the Legislature to memorialize the boys who lived and died at the Arthur G. Dozier School for Boys, including the 1914 dormitory fire victims. As such, the bill establishes the Arthur G. Dozier School for Boys Memorial in two locations: one in Tallahassee, Florida, and the other in Jackson County, Florida.

The bill directs the Department of Management Services (DMS) to administer the memorials. DMS must designate an appropriate public area for the Arthur G. Dozier School for Boys Memorial in Tallahassee, Florida, on the premises of the Capitol Complex, not including the State Capital Circle Office Complex. DMS must consider recommendations of the Florida Historical Commission, coordinate with the Division of Historical Resources of the Department of State regarding the design and placement of the memorial, and consider recommendations of former students of the Arthur G. Dozier School for Boys regarding the design of the memorial.

DMS, in consultation with the Division of State Lands of the Department of Environmental Protection and the Jackson County Administrator, must designate an appropriate public area for the Arthur G. Dozier School for Boys Memorial in Jackson County, Florida. DMS must coordinate with the Division of Historical Resources of the Department of State regarding the design and placement of the memorial, and consider recommendations of former students of the Arthur G. Dozier School for Boys regarding the design of the memorial.

Forensic Training Center

The bill names the Forensic Training Center (HB 3577) in Specific Appropriation 1234 of PCB APC 17-01, General Appropriations Act, the "Thomas Varnadoe Forensic Center for Education and Research."

B. SECTION DIRECTORY:

- Section 1. Specifies that this act governs disposition of remains exhumed from Dozier.
- Section 2. Requires the Division of Funeral, Cemetery and Consumer Services to implement reinterment of remains exhumed at the Dozier School.
- Section 3. Establishes the Arthur G. Dozier School for Boys Memorial and requires the Department of Management Services to administer the memorials.
- Section 4. Names the Forensic Training Center the "Thomas Varnadoe Forensic Center for Education and Research."

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues: None
- 2. Expenditures: For the 2017-2018 fiscal year, the sum of \$700,000 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Financial Services for the purpose of reinterment of remains exhumed at Dozier School. Funds remaining unexpended or unencumbered from this appropriation as of July 1, 2018, shall revert and be reappropriated for the same purpose in the 2018-2019 fiscal year.

For the 2017-2018 fiscal year, the sum of \$500,000 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Management Services for the purpose of creating the

Arthur G. Dozier School for Boys Memorial. Funds remaining unexpended or unencumbered from this appropriation as of July 1, 2018, shall revert and be reappropriated for the same purpose in the 2018-2019 fiscal year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None
2. Expenditures: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None

D. FISCAL COMMENTS: None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable. The bill does not appear to affect cities or counties.
2. Other: None

B. RULE-MAKING AUTHORITY: Rulemaking authority is not granted or expanded by this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS: None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
 2 An act relating to the Arthur G. Dozier School for
 3 Boys; providing for the internment of remains exhumed
 4 from the school; requiring the Department of Financial
 5 Services to administer reinternments; creating s.
 6 265.007, F.S.; creating the Arthur G. Dozier School
 7 for Boys memorial; requiring the Department of
 8 Management Services to administer the memorials;
 9 providing for the naming of the Forensic Training
 10 Center; providing appropriations; providing an
 11 effective date.

12
 13 WHEREAS, the Florida State Reform School, also known as the
 14 Florida Industrial School for Boys, the Florida School for Boys,
 15 and, lastly, as the Arthur G. Dozier School for Boys ("Dozier
 16 School"), was opened by the State of Florida in 1900 in
 17 Marianna, Florida, to house children who had committed minor
 18 criminal offenses such as incorrigibility, truancy, and smoking,
 19 as well as more serious offenses such as theft and murder, and

20 WHEREAS, throughout Dozier School's history, reports of
 21 abuse, suspicious deaths, and threats of closure plagued the
 22 school, and

23 WHEREAS, a forensic investigation funded by the Florida
 24 Legislature and conducted from 2013 to 2016 by the University of
 25 South Florida found incomplete records regarding deaths and

26 burials that occurred at Dozier School between 1900 and 1960,
 27 and that families were often notified after the child was buried
 28 or denied access to their remains at the time of burial, and

29 WHEREAS, on November 18, 1914, a fire consumed a school
 30 dormitory where children and school employees perished, some of
 31 whom died after returning to the burning building to look for
 32 each other and assist with the rescue,

33 WHEREAS, the excavations conducted as part of the forensic
 34 investigation yielded 55 burial sites, 24 more sites than
 35 reported in official records, and

36 WHEREAS, given the lack of documentation and
 37 contradictions in the historical record, questions persist
 38 regarding the identity of persons buried at Dozier School and
 39 the circumstances surrounding their deaths, and

40 WHEREAS, Dozier School closed in 2011 after investigations
 41 by the Florida Department of Law Enforcement and the Civil
 42 Rights Division of the United States Department of Justice; and

43 WHEREAS, in 2016, the Florida Legislature created the
 44 Dozier Task Force, which recommended that the remains of the
 45 1914 dormitory fire victims should be reinterred at Boot Hill
 46 Cemetery on Dozier School property; that unidentified or
 47 unclaimed remains should be reinterred in Tallahassee, Florida,
 48 with the location to be determined by the Florida Legislature;
 49 and that two memorials should be established, one in Jackson
 50 County and one in Tallahassee, dedicated to the memories of the

51 | boys who lived and died at Dozier School, including the 1914
 52 | dormitory fire victims, and

53 | WHEREAS Thomas Varnadoe was 13 years old when he died on
 54 | October 26, 1934, only 34 days after being admitted to the
 55 | Florida School for Boys, and whose remains were identified in
 56 | 2014 by the forensic anthropologists and archeologists from the
 57 | University of South Florida after being exhumed from an unmarked
 58 | grave on school grounds; NOW THEREFORE,

59 |

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

61 | Section 1. Notwithstanding s. 406.50, F.S., this act
 62 | governs the disposition of unclaimed or unidentified remains
 63 | that were exhumed from the Arthur G. Dozier School for Boys in
 64 | Marianna, Florida, during the forensic investigation.

65 | Section 2. (1) For purposes of this section, the Division
 66 | of Funeral, Cemetery and Consumer Services of the Department of
 67 | Financial Services shall be considered a legally authorized
 68 | person pursuant to s. 406.49(6), F.S., and s. 497.005(43), F.S.,
 69 | to care for remains exhumed from the Arthur G. Dozier School for
 70 | Boys in Jackson County, Florida.

71 | (2)(a) In order to care for the unclaimed remains of
 72 | victims of the 1914 dormitory fire in a respectful and dignified
 73 | manner, the Division, pursuant to chapter 287, F.S., shall
 74 | select a removal service, licensed pursuant to chapter 497,
 75 | F.S., to transport the unclaimed remains of victims of the 1914

76 dormitory fire from Tampa, Florida, to a funeral establishment
 77 in Jackson County, Florida, for preparation for reinterment.

78 (b) The Division, pursuant to chapter 287, F.S., shall
 79 select a funeral establishment in Jackson County, Florida,
 80 licensed pursuant to chapter 497, F.S., to prepare the unclaimed
 81 remains of victims of the 1914 dormitory fire for burial.

82 (c) The Division shall ensure that the unclaimed remains
 83 of victims of the 1914 dormitory fire are reinterred at the Boot
 84 Hill Cemetery located at the Arthur G. Dozier School for Boys in
 85 Jackson County, Florida.

86 (d) The Division, after consulting with the Division of
 87 Historical Resources of the Department of State and the
 88 University of South Florida, shall select and cause to be
 89 installed an appropriate and respectful marking of each burial.

90 (3)(a) In order to care for all remaining unclaimed or
 91 unidentified remains in a respectful and dignified manner, the
 92 Division, pursuant to chapter 287, F.S., shall select a removal
 93 service, licensed pursuant to chapter 497, F.S., to transport
 94 all remaining and unidentified remains from Tampa, Florida, to a
 95 funeral establishment in Leon County, Florida, for preparation
 96 for reinterment.

97 (b) The Division, pursuant to chapter 287, F.S., shall
 98 select a funeral establishment in Leon County, licensed pursuant
 99 to chapter 497, F.S., to prepare all remaining unclaimed and
 100 unidentified remains for burial.

101 (c) The Division, pursuant to chapter 287, F.S., shall
 102 select a cemetery in Leon County, Florida, licensed pursuant to
 103 chapter 497, F.S., at which all remaining unclaimed and
 104 unidentified remains shall be buried.

105 (d) The Division, after consulting with the Division of
 106 Historical Resources of the Department of State and the
 107 University of South Florida, shall select and cause to be
 108 installed an appropriate and respectful marking of each burial.

109 (4) If at any time after burial by the licensed cemetery,
 110 a legally authorized person as defined in s. 497.005(43), F.S.,
 111 lawfully claims remains, the Division shall direct the process
 112 of exhuming the remains in preparation for transport and
 113 reinterment at the legally authorized person's direction.

114 Section 3. Section 265.007, Florida Statutes, is created
 115 to read:

116 265.007 Arthur G. Dozier School for Boys Memorial

117 (1) It is the intent of the Legislature to memorialize the
 118 boys who lived and died at the Arthur G. Dozier School for Boys,
 119 including the 1914 dormitory fire victims.

120 (2) There is established the Arthur G. Dozier School for
 121 Boys Memorial in two locations: one in Tallahassee, Florida, and
 122 the other in Jackson County, Florida.

123 (3) The memorials are administered by the Department of
 124 Management Services.

125 (4)(a) The Department of Management Services shall

126 designate an appropriate public area for the Arthur G. Dozier
 127 School for Boys Memorial in Tallahassee, Florida, on the
 128 premises of the Capitol Complex, as defined in s. 281.01, not
 129 including the State Capital Circle Office Complex. The
 130 department shall consider recommendations of the Florida
 131 Historical Commission as required pursuant to ss. 265.111 and
 132 267.0612(9), coordinate with the Division of Historical
 133 Resources of the Department of State regarding the design and
 134 placement of the memorial, and consider recommendations of
 135 former students of the Arthur G. Dozier School for Boys
 136 regarding the design of the memorial.

137 (b) The Department of Management Services, in consultation
 138 with the Division of State Lands of the Department of
 139 Environmental Protection and the Jackson County Administrator,
 140 shall designate an appropriate public area for the Arthur G.
 141 Dozier School for Boys Memorial in Jackson County, Florida. The
 142 department shall coordinate with the Division of Historical
 143 Resources of the Department of State regarding the design and
 144 placement of the memorial, and consider recommendations of
 145 former students of the Arthur G. Dozier School for Boys
 146 regarding the design of the memorial.

147 Section 4. The Forensic Training Center (HB 3577) in
 148 Specific Appropriation 1234 of PCB APC 17-01, General
 149 Appropriations Act, is hereby named the Thomas Varnadoe Forensic
 150 Center for Education and Research.

151 Section 5. (1) For the 2017-2018 fiscal year, the sum of
 152 \$700,000 in nonrecurring funds is appropriated from the General
 153 Revenue Fund to the Department of Financial Services for the
 154 purpose of implementing Section 2 of this act. Funds remaining
 155 unexpended or unencumbered from this appropriation as of July 1,
 156 2018, shall revert and be reappropriated for the same purpose in
 157 the 2018-2019 fiscal year.

158 (2) For the 2017-2018 fiscal year, the sum of \$500,000 in
 159 nonrecurring funds is appropriated from the General Revenue Fund
 160 to the Department of Management Services for the purpose of
 161 implementing Section 3 of this act. Funds remaining unexpended
 162 or unencumbered from this appropriation as of July 1, 2018,
 163 shall revert and be reappropriated for the same purpose in the
 164 2018-2019 fiscal year.

165 Section 6. This act shall take effect upon becoming law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 441 Court Records
SPONSOR(S): Civil Justice & Claims Subcommittee, Diamond
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 202

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	15 Y, 0 N, As CS	MacNamara	Bond
2) Oversight, Transparency & Administration Subcommittee	14 Y, 0 N	Toliver	Harrington
3) Judiciary Committee		MM MacNamara	Camechis

SUMMARY ANALYSIS

The clerks of court are responsible for maintaining court records and generally making those records available for public inspection and copying. Where such records contain confidential information, the Florida Rules of Judicial Administration require a clerk of court to keep such records confidential. So that the clerk knows that information qualifies as confidential, the rules require the filer of any document containing confidential information to file a "Notice of Confidential Information within Court Filing" along with the document. This notice must indicate that either the entire document is confidential or identify the location of the confidential information within the document being filed.

The bill provides immunity from liability for clerks of court for the release of information that is made confidential by the Florida Rules of Judicial Administration where the filer failed to disclose the existence of the confidential information to the clerk as required by court rule. The bill also amends current law to remove outdated language.

The bill may have a positive fiscal impact on state government expenditures. The bill does not appear to have a fiscal impact on local governments.

The bill has an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Law

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ This right to access public records includes records made or received by legislative, executive, and judicial branches of government.²

A clerk of court is a custodian of public records. As custodian, clerks are required to provide access to and copies of public records. Certain records are confidential or exempt³ from disclosure under public records laws, including personal information of certain individuals such as law enforcement personnel, firefighters, justices and judges, state attorneys, magistrates, and others as specified by statute.⁴ A clerk of court, as the custodian of public records, is responsible for maintaining official records and court records that may be confidential or exempt.

Court Records and Confidential Information

An official record is recorded by the clerk as part of a general series called "Official Records" and includes such documents as court orders, mortgages, deeds, notices of levy, tax warrants, and liens.⁵

Florida Rule of Judicial Administration 2.420(d) sets out procedures for determining confidentiality of court records. It requires filers and allows parties and affected non-parties to file a "Notice of Confidential Information within Court Filing," which triggers a review by the clerk of the court and a process to temporarily or permanently maintain the information as confidential.⁶ Once the form notice is filed, the clerk of court must review filings identified as containing confidential information to determine whether the information is facially subject to confidentiality.⁷

For court records filed with the clerk of court on and after January 1, 2012, the clerk must maintain any social security numbers and financial account numbers in those records as confidential and exempt from disclosure under public records law.⁸ Clerks are not liable for inadvertently releasing social security, bank account, charge, debit, and credit card numbers found in court records that were filed before January 1, 2012.⁹ However, a person whose social security number or financial account number is contained in an older record, or his or her attorney or legal guardian, may request that the clerk redact the numbers from the record.¹⁰

¹ Fla. Const. art. I, s. 24(a).

² *Id.*

³ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature designates as *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 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *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, the record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See 85-62 Fla. Op. Att'y Gen. (1985).

⁴ S. 119.071(3)(d), F.S.

⁵ S. 28.222(2) and (3), F.S.

⁶ Fla. R. Jud. Admin. 2.420(d)(2).

⁷ Fla. R. Jud. Admin. 2.420(d)(2)(B).

⁸ S. 119.0714(2)(e), F.S.

⁹ S. 119.0714(2)(d), F.S.

¹⁰ See s. 119.0714(2), F.S.

Rule 2.420(d)(1)(B) of the Florida Rules of Judicial Administration requires the clerk of the court to designate and maintain the confidentiality of the following records or information, which are exempt from disclosure under existing law:

- Chapter 39, F.S., records relating to dependency matters, termination of parental rights, guardians ad litem, child abuse, neglect, and abandonment (ss. 39.0132(3) and (4)(a), F.S.).
- Adoption records (s. 63.162, F.S.).
- Social Security, bank account, charge, debit, and credit card numbers (s. 119.0714(1)(i)-(j) and (2)(a)-(e), F.S.).
- HIV test results and the identity of any person upon whom an HIV test has been performed (s. 381.004(2)(e), F.S.).
- Records, including test results, held by the Department of Health or its authorized representatives relating to sexually transmissible diseases (s. 384.29, F.S.).
- Birth records and portions of death and fetal death records (ss. 382.008(6) and 382.025(1), F.S.).
- Information that can be used to identify a minor petitioning for a waiver of parental notice when seeking to terminate pregnancy (s. 390.01116, F.S.).
- Clinical records under the Baker Act (s. 394.4615(7), F.S.).
- Records of substance abuse service providers which pertain to the identity, diagnosis, and prognosis of and service provision to individuals (s. 397.501(8), F.S.).
- Clinical records of criminal defendants found incompetent to proceed or acquitted by reason of insanity (s. 916.107(8), F.S.).
- Estate inventories and accountings (s. 733.604(1), F.S.).
- The victim's address in a domestic violence action on petitioner's request (s. 741.30(3)(b), F.S.).
- Protected information regarding victims of child abuse or sexual offenses (ss. 119.071(2)(h) and 119.0714(1)(h), F.S.).
- Gestational surrogacy records (s. 742.16(9), F.S.).
- Guardianship reports, orders appointing court monitors, and orders relating to findings of no probable cause in guardianship cases (ss. 744.1076 and 744.3701, F.S.).
- Grand jury records (ss. 905.17 and 905.28(1), F.S.).
- Records acquired by courts and law enforcement regarding family services for children (s. 984.06(3)-(4), F.S.).
- Juvenile delinquency records (ss. 985.04(1) and 985.045(2), F.S.).
- Records disclosing the identity of persons subject to tuberculosis proceedings and records held by the Department of Health or its authorized representatives relating to known or suspected cases of tuberculosis or exposure to tuberculosis (ss. 392.545 and 392.65, F.S.).
- Complete presentence investigation reports (Fla. R. Crim. P. 3.712).
- Forensic behavioral health evaluations under ch. 916, F.S. (s. 916.1065, F.S.).
- Eligibility screening, substance abuse screening, behavioral health evaluations, and treatment status reports for defendants referred to or considered for referral to a drug court program (s. 397.334(10)(a), F.S.).

Similarly, Rule 2.425, of the Florida Rules of Judicial Administration, relates to the minimization of filing sensitive information. Under this rule, designated sensitive information is formatted to limit the amount of confidential information filed with a court. In relevant part, the rule, unless authorized by statute, rule of court, or court order provides that court filings should not contain any portion of an individual's:

- Social security number,
- Bank account number,
- Credit card account number,
- Charge account number, or
- Debit account number.¹¹

¹¹ Fla. R. Jud. Admin. 2.425(a)(3).
STORAGE NAME: h0441d.JDC.DOCX
DATE: 4/4/2017

Rule 2.515 of the Florida Rules of Judicial Administration requires every document of a party represented by an attorney be signed by at least one attorney of record. The attorney's signature constitutes a certificate by the attorney that, among other things, the document contains no confidential or sensitive information or that any such information has been protected by identifying the confidential or sensitive information in accordance with the requirements of the Florida Rules of Judicial Administration.¹²

Clerks of Court Liability

Clerks also enjoy immunity from liability under common law. This may be in the form of either judicial immunity or qualified immunity.

The doctrine of judicial immunity insures that judges are immune from liability for damages for acts committed within their judicial jurisdiction and is essential to the preservation of an independent judiciary.¹³ Judges enjoy absolute immunity for acts performed in the course of their judicial capacities unless they clearly act without jurisdiction.¹⁴ This doctrine has been extended to quasi-judicial officials, such as a clerk of court, performing judicial acts.¹⁵ In Florida, judicial immunity applies to all forms of suits against judicial officials, not just suits for money damages.¹⁶

Acts or omissions by a government official that are not protected by absolute immunity, such as judicial immunity, may be protected by qualified immunity.¹⁷ The central purpose of qualified immunity is to protect public officials from undue interferences with their duties and from potentially disabling threats of liability. The doctrine insulates government officials from personal liability for money damages for actions taken pursuant to their discretionary authority insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.

Qualified immunity applies to all except the plainly incompetent or those who knowingly violate the law and turns upon the objective legal reasonableness of the official's action assessed in light of the legal rules that were clearly established at the time when the action was taken. To abrogate or limit a government official's immunity, a statute must be clear.¹⁸

Effect of Proposed Changes

The bill provides that a clerk of court is not liable if confidential information is disclosed due to the filer's failure to disclose the existence of the confidential information to the clerk, as required by the Florida Rules of Judicial Administration.

The bill also removes outdated language.

B. SECTION DIRECTORY:

Section 1 amends s. 119.0714, F.S., related to court files; court records; official records.

Section 2 provides an effective date of July 1, 2017.

¹² Fla. R. Jud. Admin. 2.515(a)(4).

¹³ *Berry v. State*, 400 So.2d 80, 82–83 (Fla. 4th DCA 1981).

¹⁴ *Id.* at 83.

¹⁵ *See Zoba v. City of Coral Springs*, 189 So.3d 888 (Fla. 4th DCA 2016); *see also Fong v. Forman*, 105 So.3d 650 (Fla. 4th DCA 2013).

¹⁶ *Fuller v. Truncale*, 50 So.3d 25, 30 (Fla. 1st DCA 2010).

¹⁷ "Qualified Immunity" is defined to mean "[i]mmunity from civil liability for a public official who is performing a discretionary function, as long as the conduct does not violate clearly established constitutional or statutory rights." *Black's Law Dictionary* 643 (9th ed. abr., 2010).

¹⁸ *Bates v. St. Lucie County Sheriff's Office*, 31 So.3d 210, 213 (Fla. 4th DCA 2010).

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 has the potential to result in an indeterminate positive impact for clerks through savings on legal fees.¹⁹

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:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2017, the Civil Justice & Claims Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed the term "inadvertent" from the bill.

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

1 A bill to be entitled
 2 An act relating to court records; amending s.
 3 119.0714, F.S.; providing an exemption from liability
 4 for the release of certain information by the clerk of
 5 court; deleting obsolete language; providing an
 6 effective date.

7

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

9

10 Section 1. Paragraph (e) of subsection (2) of section
 11 119.0714, Florida Statutes, is amended, and paragraph (g) is
 12 added to that subsection, to read:

13 119.0714 Court files; court records; official records.—

14 (2) COURT RECORDS.—

15 (e)1. ~~On January 1, 2012, and thereafter,~~ The clerk of the
 16 court must keep social security numbers confidential and exempt
 17 as provided for in s. 119.071(5)(a), and bank account, debit,
 18 charge, and credit card numbers exempt as provided for in s.
 19 119.071(5)(b), without any person having to request redaction.

20 2. Section 119.071(5)(a)7. and 8. does not apply to the
 21 clerks of the court with respect to court records.

22 (g) The clerk of the court is not liable for the release
 23 of information that is required by the Florida Rules of Judicial
 24 Administration to be identified by the filer as confidential if
 25 the filer fails to make the required identification of the

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2017

26 | confidential information to the clerk of the court.

27 | Section 2. This act shall take effect July 1, 2017.



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 Moraitis offered the following:

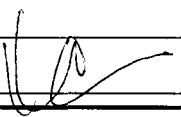
3
4 **Amendment**

5 Remove line 221 and insert:

6 (I) The recipient may request that any documents sent
7 during

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 477 Controlled Substances
SPONSOR(S): Criminal Justice Subcommittee, Boyd and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 1 N, As CS	Hall	White
2) Justice Appropriations Subcommittee	13 Y, 0 N	Smith	Gusky
3) Judiciary Committee		Hall WH	Camechis 

SUMMARY ANALYSIS

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act ("the Act") which classifies controlled substances into five categories, known as schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed therein. The distinguishing factors between the different schedules are the "potential for abuse" of the substances and whether there is a currently accepted medical use for the substances. Florida law also regulates emerging substances, not yet included in the schedules, under s. 893.0356, F.S., the Analogue Statute. An analog drug is substantially similar in chemical structure and potential for abuse to a drug already prohibited by statute and is treated the same as the controlled substance to which it is an analog for the purpose of assigning criminal penalties.

Recently, Florida has experienced increased incidents involving fentanyl. Fentanyl is a Schedule II synthetic opioid drug that is approximately 50 to 100 times stronger than morphine and has analogs that can be up to 100 times stronger than the drug itself. Similar synthetic opioid compounds previously used as "research drugs" have also surfaced in the state. In addition to users, these drugs are dangerous to emergency responders and law enforcement, as even small amounts absorbed through the skin or inhaled can be lethal.

The bill enhances existing penalties and creates new penalties for synthetic opioid drugs by:

- Adding certain fentanyl related controlled substances to the substances for which distribution, that results in death and is the proximate cause of a user's death, is punishable as murder;
- Adding a class of fentanyl derivatives and five "research drugs" to Schedule I;
- Creating a first degree felony for possession of 10 grams or more of certain Schedule II substances including certain fentanyl related substances;
- Revising the substances that constitute trafficking offenses for hydrocodone, oxycodone, phencyclidine, and phenethylamines;
- Creating trafficking offenses for fentanyl, synthetic cannabinoids, and n-benzyl phenethylamines; and
- Authorizing certain crime laboratory personnel to possess, store, and administer emergency opioid antagonists used to treat opioid overdoses.

Additionally, the bill creates s. 893.015, F.S., to provide that a reference in any section of the Florida Statutes to chapter 893, F.S., or to any section or portion of a section of chapter 893, F.S., includes all subsequent amendments.

The Criminal Justice Impact Conference (CJIC) met on March 29, 2017, and determined the bill has a positive indeterminate impact on prison population, meaning it is expected that the need for prison beds will increase by an unquantifiable number. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

The bill provides an effective date of October 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Regulation of Controlled Substances

Chapter 893, F.S., the Florida Comprehensive Drug Abuse Prevention and Control Act ("the Act"), classifies controlled substances into five categories, called schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed therein. The distinguishing factors between the different drug schedules are the "potential for abuse"¹ of the substance and whether there is a currently accepted medical use for the substance.²

The Controlled Substance Schedules are as follows:

- Schedule I substances have a high potential for abuse and currently have no accepted medical use in the United States, including substances such as cannabis and heroin.³
- Schedule II substances have a high potential for abuse and have a currently accepted but severely restricted medical use in the United States, including substances such as raw opium, fentanyl, and codeine.⁴
- Schedule III substances have a potential for abuse less than the substances contained in Schedules I and II and have a currently accepted medical use in the United States, including substances such as stimulants and anabolic steroids.⁵
- Schedule IV substances have a low potential for abuse relative to substances in Schedule III and have a currently accepted medical use in the United States, including substances such as benzodiazepines and barbiturates.⁶
- Schedule V substances have a low potential for abuse relative to the substances in Schedule IV and have a currently accepted medical use in the United States, including substances such as mixtures that contain small quantities of opiates, narcotics, or stimulants.⁷

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 and provides the penalties for the possession, sale, purchase, manufacture, and delivery of controlled substances. In general, the severity of the penalty for a violation of these provisions depends on the schedule in which the controlled substance is listed.⁸ Other factors such as the quantity of the controlled substance involved or the location where the violation occurs may also enhance the penalties for a violation of ch. 893.13, F.S. Additionally, s. 893.135, F.S., provides penalties for drug trafficking offenses, including minimum mandatory sentences and fines, which increase in severity as the quantity of the controlled substance involved increases.

In an effort to regulate emerging substances that are not yet included in the schedules, the Legislature created s. 893.0356, F.S., commonly called the Analogue Statute, to prohibit drugs that are

¹ Section 893.035(3)(a), F.S., defines "potential for abuse" to mean that a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of its being: 1) used in amounts that create a hazard to the user's health or safety of the community; 2) diverted from legal channels and distributed through illegal channels; or 3) taken on the user's own initiative rather than on the basis of professional medical advice.

² See s. 893.03, F.S.

³ s. 893.03(1), F.S.

⁴ s. 893.03(2), F.S.

⁵ s. 893.03(3), F.S.

⁶ s. 893.03(4), F.S.

⁷ s. 893.03(5), F.S.

⁸ See s. 893.13, F.S.

substantially similar to those prohibited by statute.⁹ Under the law a “controlled substance analog” is defined as:

- A substance which, due to its chemical structure and potential for abuse, is substantially similar to that of a controlled substance listed in Schedule I or Schedule II of s. 893.03, F.S.; and
- Either has or is represented to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than that of a controlled substance listed in Schedule I or Schedule II of s. 893.03, F.S.¹⁰

The Analogue Statute requires the controlled substance analog to be treated the same as the highest scheduled controlled substance in s. 893.03, F.S., of which it is an analog, for the purposes of determining criminal penalties.¹¹ The Analogue Statute specifies that a “controlled substance analog” does not include:

- A controlled substance;
- Any substance for which there is an approved new drug application;
- Any compound, mixture, or preparation which contains any controlled substance which is not for administration to a human being or animal, and which is packaged in such form or concentration, or with adulterants or denaturants, so that as packaged it does not present any significant potential for abuse; or
- Any substance to which an investigation exemption applies under s. 505 of the Food, Drug, and Cosmetic Act, 21 U.S.C. § 355, but only to the extent that conduct with respect to the substance is pursuant to such exemption.

Fentanyl and Related Drugs

Fentanyl, carfentanil,¹² alfentanil,¹³ and sufentanil¹⁴ are Schedule II controlled substances.¹⁵ Florida law punishes the possession of these controlled substances as a third degree felony,¹⁶ and the possession with intent to sell, manufacture, or deliver, or the sale, manufacture, or delivery of these controlled substances as a second degree felony.¹⁷

Fentanyl is a synthetic opioid analgesic that is approximately 50 to 100 times more potent than morphine.¹⁸ When prescribed by a physician, fentanyl is typically used to treat patients with severe pain or to manage pain after surgery and is administered via injection, transdermal patch, or in lozenges.¹⁹ Although prescription fentanyl can be misused, most overdoses and related deaths have been linked to illicitly manufactured fentanyl, including fentanyl analogs.²⁰ Such illicitly manufactured fentanyl is produced in clandestine laboratories and can be sold as a powder, spiked on blotter paper, mixed with heroin, or as tablets made to look like other, less potent opioids.²¹

⁹ The Analogue Statute, created in 1987, is largely modeled after the federal Controlled Substance Analogue Enforcement Act under 21 U.S.C. § 802(32)(A).

¹⁰ s. 893.0356(2)(a), F.S.

¹¹ s. 893.0356(5), F.S.

¹² Carfentanil was first developed in the 1970s and is only routinely used as an anesthetic for elephants and other large animals. Erika Kinetz & Desmond Butler, *Chemical Weapon for sale: China's unregulated narcotic*, AP TOP NEWS, October 07, 2016, available at <https://apnews.com/7c85cda5658e46f3a3be95a367f727e6>.

¹³ Alfentanil is a fentanyl derivative opioid anesthetic, which has a faster onset of action, and also the shorter duration of action than fentanyl. PUBMED, *Clinical uses of fentanyl, sufentanil, and alfentanil*, <https://www.ncbi.nlm.nih.gov/pubmed/1834393> (last visited February 22, 2017).

¹⁴ Sufentanil is a fentanyl derivative that is even more potent than fentanyl. *Id.*

¹⁵ s. 893.03(2)(b), F.S.

¹⁶ Violation of s. 893.13(6)(a), F.S., is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

¹⁷ Violation of s. 893.13(1)(a)1., F.S., is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

¹⁸ NATIONAL INSTITUTE ON DRUG ABUSE, *Fentanyl*, <https://www.drugabuse.gov/publications/drugfacts/fentanyl> (last visited February 2, 2017).

¹⁹ *Id.*

²⁰ CENTERS FOR DISEASE CONTROL AND PREVENTION, *Increases in Fentanyl-Related Overdose Deaths-Florida and Ohio, 2013-2015*, <https://www.cdc.gov/mmwr/volumes/65/wr/mm6533a3.htm> (last visited February 7, 2017).

²¹ *Id.*

Frequently, fentanyl is mixed into other drugs and sold without the customer's knowledge of the presence of fentanyl.²² The Drug Enforcement Agency (DEA) reports that since 2014, law enforcement agencies within the United States have begun seizing counterfeit prescription opioid pills, mimicking authentic medications, which contain fentanyl.²³ Recently in Florida, nine overdose deaths in Pinellas County were linked to counterfeit Xanax pills containing a combination of Xanax and fentanyl.²⁴

Between late 2013 and late 2014, the DEA estimates over 700 deaths in the United States were related to fentanyl; however, this number is believed to be underestimated due to variations in reporting techniques between states and deaths being attributed to heroin.²⁵ According to a recent report from the Centers for Disease Control and Prevention (CDC), fentanyl submissions to law enforcement increased 494 percent in Florida (from 33 to 196) between 2013 and 2014, while the state also experienced a 115 percent increase (from 185 to 397) in fentanyl-related deaths during the same time frame.²⁶ Fentanyl analogs, specifically, were implicated in 49 drug overdose deaths in Florida between January and June 2015.²⁷ The CDC estimates the numbers and rates of fentanyl deaths, relating to Florida specifically, are also underestimated because testing for fentanyl and fentanyl analogs is not systematic statewide.²⁸

Carfentanil, one fentanyl analog, has been responsible for multiple overdose deaths in Florida. The drug is chemically similar to, but 100 times stronger, than fentanyl itself and is so deadly that an amount smaller than a poppy seed can be lethal.²⁹ In Manatee County, FL, carfentanil was confirmed in at least 43 fatal overdoses in 2016, with 12 more cases in which the drug was suspected, but not yet confirmed by the toxicology lab as the cause of death.³⁰ In August 2016, the National Institute on Drug Abuse issued an alert for Ohio and Florida concerning carfentanil overdoses, warning that the drug is likely being added to mixtures of heroin and other street drugs, creating a higher risk for overdoses.³¹

In addition to the rise of fentanyl and its analogs, a new group of synthetic opioid compounds has emerged. These drugs are a part of a group of compounds known as "research chemicals" that have been typically reserved for industrial and medical trials and remain largely untested in humans.³² This group includes, but is not limited to:

- W-15, 4-chloro-N- [1- (2-phenylethyl) -2-piperidinylidene] -benzenesulfonamide.
- W-18, 4-chloro-N- [1-[2-(4-nitrophenyl) ethyl] -2-piperidinylidene] -benzenesulfonamide³³.
- AH-7921, 3, 4-dichloro-N- [[1-dimethylamino) cyclohexyl]methyl] -benzamide³⁴.

²² Drug Enforcement Agency, *Counterfeit Prescription Pills Containing Fentanyls: A Global Threat*, DEA INTELLIGENCE BRIEF, July 2016, at 2, available at

https://content.govdelivery.com/attachments/USDOJDEA/2016/07/22/file_attachments/590360/fentanyl%2Bpills%2Breport.pdf.

²³ *Id.* at 2.

²⁴ Kristen Mitchell, *Sheriff: Blend of Xanax, fentanyl has killed nine people in Pinellas*, TAMPA BAY ONLINE (March 22, 2016), <http://www.tbo.com/pinellas-county/sheriff-blend-of-xanax-fentanyl-has-killed-nine-people-in-pinellas-20160322/>.

²⁵ Drug Enforcement Agency, *Counterfeit Prescription Pills Containing Fentanyls: A Global Threat*, DEA INTELLIGENCE BRIEF, July 2016, at 9, available at

https://content.govdelivery.com/attachments/USDOJDEA/2016/07/22/file_attachments/590360/fentanyl%2Bpills%2Breport.pdf.

²⁶ In contrast, the prescription rate for fentanyl only increased five percent in the state of Florida. CENTERS FOR DISEASE CONTROL AND PREVENTION, *Increases in Fentanyl-Related Overdose Deaths-Florida and Ohio, 2013-2015*, <https://www.cdc.gov/mmwr/volumes/65/wr/mm6533a3.htm> (last visited February 7, 2017).

²⁷ *Id.*

²⁸ *Id.*

²⁹ Erika Kinetz & Desmond Butler, *Chemical Weapon for sale: China's unregulated narcotic*, AP TOP NEWS, October 07, 2016, available at <https://apnews.com/7c85cda5658e46f3a3be95a367f727e6>.

³⁰ Jessica De Leon, *Bradenton is opioid overdose capital of Florida. And still no one knows why.*, BRADENTON HERALD (December 19, 2016, 8:58 AM), <http://www.bradenton.com/news/local/heroin-epidemic/article121725633.html>.

³¹ NATIONAL INSTITUTE ON DRUG ABUSE, *Alert Issued in Ohio for Human Use of Animal Sedative Carfentanil, with Cases Also Seen in Florida*, <https://www.drugabuse.gov/drugs-abuse/emerging-trends-alerts> (last visited February 23, 2017).

³² Christopher Moraff, *How Knockoff Fentanyl Dodges Cops*, THE DAILY BEAST (June 07, 2016, 1:00 AM), <http://www.thedailybeast.com/articles/2016/06/07/how-knockoff-fentanyl-dodges-cops.html>.

³³ The drug is said to be 10,000 times stronger than morphine (however, tests have only been conducted on mice). *Id.*

³⁴ The synthetic opioid drug was emergency scheduled by the DEA in May 2016. *Id.*

- U47700, *trans*-3, 4-dichloro-N- [2-(dimethylamino) cyclohexyl] -N-methyl-benzamide³⁵.
- MT-45, 1-cyclohexyl-4- (1,2-diphenylethyl) -piperazine, dihydrochloride.

In March 2016, law enforcement in Lorain County, Ohio seized 500 pills that appeared to be oxycodone pills but were actually the research chemical U-4770. The DEA estimates that U-47700 has been linked to at least 46 deaths in the United States.³⁶ Also in March 2016, law enforcement in South Florida discovered counterfeit OxyContin tablets containing the research chemical W-18 in Miramar, FL.³⁷ The DEA predicts that although many counterfeit opioid pill traffickers currently use fentanyls, it is likely that synthetic opioids like these will be utilized if fentanyls become unavailable or if user preferences shift.³⁸

Effect of the Bill on the Regulation of Controlled Substances

Section four of the bill amends s. 893.03(1)(a), F.S., to add certain substances, called fentanyl derivatives, to Schedule I, including:

- A general class by chemical structure;
- A description of chemical substitutions that can be made to the structure to remain an illicit member of the structure family;
- Twenty-three substances specifically identified as fentanyl derivatives; and
- An exclusion for alfentanil, carfentanil, fentanyl, and sufentanil so as to not alter their current placement in Schedule II.³⁹

Offenses involving fentanyl derivatives will be subject to the following criminal penalties:

- Possession⁴⁰ of less than 10 grams is a third degree felony.⁴¹
- Possession of 10 grams or more is a first degree felony.⁴²
- Purchase or possession with intent to purchase is a second degree felony.⁴³
- Sale, manufacture, or delivery, or possession with intent to sell, manufacture, or deliver is a second degree felony.⁴⁴

Additionally, in section four of the bill, s. 893.03(1)(c), F.S., is amended to add five new substances to Schedule I. These substances have traditionally been used as research chemicals, but have emerged for illicit use and include:

- W-15, 4-chloro-N- [1- (2-phenylethyl) -2-piperidinylidene] –benzenesulfonamide.
- W-18, 4-chloro-N- [1- [2-(4-nitrophenyl) ethyl] -2-piperidinylidene] –benzenesulfonamide.
- AH-7921, 3, 4-dichloro-N-[[1-(dimethylamino) cyclohexyl] methyl] –benzamide.
- U47700, *trans*-3, 4-dichloro-N- [2-(dimethylamino) cyclohexyl] -N-methyl-benzamide.
- MT-45, 1-cyclohexyl-4- (1, 2-diphenylethyl) -piperazine, dihydrochloride.

³⁵ This drug was developed by pharmaceutical manufacturer Upjohn in the 1970s and is 7.5 times more powerful than morphine. *Id.*

³⁶ NATIONAL INSTITUTE ON DRUG ABUSE, *DEA Temporarily Bans Synthetic Opioid U-47700 ("Pink"), Linked to Nearly 50 Deaths*, <http://www.drugabuse.gov/drug-abuse/emerging-trends-alerts> (last visited February 23, 2017).

³⁷ Jerry Iannelli, *New Synthetic Drug, W-18, Found in South Florida*, NEW TIMES BROWARD-PALM BEACH, March 22, 2016, available at <http://www.browardpalmbeach.com/new-synthetic-drug-w-18-found-in-south-florida-7667569>.

³⁸ Drug Enforcement Agency, *Counterfeit Prescription Pills Containing Fentanyls: A Global Threat*, DEA INTELLIGENCE BRIEF, July 2016, at 2, available at

https://content.govdelivery.com/attachments/USDOJDEA/2016/07/22/file_attachments/590360/fentanyl%2Bpills%2Breport.pdf.

³⁹ These fentanyl derivative compounds have limited medical or veterinary applications. See s. 893.03(b), F.S.

⁴⁰ Unless lawfully obtained from a practitioner or pursuant to a valid prescription. s. 893.13(6)(a), F.S.

⁴¹ Pursuant to s. 893.13(6)(a), F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

⁴² Pursuant to s. 893.13(6)(c), F.S. A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

⁴³ Pursuant to s. 893.13(2)(a)1., F.S. A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

⁴⁴ Pursuant to s. 893.13(1)(a)1., F.S. A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

Offenses involving these drugs are subject to the following criminal penalties:

- Possession is a third degree felony.⁴⁵
- Purchase or possession with intent to purchase is a third degree felony.⁴⁶
- Sale, manufacture, or delivery, or possession with intent to sell, manufacture, or deliver is a third degree felony.⁴⁷

Section five of the bill amends s. 893.13(6)(c), F.S., to add 29 Schedule II controlled substances listed in s. 893.03(2)(b), F.S., to the list of substances for which possession of 10 grams or more is now punishable as a first degree felony. These substances include, but are not limited to: alfentanil, carfentanil, fentanyl, and sufentanil.

Section six of the bill amends existing trafficking offenses to revise the prohibited substances that are subject to heightened penalties.⁴⁸ The bill amends s. 893.135(1)(c)2., F.S., trafficking in hydrocodone, to:

- Add codeine,⁴⁹ a Schedule II substance and an isomer⁵⁰ of hydrocodone,⁵¹ to the controlled substances punishable under this subparagraph, and
- Remove “derivative, isomer, or salt of an isomer” related to hydrocodone from those punishable under this subparagraph.⁵²

By adding codeine to the trafficking in hydrocodone offenses, codeine becomes subject to the following mandatory minimum sentences and fines or capital penalties:

Amount	14 < 28 grams	28 < 50 grams	50 < 200 grams	200 grams < 30 kilograms	30+ kilos
Minimum Mandatory Sentence and Fine or Capital Offense	3 years \$50,000	7 years \$100,000	15 years \$500,000	25 years \$750,000	Capital trafficking and importation in illegal drugs ⁵³

The bill amends s. 893.135(1)(c)3., F.S, trafficking in oxycodone, to remove “derivative, isomer, or salt of an isomer” related to oxycodone punishable under this subparagraph. The removal of the language has no effect on the types of substances prohibited because there have not been any drugs identified as a derivative, isomer, or salt of an isomer of oxycodone.⁵⁴

⁴⁵ Pursuant to s. 893.13(6)(a), F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

⁴⁶ Pursuant to s. 893.13(2)(a)2., F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

⁴⁷ Pursuant to s. 893.13(1)(a)2., F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

⁴⁸ Trafficking is a first degree felony punishable by up to 30 years imprisonment. s. 775.082, F.S.

⁴⁹ Codeine is classified as an opioid, typically prescribed as a pain reliever and cough suppressant, which has a high potential for addiction. DRUG ABUSE.COM, *The Effects of Codeine Use*, drugabuse.com/library/the-effects-of-codeine-use/ (last visited February 24, 2017).

⁵⁰ Isomers are compounds with the same chemical formula but different structures. BODNER RESEARCH WEB, *Isomers*, chemed.chem.purdue.edu/genchem/topicreview/bp/ch12/isomers.php (last visited February 24, 2017).

⁵¹ Email from Michelle DePaola, Chemistry Technical Leader, Florida Department of Law Enforcement, HB 0477 (February 23, 2017) (on file with the Criminal Justice Subcommittee).

⁵² This language is stricken since codeine is the only known isomer of hydrocodone and is now specifically listed in the law. *Id.*

⁵³ s. 893.13(1)(c)5. and 6., F.S.

⁵⁴ Email from Michelle DePaola, Chemistry Technical Leader, Florida Department of Law Enforcement, HB 0477 (February 23, 2017) (on file with Criminal Justice Subcommittee).

The bill amends s. 893.135(1)(d), F.S, relating to trafficking in phencyclidine,⁵⁵ to add the following substances to those currently punishable under this paragraph:

- Substituted phenylcyclohexylamines,⁵⁶
- Five controlled substances identified as phenylcyclohexylamine analogs; or
- Any mixture thereof.

By adding the new substances to the trafficking in phencyclidine offenses, the new substances become subject to the following mandatory minimum sentences and fines or capital penalties:

Amount	28 <200 grams	200 < 400 grams	400 < 800 grams	800+ grams
Minimum Mandatory Sentence and Fine or Capital Offense	3 years \$50,000	7 years \$100,000	15 years \$250,000	Capital importation or manufacture ⁵⁷

The bill amends s. 893.135(1)(k), F.S., relating to trafficking in phenethylamines⁵⁸, to add the following substances to those punishable under this paragraph:

- Approximately sixty controlled substances identified as phenethylamines or cathinones,⁵⁹
- Substituted cathinones listed in s. 893.03(1)(c)191., F.S.;
- Substituted phenethylamines listed in s. 893.03(1)(c)192., F.S.;
- Any mixture thereof; or
- Any mixture of the salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers thereof.

By adding the new substances to the trafficking in phenethylamines offenses, the new substances become subject to the following mandatory minimum sentences and fines or capital penalties:

Amount	10 <200 grams	200 < 400 grams	400 grams < 30 kilograms	30+ kilograms
Minimum Mandatory Sentence and Fine or Capital Offense	3 years \$50,000	7 years \$100,000	15 years \$250,000	Capital Importation or Manufacture ⁶⁰

In addition to amending existing trafficking offenses, the bill creates new trafficking offenses for possession of threshold amounts of certain controlled substances including: fentanyl, synthetic cannabinoids, and n-benzyl phenethylamines.

Section six of the bill amends s. 893.135(1)(c)4., F.S., to create the offense of trafficking in fentanyl, for the possession of certain threshold amounts of the following controlled substances and creates penalties as follows:

⁵⁵ Phencyclidine is classified as a hallucinogen and goes by the street name “PCP”. DRUG ENFORCEMENT AGENCY DIVERSION CONTROL, *Phencyclidine*, www.deadiversion.usdoj.gov/drug_chem_info/pcp.pdf (last visited February 24, 2017).

⁵⁶ These substances are phencyclidine analogs. See generally Richard R. Laing, HALLUCINOGENS: A FORENSIC DRUG HANDBOOK, 60-62, Jay A. Siegel (2003).

⁵⁷ This offense is punishable as provided in ss. 775.082 and 921.142, F.S., and the offender may be ordered to pay a fine up to \$250,000. s. 893.135(6)(d)2., F.S.

⁵⁸ This class of controlled substances includes hallucinogenic drugs such as MDMA (Ecstasy), MDA, and MDEA. FLORIDA DEPARTMENT OF LAW ENFORCEMENT, *Drugs Identified in Deceased Persons by Florida Medical Examiners, 2015 Annual Report*, September 2016, at 52, available at <http://www.fdle.state.fl.us/cms/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2015-Annual-Drug-Report.aspx>.

⁵⁹ Cathinones are drug “cousins” of phenethylamines and include drugs such as “Molly” and “Flakka”. *Id.*

⁶⁰ This offense is punishable as provided in ss. 775.082 and 921.142, F.S., and the offender may be ordered to pay a fine up to \$250,000. s. 893.135(6)(k)2., F.S.

- Alfentanil;
- Carfentanil;
- Fentanyl;
- Sufentanil;
- Fentanyl derivatives;
- Fentanyl analogs; or
- Any mixture thereof.

Amount	4 <14 grams	14 < 28 grams	28 grams+
Minimum Mandatory Sentence and Fine	3 years \$50,000	15 years \$100,000	25 years \$500,000

Section six of the bill adds s. 893.135(1)(m), F.S., to create the offense of trafficking in synthetic cannabinoids, for the possession of certain threshold amounts of the following controlled substances and create penalties as follows:

- Approximately 56 controlled substances identified as synthetic cannabinoids;
- Synthetic cannabinoids as described in s. 893.03(1)(c)190., F.S.; or
- Any mixture thereof.

Amount	280 <500 grams	500 < 1,000 grams	1,000 grams < 30 kilograms	30+ kilograms
Minimum Mandatory Sentence and Fine	3 years \$50,000	7 years \$100,000	15 years \$200,000	25 years \$750,000

Section six of the bill adds s. 893.135(1)(n), F.S., to create the offense of trafficking in n-benzyl phenethylamines, for the possession of certain threshold amounts of the following controlled substances and create penalties as follows:

- Eleven controlled substances identified as n-benzyl phenethylamines;
- N-benzyl phenethylamine compounds as described in s. 893.03(1)(c)193., F.S.; or
- Any mixture thereof.

Amount	14 <100 grams	100 < 200 grams	200 < 400 grams	400+ grams
Minimum Mandatory Sentence and Fine	3 years \$50,000	7 years \$100,000	15 years \$500,000	Capital Importation or Manufacture

Section seven of the bill amends s. 921.0022, F.S., the Criminal Punishment Code Offense Severity Ranking chart, to include rankings for the trafficking offenses either amended or created by the bill. The following offenses will be classified as a Level 7 offense:

- Trafficking in phencyclidine, 28 g. or more < 200 g.
- Trafficking in phenethylamines, 10 g. or more < 200 g.
- Trafficking in fentanyl, 4 g. or more < 14 g.
- Trafficking in synthetic cannabinoids, 280 g. or more < 500 g. and 500 g. or more < 1,000 g.
- Trafficking in n-benzyl phenethylamines, 14 g. or more < 100 g.

The following trafficking offenses amended or created by the bill will be classified as Level 8 offenses:

- Trafficking in phencyclidine, 200 g. or more < 400 g.
- Trafficking in phenethylamines, 200 g. or more < 400 g.
- Trafficking in fentanyl, 14 g. or more < 28 g.
- Trafficking in synthetic cannabinoids, 1,000 g. or more < 30 kg.
- Trafficking in n-benzyl phenethylamines, 100 g. or more < 200 g.

The remaining trafficking offenses amended or created by the bill will be classified as Level 9 offenses and include:

- Trafficking in phencyclidine, 400 g. or more
- Trafficking in phenethylamines, 400 g. or more
- Trafficking in fentanyl, 28 g. or more
- Trafficking in synthetic cannabinoids, 30 kg. or more
- Trafficking in n-benzyl phenethylamines, 200 g. or more

Felony Murder by Drug Distribution

Currently, if a person 18 years of age or older unlawfully distributes certain controlled substances that are later proven to be the proximate cause of the death of a drug user, the distributor commits murder in the first degree, constituting a capital felony. The controlled substances currently included in the felony murder law include:

- Any substance controlled under s. 893.03(1), F.S.;
- Cocaine⁶¹;
- Opium or any synthetic or natural salt, compound, derivative, or preparation of opium; or
- Methadone.⁶²

Florida courts have held that under s. 782.04(1)(a)3., F.S., a defendant does not need to intend an act of homicide, have knowledge of a drug overdose, or be present when it occurs. In order to be guilty of this offense, the defendant need only intend to unlawfully distribute one of the prohibited drugs that results in a death caused by the drug.⁶³

Effect of the bill on Felony Murder by Drug Distribution

Section two of the bill amends s. 782.04(1)(a)3., F.S., to add additional controlled substances for which a distributor may be guilty of felony murder if the distribution of the drug results in the death of a user. The bill adds the following fentanyl-related controlled substances:

- Alfentanil;⁶⁴
- Carfentanil;⁶⁵
- Fentanyl;⁶⁶
- Sufentanil;⁶⁷
- Fentanyl derivatives;⁶⁸
- An analog thereto;⁶⁹ or
- Any mixture thereof.

A drug distributor who unlawfully distributes any of these Schedule I or II controlled substances will be subject to the provisions of s. 782.04(1)(a)3., F.S., if such distribution causes death, regardless of whether he or she intended such a result.

Emergency Treatment for Suspected Opioid Overdose

In addition to being deadly to drug users, fentanyl related drugs pose a dangerous threat to first responders and law enforcement, as a lethal dose can be accidentally inhaled or absorbed through the skin.⁷⁰ In September 2016, the DEA issued a warning to first responders, medical, treatment, and

⁶¹ As described in s. 893.03(2)(a)4., F.S.

⁶² s. 782.04(1)(a)3., F.S.

⁶³ *Pena v. State*, 829 So. 2d 289, 294 (Fla. 2d 2002), *see also Aumuller v. State*, 944 So. 2d 1137, 1142 (Fla. 2d 2006).

⁶⁴ As described in s. 893.03(2)(b)1., F.S.

⁶⁵ As described in s. 893.03(2)(b)6., F.S.

⁶⁶ As described in s. 893.03(2)(b)9., F.S.

⁶⁷ As described in s. 893.03(2)(b)29., F.S.

⁶⁸ As described in s. 893.03(1)(a)62., F.S.

⁶⁹ As described in s. 893.0356, F.S.

⁷⁰ DRUG ENFORCEMENT AGENCY, *DEA Issues Carfentanil Warning to Police and Public*, <http://www.dea.gov/divisions/hq/2016/hq092216.html> (last visited February 23, 2017).

laboratory personnel about the serious danger posed in handling fentanyl and fentanyl related compounds.⁷¹ The agency warned these personnel to take measures to protect themselves from accidental exposure and to immediately administer Naloxone, a drug used to treat opioid overdoses, in the event of exposure.⁷²

Currently, Florida law contains an exception to the general requirement to possess a prescription for an emergency opioid antagonist, like Naloxone, to permit the emergency administration of the medication to a person believed to be experiencing an opioid overdose. Section 381.887, F.S., authorizes certain emergency responders to “possess, store, and administer emergency opioid antagonists as clinically indicated.”⁷³ Section 381.887, F.S., does not currently authorize crime laboratory personnel to possess, store, and administer opioid antagonists.

Effect of the bill on Emergency Treatment for Suspected Opioid Overdose

Section one of the bill amends s. 381.887, F.S., to add certain crime laboratory personnel to the group of persons authorized to possess, store, and administer emergency opioid antagonists as clinically indicated. These crime laboratory personnel include, but are not limited to:

- Analysts;
- Evidence intake personnel; and
- Their supervisors.

Crime laboratory personnel will be authorized to administer the medication without a prescription, allowing them to respond in the event of accidental exposure in the course of their job performance.

Cross-References to the Florida Comprehensive Drug Abuse Prevention and Control Act

There are two types of statutory cross-references, general and specific. A general reference is a cross-reference to a general body of law, e.g., a reference in a statute to the “Florida Comprehensive Drug Abuse Prevention and Control Act” would be considered a general reference. A specific reference is a cross-reference to a specific section of law, e.g., a reference to s. 893.03, F.S., would be considered a specific reference.

Under case law, a general reference in statute incorporates the referenced law and any subsequent amendments of that law.⁷⁴ A specific reference in statute, however, incorporates the referenced statute as it existed at the time the cross-reference was adopted. Such specific reference is unaffected by subsequent amendments to the incorporated statute,⁷⁵ unless the specific reference is reenacted by the legislation that amends the incorporated statute.

To avoid the necessity of reenacting specific references to sections within certain chapters of law, the Legislature has codified provisions that allow for all specific references to sections of law within certain chapters to automatically incorporate all subsequent amendments. Such chapters of law include ch. 435, F.S., entitled “Employment Screening,” and ch. 938, F.S., entitled “Court Costs.”⁷⁶

Currently, there are hundreds of specific references to sections contained in ch. 893, F.S. There is no statutory authority allowing such specific references to automatically incorporate subsequent amendments.

⁷¹ *Id.*

⁷² *Id.*

⁷³ Such emergency responders include: law enforcement officers, paramedics, and emergency medical technicians. s. 381.887(4), F.S.

⁷⁴ See *Williams v. State ex rel. Newberger*, 100 Fla. 1567, 125 So. 358 (1930), rev’d on other grounds on rehearing, 100 Fla. 1570, 131 So. 864 (1930); *State ex rel. Springer v. Smith*, 189 So. 2d 846 (Fla. 4th D.C.A. 1966); *Reino v. State*, 352 So. 2d 853 (Fla. 1977).

⁷⁵ See *Overstreet v. Blum*, 227 So. 2d 197 (Fla. 1969); *Hecht v. Shaw*, 112 Fla. 762, 151 So. 333 (1933); *Van Pelt v. Hilliard*, 75 Fla. 792, 78 So. 693 (1918); and *State ex rel. Springer v. Smith*, *ibid.*

⁷⁶ See ss. 435.01 and 983.31, F.S.

Effect of the Bill on Cross-References to the Act

Section three of the bill creates s. 893.015, F.S., to specify that the purpose of ch. 893, F.S., is to comprehensively address drug abuse prevention and control in this state, and, as such, unless expressly provided otherwise, a specific reference to ch. 893, F.S., or any section thereof incorporates all subsequent amendments to ch. 893, F.S., or any section thereof.

The bill provides an effective date of October 1, 2017.

B. SECTION DIRECTORY:

Section 1: Amends s. 381.887, F.S., providing that certain crime laboratory personnel may possess, store, and administer emergency opioid antagonist.

Section 2: Amends s. 782.04, F.S., providing that unlawful distribution of specified controlled substances and analogs or mixtures thereof which proximately cause a death is murder; providing criminal penalties.

Section 3: Creates s. 893.015, F.S., specifying the chapter's purpose; providing that a reference to ch. 893, F.S., or to any section or portion thereof, includes all subsequent amendments.

Section 4: Amends s. 893.03, F.S., adding certain synthetic opioid substitute compounds to the list of Schedule I controlled substances.

Section 5: Amends s. 893.13, F.S., prohibiting possession of more than 10 grams of specified substances; providing criminal penalties.

Section 6: Amends s. 893.135, F.S., revising the substances that constitute the offenses of trafficking in hydrocodone, trafficking in oxycodone, trafficking in phencyclidine and capital importation of phencyclidine, trafficking in phenethylamines and capital importation of phenethylamines; creating the offense of trafficking in fentanyl; creating the offenses of trafficking in n-benzyl phenethylamines and capital manufacture or importation of a n-benzyl phenethylamine compound; providing specified minimum terms of imprisonment and fines based on the quantity involved in the offense.

Section 7: Amends s. 921.0022, F.S., ranking offenses on the offense severity ranking chart of the Criminal Punishment Code; reenacting multiple sections of law to incorporate the amendments made by the bill in cross-references to amended provisions; providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: This bill does not appear to have an impact on state revenues.
2. Expenditures: The Criminal Justice Impact Conference (CJIC) met on March 29, 2017, and determined the bill has a positive indeterminate impact on prison population, meaning it is expected that the need for prison beds will increase by an unquantifiable number.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill does not appear to have an impact on local government revenues.
2. Expenditures: The bill does not appear to have an impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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

2. Other: None.

B. RULE-MAKING AUTHORITY: The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 15, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute (CS). The CS differs from the bill as filed in that the CS:

- Adds a provision amending s. 381.887, F.S., to authorize crime laboratory personnel to possess, store, and administer emergency opioid antagonist;
- Increases the penalty for unlawful distribution of specified controlled substances that cause the death of a drug user from manslaughter to murder;
- Creates s. 893.015, F.S., to provide that a reference to ch. 893, F.S., or any section thereof, includes all subsequent amendments;
- Reorganizes and replaces the offense of trafficking in synthetic drugs by revising existing offenses related to hydrocodone, oxycodone, phencyclidine, and phenethylamines and creating offenses relating to fentanyl, synthetic cannabinoids, and n-benzyl phenethylamines;
- Revises ranking of offenses on the offense severity ranking chart;
- Changes the effective date of the bill.

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

1 A bill to be entitled
 2 An act relating to controlled substances; amending s.
 3 381.887, F.S.; providing that certain emergency
 4 responders and crime laboratory personnel may possess,
 5 store, and administer emergency opioid antagonists;
 6 amending s. 782.04, F.S.; providing that unlawful
 7 distribution of specified controlled substances and
 8 analogs or mixtures thereof by an adult which
 9 proximately cause a death is murder; providing
 10 criminal penalties; creating s. 893.015, F.S.;
 11 specifying purpose relating to drug abuse prevention
 12 and control; providing that a reference to ch. 893,
 13 F.S., or to any section or portion thereof, includes
 14 all subsequent amendments; amending s. 893.03, F.S.;
 15 adding certain synthetic opioid substitute compounds
 16 to the list of Schedule I controlled substances;
 17 amending s. 893.13, F.S.; prohibiting possession of
 18 more than 10 grams of specified substances; providing
 19 criminal penalties; amending s. 893.135, F.S.;
 20 revising the substances that constitute the offenses
 21 of trafficking and capital trafficking in, and capital
 22 importation of, hydrocodone and oxycodone; creating
 23 the offense of trafficking in fentanyl; providing
 24 penalties and specifying minimum terms of imprisonment
 25 and fines based on the quantity involved in the

26 offense; revising the substances that constitute the
 27 offenses of trafficking in phencyclidine and capital
 28 importation of phencyclidine; revising the substances
 29 that constitute trafficking in phenethylamines and
 30 capital manufacture or importation of phenethylamines;
 31 creating the offense of trafficking in synthetic
 32 cannabinoids; providing penalties and specifying
 33 minimum terms of imprisonment and fines based on the
 34 quantity involved in the offense; creating the
 35 offenses of trafficking in n-benzyl phenethylamines
 36 and capital manufacture or importation of a n-benzyl
 37 phenethylamine compound; providing penalties and
 38 specifying minimum terms of imprisonment and fines
 39 based on the quantity involved in the offense;
 40 reenacting and amending s. 921.0022, F.S.; ranking
 41 offenses on the offense severity ranking chart of the
 42 Criminal Punishment Code; incorporating the amendments
 43 made by the act in cross-references to amended
 44 provisions; reenacting ss. 39.806(1)(d), 63.089(4)(b),
 45 95.11(10), 775.082(1)(b) and (3)(a), (b), and (c),
 46 775.0823(1) and (2), 921.16(1), 948.06(8)(c),
 47 948.062(1)(a), 985.265(3)(b), 1012.315(1)(d), and
 48 1012.467(2)(g), relating to grounds for termination of
 49 parental rights, proceeding to terminate parental
 50 rights pending adoption, limitations other than for

51 the recovery of real property, penalties, when
 52 sentences to be concurrent and when consecutive,
 53 violent offenses committed against specified
 54 officials, violation of probation or community
 55 control, reviewing and reporting serious offenses
 56 committed by offenders placed on probation or
 57 community control, detention transfer and release,
 58 disqualification from employment, and noninstructional
 59 contractors who are permitted access to school grounds
 60 when students are present, respectively, to
 61 incorporate the amendments made by the act in cross-
 62 references to amended provisions; providing an
 63 effective date.

64
 65 Be It Enacted by the Legislature of the State of Florida:

66
 67 Section 1. Subsection (4) of section 381.887, Florida
 68 Statutes, is amended to read:

69 381.887 Emergency treatment for suspected opioid
 70 overdose.-

71 (4) The following persons ~~Emergency responders, including,~~
 72 ~~but not limited to, law enforcement officers, paramedics, and~~
 73 ~~emergency medical technicians,~~ are authorized to possess, store,
 74 and administer emergency opioid antagonists as clinically
 75 indicated:

76 (a) Emergency responders, including, but not limited to,
 77 law enforcement officers, paramedics, and emergency medical
 78 technicians.

79 (b) Crime laboratory personnel for the statewide criminal
 80 analysis laboratory system as described in s. 943.32, including,
 81 but not limited to, analysts, evidence intake personnel, and
 82 their supervisors.

83 Section 2. Paragraph (a) of subsection (1) of section
 84 782.04, Florida Statutes, is amended to read:

85 782.04 Murder.—

86 (1)(a) The unlawful killing of a human being:

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

89 2. When committed by a person engaged in the perpetration
 90 of, or in the attempt to perpetrate, any:

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

92 b. Arson,

93 c. Sexual battery,

94 d. Robbery,

95 e. Burglary,

96 f. Kidnapping,

97 g. Escape,

98 h. Aggravated child abuse,

99 i. Aggravated abuse of an elderly person or disabled
 100 adult,

- 101 j. Aircraft piracy,
- 102 k. Unlawful throwing, placing, or discharging of a
- 103 destructive device or bomb,
- 104 l. Carjacking,
- 105 m. Home-invasion robbery,
- 106 n. Aggravated stalking,
- 107 o. Murder of another human being,
- 108 p. Resisting an officer with violence to his or her
- 109 person,
- 110 q. Aggravated fleeing or eluding with serious bodily
- 111 injury or death,
- 112 r. Felony that is an act of terrorism or is in furtherance
- 113 of an act of terrorism,
- 114 s. Human trafficking; or
- 115 3. Which resulted from the unlawful distribution by a
- 116 person 18 years of age or older of any of the following
- 117 substances, or mixture containing any of the following
- 118 substances ~~substance controlled under s. 893.03(1), cocaine as~~
- 119 ~~described in s. 893.03(2)(a)4., opium or any synthetic or~~
- 120 ~~natural salt, compound, derivative, or preparation of opium, or~~
- 121 ~~methadone by a person 18 years of age or older, when such~~
- 122 substance or mixture ~~drug~~ is proven to be the proximate cause of
- 123 the death of the user:
- 124 a. A substance controlled under s. 893.03(1);
- 125 b. Cocaine as described in s. 893.03(2)(a)4.;

- 126 c. Opium or any synthetic or natural salt, compound,
- 127 derivative, or preparation of opium;
- 128 d. Methadone;
- 129 e. Alfentanil, as described in s. 893.03(2)(b)1.;
- 130 f. Carfentanil, as described in s. 893.03(2)(b)6.;
- 131 g. Fentanyl, as described in s. 893.03(2)(b)9.;
- 132 h. Sufentanil, as described in s. 893.03(2)(b)29.; or
- 133 i. A controlled substance analog, as described in s.
- 134 893.0356, of any substance specified in sub-subparagraphs a.-h.,

135

136 is murder in the first degree and constitutes a capital felony,

137 punishable as provided in s. 775.082.

138 Section 3. Section 893.015, Florida Statutes, is created to

139 read:

140 893.015 Statutory references.—The purpose of this chapter

141 is to comprehensively address drug abuse prevention and control

142 in this state. To this end, unless expressly provided otherwise,

143 a reference in any section of the Florida Statutes to chapter

144 893 or to any section or portion of a section of chapter 893

145 includes all subsequent amendments to chapter 893 or to the

146 referenced section or portion of a section.

147 Section 4. Paragraphs (a) and (c) of subsection (1) of

148 section 893.03, Florida Statutes, are amended to read:

149 893.03 Standards and schedules.—The substances enumerated

150 in this section are controlled by this chapter. The controlled

151 substances listed or to be listed in Schedules I, II, III, IV,
 152 and V are included by whatever official, common, usual,
 153 chemical, trade name, or class designated. The provisions of
 154 this section shall not be construed to include within any of the
 155 schedules contained in this section any excluded drugs listed
 156 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded
 157 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical
 158 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted
 159 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt
 160 Anabolic Steroid Products."

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

166 (a) Unless specifically excepted or unless listed in
 167 another schedule, any of the following substances, including
 168 their isomers, esters, ethers, salts, and salts of isomers,
 169 esters, and ethers, whenever the existence of such isomers,
 170 esters, ethers, and salts is possible within the specific
 171 chemical designation:

- 172 1. Acetyl-alpha-methylfentanyl.
- 173 2. Acetylmethadol.
- 174 3. Allylprodine.
- 175 4. Alphacetylmethadol (except levo-alphacetylmethadol,

- 176 also known as levo-alpha-acetylmethadol, levomethadyl acetate,
 177 or LAAM).
- 178 5. Alphamethadol.
 - 179 6. Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl)
 180 ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-
 181 (N-propanilido) piperidine).
 - 182 7. Alpha-methylthiofentanyl.
 - 183 8. Alphameprodine.
 - 184 9. Benzethidine.
 - 185 10. Benzylfentanyl.
 - 186 11. Betacetylmethadol.
 - 187 12. Beta-hydroxyfentanyl.
 - 188 13. Beta-hydroxy-3-methylfentanyl.
 - 189 14. Betameprodine.
 - 190 15. Betamethadol.
 - 191 16. Betaprodine.
 - 192 17. Clonitazene.
 - 193 18. Dextromoramide.
 - 194 19. Diampromide.
 - 195 20. Diethylthiambutene.
 - 196 21. Difenoquin.
 - 197 22. Dimenoxadol.
 - 198 23. Dimepheptanol.
 - 199 24. Dimethylthiambutene.
 - 200 25. Dioxaphetyl butyrate.

- 201 26. Dipipanone.
- 202 27. Ethylmethylthiambutene.
- 203 28. Etonitazene.
- 204 29. Etoxeridine.
- 205 30. Flunitrazepam.
- 206 31. Furethidine.
- 207 32. Hydroxypethidine.
- 208 33. Ketobemidone.
- 209 34. Levomoramide.
- 210 35. Levophenacymorphan.
- 211 36. Desmethylprodine (1-Methyl-4-Phenyl-4-
- 212 Propionoxypiperidine).
- 213 37. 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-
- 214 piperidyl]-N-phenylpropanamide).
- 215 38. 3-Methylthiofentanyl.
- 216 39. Morpheridine.
- 217 40. Noracymethadol.
- 218 41. Norlevorphanol.
- 219 42. Normethadone.
- 220 43. Norpipanone.
- 221 44. Para-Fluorofentanyl.
- 222 45. Phenadoxone.
- 223 46. Phenampromide.
- 224 47. Phenomorphan.
- 225 48. Phenoperidine.

- 226 49. PEPAP (1-(2-Phenylethyl)-4-Phenyl-4-
 227 Acetyloxypiperidine).
- 228 50. Piritramide.
- 229 51. Proheptazine.
- 230 52. Properidine.
- 231 53. Propiram.
- 232 54. Racemoramide.
- 233 55. Thenylfentanyl.
- 234 56. Thiofentanyl.
- 235 57. Tilidine.
- 236 58. Trimeperidine.
- 237 59. Acetylfentanyl.
- 238 60. Butyrylfentanyl.
- 239 61. Beta-Hydroxythiofentanyl.
- 240 62. Fentanyl Derivatives. Unless specifically excepted,
 241 listed in another schedule, or contained within a pharmaceutical
 242 product approved by the United States Food and Drug
 243 Administration, any material, compound, mixture, or preparation,
 244 including its salts, isomers, esters, or ethers, and salts of
 245 isomers, esters, or ethers, whenever the existence of such salts
 246 is possible within any of the following specific chemical
 247 designations containing a 4-anilidopiperidine structure:
- 248 a. With or without substitution at the carbonyl of the
 249 aniline moiety with alkyl, alkenyl, carboalkoxy, cycloalkyl,
 250 methoxyalkyl, cyanoalkyl, or aryl groups, or furanyl,

251 dihydrofuranyl, benzyl moiety, or rings containing heteroatoms
 252 sulfur, oxygen, or nitrogen;

253 b. With or without substitution at the piperidine amino
 254 moiety with a phenethyl, benzyl, alkylaryl (including
 255 heteroaromatics), alkyltetrazolyl ring, or an alkyl or
 256 carbomethoxy group, whether or not further substituted in the
 257 ring or group;

258 c. With or without substitution or addition to the
 259 piperidine ring to any extent with one or more methyl,
 260 carbomethoxy, methoxy, methoxymethyl, aryl, allyl, or ester
 261 groups;

262 d. With or without substitution of one or more hydrogen
 263 atoms for halogens, or methyl, alkyl, or methoxy groups, in the
 264 aromatic ring of the anilide moiety;

265 e. With or without substitution at the alpha or beta
 266 position of the piperidine ring with alkyl, hydroxyl, or methoxy
 267 groups;

268 f. With or without substitution of the benzene ring of the
 269 anilide moiety for an aromatic heterocycle; and

270 g. With or without substitution of the piperidine ring for
 271 a pyrrolidine ring, perhydroazepine ring, or azepine ring;

272
 273 excluding, Alfentanil, Carfentanil, Fentanyl, and Sufentanil;
 274 including, but not limited to:

275 (I) Acetyl-alpha-methylfentanyl.

- 276 (II) Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl)
- 277 ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-
- 278 (N-propanilido) piperidine).
- 279 (III) Alpha-methylthiofentanyl.
- 280 (IV) Benzylfentanyl.
- 281 (V) Beta-hydroxyfentanyl.
- 282 (VI) Beta-hydroxy-3-methylfentanyl.
- 283 (VII) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-
- 284 piperidyl]-N-phenylpropanamide).
- 285 (VIII) 3-Methylthiofentanyl.
- 286 (IX) Para-Fluorofentanyl.
- 287 (X) Thenylfentanyl or Thienyl fentanyl.
- 288 (XI) Thiofentanyl.
- 289 (XII) Acetylfentanyl.
- 290 (XIII) Butyrylfentanyl.
- 291 (XIV) Beta-Hydroxythiofentanyl.
- 292 (XV) Lofentanil.
- 293 (XVI) Ocfentanil.
- 294 (XVII) Ohmfentanyl.
- 295 (XVIII) Benzodioxolefentanyl.
- 296 (XIX) Furanyl fentanyl.
- 297 (XX) Pentanoyl fentanyl.
- 298 (XXI) Cyclopentyl fentanyl.
- 299 (XXII) Isobutyryl fentanyl.
- 300 (XXIII) Remifentanil.

301 (c) Unless specifically excepted or unless listed in
 302 another schedule, any material, compound, mixture, or
 303 preparation that contains any quantity of the following
 304 hallucinogenic substances or that contains any of their salts,
 305 isomers, including optical, positional, or geometric isomers,
 306 homologues, nitrogen-heterocyclic analogs, esters, ethers, and
 307 salts of isomers, homologues, nitrogen-heterocyclic analogs,
 308 esters, or ethers, if the existence of such salts, isomers, and
 309 salts of isomers is possible within the specific chemical
 310 designation or class description:

- 311 1. Alpha-Ethyltryptamine.
- 312 2. 4-Methylaminorex (2-Amino-4-methyl-5-phenyl-2-
 313 oxazoline).
- 314 3. Aminorex (2-Amino-5-phenyl-2-oxazoline).
- 315 4. DOB (4-Bromo-2,5-dimethoxyamphetamine).
- 316 5. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine).
- 317 6. Bufotenine.
- 318 7. Cannabis.
- 319 8. Cathinone.
- 320 9. DET (Diethyltryptamine).
- 321 10. 2,5-Dimethoxyamphetamine.
- 322 11. DOET (4-Ethyl-2,5-Dimethoxyamphetamine).
- 323 12. DMT (Dimethyltryptamine).
- 324 13. PCE (N-Ethyl-1-phenylcyclohexylamine) (Ethylamine
 325 analog of phencyclidine).

- 326 | 14. JB-318 (N-Ethyl-3-piperidyl benzilate).
- 327 | 15. N-Ethylamphetamine.
- 328 | 16. Fenethylamine.
- 329 | 17. 3,4-Methylenedioxy-N-hydroxyamphetamine.
- 330 | 18. Ibogaine.
- 331 | 19. LSD (Lysergic acid diethylamide).
- 332 | 20. Mescaline.
- 333 | 21. Methcathinone.
- 334 | 22. 5-Methoxy-3,4-methylenedioxyamphetamine.
- 335 | 23. PMA (4-Methoxyamphetamine).
- 336 | 24. PMMA (4-Methoxymethamphetamine).
- 337 | 25. DOM (4-Methyl-2,5-dimethoxyamphetamine).
- 338 | 26. MDEA (3,4-Methylenedioxy-N-ethylamphetamine).
- 339 | 27. MDA (3,4-Methylenedioxyamphetamine).
- 340 | 28. JB-336 (N-Methyl-3-piperidyl benzilate).
- 341 | 29. N,N-Dimethylamphetamine.
- 342 | 30. Parahexyl.
- 343 | 31. Peyote.
- 344 | 32. PCPY (N-(1-Phenylcyclohexyl)-pyrrolidine) (Pyrrolidine
- 345 | analog of phencyclidine).
- 346 | 33. Psilocybin.
- 347 | 34. Psilocyn.
- 348 | 35. Salvia divinorum, except for any drug product approved
- 349 | by the United States Food and Drug Administration which contains
- 350 | Salvia divinorum or its isomers, esters, ethers, salts, and

351 salts of isomers, esters, and ethers, if the existence of such
 352 isomers, esters, ethers, and salts is possible within the
 353 specific chemical designation.

354 36. Salvinorin A, except for any drug product approved by
 355 the United States Food and Drug Administration which contains
 356 Salvinorin A or its isomers, esters, ethers, salts, and salts of
 357 isomers, esters, and ethers, if the existence of such isomers,
 358 esters, ethers, and salts is possible within the specific
 359 chemical designation.

360 37. Xylazine.

361 38. TCP (1-[1-(2-Thienyl)-cyclohexyl]-piperidine)
 362 (Thiophene analog of phencyclidine).

363 39. 3,4,5-Trimethoxyamphetamine.

364 40. Methyone (3,4-Methylenedioxymethcathinone).

365 41. MDPV (3,4-Methylenedioxypyrovalerone).

366 42. Methylenmethcathinone.

367 43. Methoxymethcathinone.

368 44. Fluoromethcathinone.

369 45. Methylethcathinone.

370 46. CP 47,497 (2-(3-Hydroxycyclohexyl)-5-(2-methyloctan-2-
 371 yl)phenol) and its dimethyloctyl (C8) homologue.

372 47. HU-210 [(6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-
 373 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-
 374 ol].

375 48. JWH-018 (1-Pentyl-3-(1-naphthoyl)indole).

- 376 49. JWH-073 (1-Butyl-3-(1-naphthoyl)indole).
- 377 50. JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-
- 378 naphthoyl)indole).
- 379 51. BZP (Benzylpiperazine).
- 380 52. Fluorophenylpiperazine.
- 381 53. Methylphenylpiperazine.
- 382 54. Chlorophenylpiperazine.
- 383 55. Methoxyphenylpiperazine.
- 384 56. DBZP (1,4-Dibenzylpiperazine).
- 385 57. TFMPP (Trifluoromethylphenylpiperazine).
- 386 58. MBDB (Methylbenzodioxolylbutanamine) or (3,4-
- 387 Methylenedioxy-N-methylbutanamine).
- 388 59. 5-Hydroxy-AMT (5-Hydroxy-alpha-methyltryptamine).
- 389 60. 5-Hydroxy-N-methyltryptamine.
- 390 61. 5-MeO-MiPT (5-Methoxy-N-methyl-N-isopropyltryptamine).
- 391 62. 5-MeO-AMT (5-Methoxy-alpha-methyltryptamine).
- 392 63. Methyltryptamine.
- 393 64. 5-MeO-DMT (5-Methoxy-N,N-dimethyltryptamine).
- 394 65. 5-Me-DMT (5-Methyl-N,N-dimethyltryptamine).
- 395 66. Tyramine (4-Hydroxyphenethylamine).
- 396 67. 5-MeO-DiPT (5-Methoxy-N,N-Diisopropyltryptamine).
- 397 68. DiPT (N,N-Diisopropyltryptamine).
- 398 69. DPT (N,N-Dipropyltryptamine).
- 399 70. 4-Hydroxy-DiPT (4-Hydroxy-N,N-diisopropyltryptamine).
- 400 71. 5-MeO-DALT (5-Methoxy-N,N-Diallyltryptamine).

- 401 72. DOI (4-Iodo-2,5-dimethoxyamphetamine).
- 402 73. DOC (4-Chloro-2,5-dimethoxyamphetamine).
- 403 74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
- 404 75. 2C-T-4 (4-Isopropylthio-2,5-dimethoxyphenethylamine).
- 405 76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
- 406 77. 2C-T (4-Methylthio-2,5-dimethoxyphenethylamine).
- 407 78. 2C-T-2 (4-Ethylthio-2,5-dimethoxyphenethylamine).
- 408 79. 2C-T-7 (4-(n)-Propylthio-2,5-dimethoxyphenethylamine).
- 409 80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
- 410 81. Butylone (3,4-Methylenedioxy-alpha-
- 411 methylaminobutyrophenone).
- 412 82. Ethcathinone.
- 413 83. Ethylone (3,4-Methylenedioxy-N-ethylcathinone).
- 414 84. Naphyrone (Naphthylpyrovalerone).
- 415 85. Dimethylone (3,4-Methylenedioxy-N,N-
- 416 dimethylcathinone).
- 417 86. 3,4-Methylenedioxy-N,N-diethylcathinone.
- 418 87. 3,4-Methylenedioxy-propiofenone.
- 419 88. 3,4-Methylenedioxy-alpha-bromopropiofenone.
- 420 89. 3,4-Methylenedioxy-propiofenone-2-oxime.
- 421 90. 3,4-Methylenedioxy-N-acetylcathinone.
- 422 91. 3,4-Methylenedioxy-N-acetylmethcathinone.
- 423 92. 3,4-Methylenedioxy-N-acetylethcathinone.
- 424 93. Bromomethcathinone.
- 425 94. Buphedrone (alpha-Methylamino-butyrophenone).

- 426 95. Eutylone (3,4-Methylenedioxy-alpha-
- 427 ethylaminobutyrophenone).
- 428 96. Dimethylcathinone.
- 429 97. Dimethylmethcathinone.
- 430 98. Pentylone (3,4-Methylenedioxy-alpha-
- 431 methylaminovalerophenone).
- 432 99. MDPPP (3,4-Methylenedioxy-alpha-
- 433 pyrrolidinopropiophenone).
- 434 100. MDPBP (3,4-Methylenedioxy-alpha-
- 435 pyrrolidinobutyrophenone).
- 436 101. MOPPP (Methoxy-alpha-pyrrolidinopropiophenone).
- 437 102. MPHP (Methyl-alpha-pyrrolidinohexanophenone).
- 438 103. BTCP (Benzothiophenylcyclohexylpiperidine) or BCP
- 439 (Benocyclidine).
- 440 104. F-MABP (Fluoromethylaminobutyrophenone).
- 441 105. MeO-PBP (Methoxypyrrolidinobutyrophenone).
- 442 106. Et-PBP (Ethylpyrrolidinobutyrophenone).
- 443 107. 3-Me-4-MeO-MCAT (3-Methyl-4-Methoxymethcathinone).
- 444 108. Me-EABP (Methylethylaminobutyrophenone).
- 445 109. Etizolam.
- 446 110. PPP (Pyrrolidinopropiophenone).
- 447 111. PBP (Pyrrolidinobutyrophenone).
- 448 112. PVP (Pyrrolidinovalerophenone) or
- 449 (Pyrrolidinopentiophenone).
- 450 113. MPPP (Methyl-alpha-pyrrolidinopropiophenone).

- 451 114. JWH-007 (1-Pentyl-2-methyl-3-(1-naphthoyl)indole).
 452 115. JWH-015 (1-Propyl-2-methyl-3-(1-naphthoyl)indole).
 453 116. JWH-019 (1-Hexyl-3-(1-naphthoyl)indole).
 454 117. JWH-020 (1-Heptyl-3-(1-naphthoyl)indole).
 455 118. JWH-072 (1-Propyl-3-(1-naphthoyl)indole).
 456 119. JWH-081 (1-Pentyl-3-(4-methoxy-1-naphthoyl)indole).
 457 120. JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).
 458 121. JWH-133 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-
 459 methylpentan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).
 460 122. JWH-175 (1-Pentyl-3-(1-naphthylmethyl)indole).
 461 123. JWH-201 (1-Pentyl-3-(4-methoxyphenylacetyl)indole).
 462 124. JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole).
 463 125. JWH-210 (1-Pentyl-3-(4-ethyl-1-naphthoyl)indole).
 464 126. JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole).
 465 127. JWH-251 (1-Pentyl-3-(2-methylphenylacetyl)indole).
 466 128. JWH-302 (1-Pentyl-3-(3-methoxyphenylacetyl)indole).
 467 129. JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole).
 468 130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-
 469 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-
 470 ol).
 471 131. HU-308 ([(1R,2R,5R)-2-[2,6-Dimethoxy-4-(2-
 472 methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-
 473 enyl] methanol).
 474 132. HU-331 (3-Hydroxy-2-[(1R,6R)-3-methyl-6-(1-
 475 methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-

- 476 1,4-dione).
- 477 133. CB-13 (4-Pentyloxy-1-(1-naphthoyl)naphthalene).
- 478 134. CB-25 (N-Cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-
- 479 undecanamide).
- 480 135. CB-52 (N-Cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-
- 481 undecanamide).
- 482 136. CP 55,940 (2-[3-Hydroxy-6-propanol-cyclohexyl]-5-(2-
- 483 methyloctan-2-yl)phenol).
- 484 137. AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole).
- 485 138. AM-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indole).
- 486 139. RCS-4 (1-Pentyl-3-(4-methoxybenzoyl)indole).
- 487 140. RCS-8 (1-(2-Cyclohexylethyl)-3-(2-
- 488 methoxyphenylacetyl)indole).
- 489 141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-
- 490 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-
- 491 naphthalenylmethanone).
- 492 142. WIN55,212-3 ([3S)-2,3-Dihydro-5-methyl-3-(4-
- 493 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-
- 494 naphthalenylmethanone).
- 495 143. Pentedrone (alpha-Methylaminovalerophenone).
- 496 144. Fluoroamphetamine.
- 497 145. Fluoromethamphetamine.
- 498 146. Methoxetamine.
- 499 147. Methiopropamine.
- 500 148. Methylbuphedrone (Methyl-alpha-

- 501 methylaminobutyrophenone).
- 502 149. APB ((2-Aminopropyl)benzofuran).
- 503 150. APDB ((2-Aminopropyl)-2,3-dihydrobenzofuran).
- 504 151. UR-144 (1-Pentyl-3-(2,2,3,3-
- 505 tetramethylcyclopropanoyl)indole).
- 506 152. XLR11 (1-(5-Fluoropentyl)-3-(2,2,3,3-
- 507 tetramethylcyclopropanoyl)indole).
- 508 153. Chloro UR-144 (1-(Chloropentyl)-3-(2,2,3,3-
- 509 tetramethylcyclopropanoyl)indole).
- 510 154. AKB48 (N-Adamant-1-yl 1-pentylindazole-3-
- 511 carboxamide).
- 512 155. AM-2233(1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-
- 513 iodobenzoyl)indole).
- 514 156. STS-135 (N-Adamant-1-yl 1-(5-fluoropentyl)indole-3-
- 515 carboxamide).
- 516 157. URB-597 ((3'-(Aminocarbonyl)[1,1'-biphenyl]-3-yl)-
- 517 cyclohexylcarbamate).
- 518 158. URB-602 ([1,1'-Biphenyl]-3-yl-carbamic acid,
- 519 cyclohexyl ester).
- 520 159. URB-754 (6-Methyl-2-[(4-methylphenyl)amino]-1-
- 521 benzoxazin-4-one).
- 522 160. 2C-D (4-Methyl-2,5-dimethoxyphenethylamine).
- 523 161. 2C-H (2,5-Dimethoxyphenethylamine).
- 524 162. 2C-N (4-Nitro-2,5-dimethoxyphenethylamine).
- 525 163. 2C-P (4-(n)-Propyl-2,5-dimethoxyphenethylamine).

- 526 164. 25I-NBOMe (4-Iodo-2,5-dimethoxy-[N-(2-
527 methoxybenzyl)]phenethylamine).
- 528 165. MDMA (3,4-Methylenedioxymethamphetamine).
- 529 166. PB-22 (8-Quinoliny 1-pentylindole-3-carboxylate).
- 530 167. Fluoro PB-22 (8-Quinoliny 1-(fluoropentyl)indole-3-
531 carboxylate).
- 532 168. BB-22 (8-Quinoliny 1-(cyclohexylmethyl)indole-3-
533 carboxylate).
- 534 169. Fluoro AKB48 (N-Adamant-1-yl 1-
535 (fluoropentyl)indazole-3-carboxamide).
- 536 170. AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
537 pentylindazole-3-carboxamide).
- 538 171. AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
539 (4-fluorobenzyl)indazole-3-carboxamide).
- 540 172. ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-
541 1-pentylindazole-3-carboxamide).
- 542 173. Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-
543 yl)-1-(fluoropentyl)indole-3-carboxamide).
- 544 174. 25B-NBOMe (4-Bromo-2,5-dimethoxy-[N-(2-
545 methoxybenzyl)]phenethylamine).
- 546 175. 25C-NBOMe (4-Chloro-2,5-dimethoxy-[N-(2-
547 methoxybenzyl)]phenethylamine).
- 548 176. AB-CHMINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
549 (cyclohexylmethyl)indazole-3-carboxamide).
- 550 177. FUB-PB-22 (8-Quinoliny 1-(4-fluorobenzyl)indole-3-

- 551 | carboxylate).
- 552 | 178. Fluoro-NNEI (N-Naphthalen-1-yl 1-
- 553 | (fluoropentyl)indole-3-carboxamide).
- 554 | 179. Fluoro-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-
- 555 | (fluoropentyl)indazole-3-carboxamide).
- 556 | 180. THJ-2201 (1-(5-Fluoropentyl)-3-(1-
- 557 | naphthoyl)indazole).
- 558 | 181. AM-855 ((4aR,12bR)-8-Hexyl-2,5,5-trimethyl-
- 559 | 1,4,4a,8,9,10,11,12b-octahydronaphtho[3,2-c]isochromen-12-ol).
- 560 | 182. AM-905 ((6aR,9R,10aR)-3-[(E)-Hept-1-enyl]-9-
- 561 | (hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-
- 562 | hexahydrobenzo[c]chromen-1-ol).
- 563 | 183. AM-906 ((6aR,9R,10aR)-3-[(Z)-Hept-1-enyl]-9-
- 564 | (hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-
- 565 | hexahydrobenzo[c]chromen-1-ol).
- 566 | 184. AM-2389 ((6aR,9R,10aR)-3-(1-Hexyl-cyclobut-1-yl)-
- 567 | 6a,7,8,9,10,10a-hexahydro-6,6-dimethyl-6H-dibenzo[b,d]pyran-1,9
- 568 | diol).
- 569 | 185. HU-243 ((6aR,8S,9S,10aR)-9-(Hydroxymethyl)-6,6-
- 570 | dimethyl-3-(2-methyloctan-2-yl)-8,9-ditritio-7,8,10,10a-
- 571 | tetrahydro-6aH-benzo[c]chromen-1-ol).
- 572 | 186. HU-336 ((6aR,10aR)-6,6,9-Trimethyl-3-pentyl-
- 573 | 6a,7,10,10a-tetrahydro-1H-benzo[c]chromene-1,4(6H)-dione).
- 574 | 187. MAPB ((2-Methylaminopropyl)benzofuran).
- 575 | 188. 5-IT (2-(1H-Indol-5-yl)-1-methyl-ethylamine).

576 | 189. 6-IT (2-(1H-Indol-6-yl)-1-methyl-ethylamine).
 577 | 190. Synthetic Cannabinoids.—Unless specifically excepted
 578 | or unless listed in another schedule or contained within a
 579 | pharmaceutical product approved by the United States Food and
 580 | Drug Administration, any material, compound, mixture, or
 581 | preparation that contains any quantity of a synthetic
 582 | cannabinoid found to be in any of the following chemical class
 583 | descriptions, or homologues, nitrogen-heterocyclic analogs,
 584 | isomers (including optical, positional, or geometric), esters,
 585 | ethers, salts, and salts of homologues, nitrogen-heterocyclic
 586 | analogs, isomers, esters, or ethers, whenever the existence of
 587 | such homologues, nitrogen-heterocyclic analogs, isomers, esters,
 588 | ethers, salts, and salts of isomers, esters, or ethers is
 589 | possible within the specific chemical class or designation.
 590 | Since nomenclature of these synthetically produced cannabinoids
 591 | is not internationally standardized and may continually evolve,
 592 | these structures or the compounds of these structures shall be
 593 | included under this subparagraph, regardless of their specific
 594 | numerical designation of atomic positions covered, if it can be
 595 | determined through a recognized method of scientific testing or
 596 | analysis that the substance contains properties that fit within
 597 | one or more of the following categories:
 598 | a. Tetrahydrocannabinols.—Any tetrahydrocannabinols
 599 | naturally contained in a plant of the genus Cannabis, the
 600 | synthetic equivalents of the substances contained in the plant

601 or in the resinous extracts of the genus Cannabis, or synthetic
 602 substances, derivatives, and their isomers with similar chemical
 603 structure and pharmacological activity, including, but not
 604 limited to, Delta 9 tetrahydrocannabinols and their optical
 605 isomers, Delta 8 tetrahydrocannabinols and their optical
 606 isomers, Delta 6a,10a tetrahydrocannabinols and their optical
 607 isomers, or any compound containing a tetrahydrobenzo[c]chromene
 608 structure with substitution at either or both the 3-position or
 609 9-position, with or without substitution at the 1-position with
 610 hydroxyl or alkoxy groups, including, but not limited to:

- 611 (I) Tetrahydrocannabinol.
- 612 (II) HU-210 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-
 613 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-
 614 ol).
- 615 (III) HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-
 616 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-
 617 ol).
- 618 (IV) JWH-051 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-
 619 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).
- 620 (V) JWH-133 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methylpentan-
 621 2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).
- 622 (VI) JWH-057 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methyloctan-
 623 2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).
- 624 (VII) JWH-359 ((6aR,10aR)-1-Methoxy-6,6,9-trimethyl-3-
 625 (2,3-dimethylpentan-2-yl)-6a,7,10,10a-

626 tetrahydrobenzo[c]chromene).

627 (VIII) AM-087 ((6aR,10aR)-3-(2-Methyl-6-bromohex-2-yl)-

628 6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

629 (IX) AM-411 ((6aR,10aR)-3-(1-Adamantyl)-6,6,9-trimethyl-

630 6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

631 (X) Parahexyl.

632 b. Naphthoylindoles, Naphthoylindazoles,

633 Naphthoylcarbazoles, Naphthylmethylindoles,

634 Naphthylmethylindazoles, and Naphthylmethylcarbazoles.—Any

635 compound containing a naphthoylindole, naphthoylindazole,

636 naphthoylcarbazole, naphthylmethylindole,

637 naphthylmethylindazole, or naphthylmethylcarbazole structure,

638 with or without substitution on the indole, indazole, or

639 carbazole ring to any extent, whether or not substituted on the

640 naphthyl ring to any extent, including, but not limited to:

641 (I) JWH-007 (1-Pentyl-2-methyl-3-(1-naphthoyl)indole).

642 (II) JWH-011 (1-(1-Methylhexyl)-2-methyl-3-(1-

643 naphthoyl)indole).

644 (III) JWH-015 (1-Propyl-2-methyl-3-(1-naphthoyl)indole).

645 (IV) JWH-016 (1-Butyl-2-methyl-3-(1-naphthoyl)indole).

646 (V) JWH-018 (1-Pentyl-3-(1-naphthoyl)indole).

647 (VI) JWH-019 (1-Hexyl-3-(1-naphthoyl)indole).

648 (VII) JWH-020 (1-Heptyl-3-(1-naphthoyl)indole).

649 (VIII) JWH-022 (1-(4-Pentenyl)-3-(1-naphthoyl)indole).

650 (IX) JWH-071 (1-Ethyl-3-(1-naphthoyl)indole).

- 651 (X) JWH-072 (1-Propyl-3-(1-naphthoyl)indole).
- 652 (XI) JWH-073 (1-Butyl-3-(1-naphthoyl)indole).
- 653 (XII) JWH-080 (1-Butyl-3-(4-methoxy-1-naphthoyl)indole).
- 654 (XIII) JWH-081 (1-Pentyl-3-(4-methoxy-1-naphthoyl)indole).
- 655 (XIV) JWH-098 (1-Pentyl-2-methyl-3-(4-methoxy-1-
- 656 naphthoyl)indole).
- 657 (XV) JWH-116 (1-Pentyl-2-ethyl-3-(1-naphthoyl)indole).
- 658 (XVI) JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).
- 659 (XVII) JWH-149 (1-Pentyl-2-methyl-3-(4-methyl-1-
- 660 naphthoyl)indole).
- 661 (XVIII) JWH-164 (1-Pentyl-3-(7-methoxy-1-
- 662 naphthoyl)indole).
- 663 (XIX) JWH-175 (1-Pentyl-3-(1-naphthylmethyl)indole).
- 664 (XX) JWH-180 (1-Propyl-3-(4-propyl-1-naphthoyl)indole).
- 665 (XXI) JWH-182 (1-Pentyl-3-(4-propyl-1-naphthoyl)indole).
- 666 (XXII) JWH-184 (1-Pentyl-3-[(4-methyl)-1-
- 667 naphthylmethyl]indole).
- 668 (XXIII) JWH-193 (1-[2-(4-Morpholinyl)ethyl]-3-(4-methyl-1-
- 669 naphthoyl)indole).
- 670 (XXIV) JWH-198 (1-[2-(4-Morpholinyl)ethyl]-3-(4-methoxy-1-
- 671 naphthoyl)indole).
- 672 (XXV) JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-
- 673 naphthoyl)indole).
- 674 (XXVI) JWH-210 (1-Pentyl-3-(4-ethyl-1-naphthoyl)indole).
- 675 (XXVII) JWH-387 (1-Pentyl-3-(4-bromo-1-naphthoyl)indole).

- 676 (XXVIII) JWH-398 (1-Pentyl-3-(4-chloro-1-
- 677 naphthoyl)indole).
- 678 (XXIX) JWH-412 (1-Pentyl-3-(4-fluoro-1-naphthoyl)indole).
- 679 (XXX) JWH-424 (1-Pentyl-3-(8-bromo-1-naphthoyl)indole).
- 680 (XXXI) AM-1220 (1-[(1-Methyl-2-piperidinyl)methyl]-3-(1-
- 681 naphthoyl)indole).
- 682 (XXXII) AM-1235 (1-(5-Fluoropentyl)-6-nitro-3-(1-
- 683 naphthoyl)indole).
- 684 (XXXIII) AM-2201 (1-(5-Fluoropentyl)-3-(1-
- 685 naphthoyl)indole).
- 686 (XXXIV) Chloro JWH-018 (1-(Chloropentyl)-3-(1-
- 687 naphthoyl)indole).
- 688 (XXXV) Bromo JWH-018 (1-(Bromopentyl)-3-(1-
- 689 naphthoyl)indole).
- 690 (XXXVI) AM-2232 (1-(4-Cyanobutyl)-3-(1-naphthoyl)indole).
- 691 (XXXVII) THJ-2201 (1-(5-Fluoropentyl)-3-(1-
- 692 naphthoyl)indazole).
- 693 (XXXVIII) MAM-2201 (1-(5-Fluoropentyl)-3-(4-methyl-1-
- 694 naphthoyl)indole).
- 695 (XXXIX) EAM-2201 (1-(5-Fluoropentyl)-3-(4-ethyl-1-
- 696 naphthoyl)indole).
- 697 (XL) EG-018 (9-Pentyl-3-(1-naphthoyl)carbazole).
- 698 (XLI) EG-2201 (9-(5-Fluoropentyl)-3-(1-
- 699 naphthoyl)carbazole).
- 700 c. Naphthoylpyrroles.—Any compound containing a

701 naphthoylpyrrole structure, with or without substitution on the
 702 pyrrole ring to any extent, whether or not substituted on the
 703 naphthyl ring to any extent, including, but not limited to:

- 704 (I) JWH-030 (1-Pentyl-3-(1-naphthoyl)pyrrole).
- 705 (II) JWH-031 (1-Hexyl-3-(1-naphthoyl)pyrrole).
- 706 (III) JWH-145 (1-Pentyl-5-phenyl-3-(1-naphthoyl)pyrrole).
- 707 (IV) JWH-146 (1-Heptyl-5-phenyl-3-(1-naphthoyl)pyrrole).
- 708 (V) JWH-147 (1-Hexyl-5-phenyl-3-(1-naphthoyl)pyrrole).
- 709 (VI) JWH-307 (1-Pentyl-5-(2-fluorophenyl)-3-(1-
 710 naphthoyl)pyrrole).
- 711 (VII) JWH-309 (1-Pentyl-5-(1-naphthalenyl)-3-(1-
 712 naphthoyl)pyrrole).
- 713 (VIII) JWH-368 (1-Pentyl-5-(3-fluorophenyl)-3-(1-
 714 naphthoyl)pyrrole).
- 715 (IX) JWH-369 (1-Pentyl-5-(2-chlorophenyl)-3-(1-
 716 naphthoyl)pyrrole).
- 717 (X) JWH-370 (1-Pentyl-5-(2-methylphenyl)-3-(1-
 718 naphthoyl)pyrrole).

719 d. Naphthylmethylenindenes.—Any compound containing a
 720 naphthylmethylenindene structure, with or without substitution
 721 at the 3-position of the indene ring to any extent, whether or
 722 not substituted on the naphthyl ring to any extent, including,
 723 but not limited to, JWH-176 (3-Pentyl-1-
 724 (naphthylmethylene)indene).

725 e. Phenylacetylindoles and Phenylacetylindazoles.—Any

726 compound containing a phenylacetylindole or phenylacetylindazole
 727 structure, with or without substitution on the indole or
 728 indazole ring to any extent, whether or not substituted on the
 729 phenyl ring to any extent, including, but not limited to:

- 730 (I) JWH-167 (1-Pentyl-3-(phenylacetyl)indole).
- 731 (II) JWH-201 (1-Pentyl-3-(4-methoxyphenylacetyl)indole).
- 732 (III) JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole).
- 733 (IV) JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole).
- 734 (V) JWH-251 (1-Pentyl-3-(2-methylphenylacetyl)indole).
- 735 (VI) JWH-302 (1-Pentyl-3-(3-methoxyphenylacetyl)indole).
- 736 (VII) Cannabipiperidiethanone.
- 737 (VIII) RCS-8 (1-(2-Cyclohexylethyl)-3-(2-
 738 methoxyphenylacetyl)indole).

739 f. Cyclohexylphenols.—Any compound containing a
 740 cyclohexylphenol structure, with or without substitution at the
 741 5-position of the phenolic ring to any extent, whether or not
 742 substituted on the cyclohexyl ring to any extent, including, but
 743 not limited to:

- 744 (I) CP 47,497 (2-(3-Hydroxycyclohexyl)-5-(2-methyloctan-2-
 745 yl)phenol).
- 746 (II) Cannabicyclohexanol (CP 47,497 dimethyloctyl (C8)
 747 homologue).
- 748 (III) CP-55,940 (2-(3-Hydroxy-6-propanol-cyclohexyl)-5-(2-
 749 methyloctan-2-yl)phenol).

750 g. Benzoylindoles and Benzoylindazoles.—Any compound

751 containing a benzoylindole or benzoylindazole structure, with or
 752 without substitution on the indole or indazole ring to any
 753 extent, whether or not substituted on the phenyl ring to any
 754 extent, including, but not limited to:

- 755 (I) AM-679 (1-Pentyl-3-(2-iodobenzoyl)indole).
- 756 (II) AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole).
- 757 (III) AM-1241 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-
 758 iodo-5-nitrobenzoyl)indole).
- 759 (IV) Pravadoline (1-[2-(4-Morpholinyl)ethyl]-2-methyl-3-
 760 (4-methoxybenzoyl)indole).
- 761 (V) AM-2233 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-
 762 iodobenzoyl)indole).
- 763 (VI) RCS-4 (1-Pentyl-3-(4-methoxybenzoyl)indole).
- 764 (VII) RCS-4 C4 homologue (1-Butyl-3-(4-
 765 methoxybenzoyl)indole).
- 766 (VIII) AM-630 (1-[2-(4-Morpholinyl)ethyl]-2-methyl-6-iodo-
 767 3-(4-methoxybenzoyl)indole).

768 h. Tetramethylcyclopropanoylindoles and
 769 Tetramethylcyclopropanoylindazoles.—Any compound containing a
 770 tetramethylcyclopropanoylindole or
 771 tetramethylcyclopropanoylindazole structure, with or without
 772 substitution on the indole or indazole ring to any extent,
 773 whether or not substituted on the tetramethylcyclopropyl group
 774 to any extent, including, but not limited to:

- 775 (I) UR-144 (1-Pentyl-3-(2,2,3,3-

776 | tetramethylcyclopropanoyl) indole).
777 | (II) XLR11 (1-(5-Fluoropentyl)-3-(2,2,3,3-
778 | tetramethylcyclopropanoyl) indole).
779 | (III) Chloro UR-144 (1-(Chloropentyl)-3-(2,2,3,3-
780 | tetramethylcyclopropanoyl) indole).
781 | (IV) A-796,260 (1-[2-(4-Morpholinyl)ethyl]-3-(2,2,3,3-
782 | tetramethylcyclopropanoyl) indole).
783 | (V) A-834,735 (1-[4-(Tetrahydropyranyl)methyl]-3-(2,2,3,3-
784 | tetramethylcyclopropanoyl) indole).
785 | (VI) M-144 (1-(5-Fluoropentyl)-2-methyl-3-(2,2,3,3-
786 | tetramethylcyclopropanoyl) indole).
787 | (VII) FUB-144 (1-(4-Fluorobenzyl)-3-(2,2,3,3-
788 | tetramethylcyclopropanoyl) indole).
789 | (VIII) FAB-144 (1-(5-Fluoropentyl)-3-(2,2,3,3-
790 | tetramethylcyclopropanoyl) indazole).
791 | (IX) XLR12 (1-(4,4,4-Trifluorobutyl)-3-(2,2,3,3-
792 | tetramethylcyclopropanoyl) indole).
793 | (X) AB-005 (1-[(1-Methyl-2-piperidinyl)methyl]-3-(2,2,3,3-
794 | tetramethylcyclopropanoyl) indole).
795 | i. Adamantoylindoles, Adamantoylindazoles, Adamantylindole
796 | carboxamides, and Adamantylindazole carboxamides.—Any compound
797 | containing an adamantoyl indole, adamantoyl indazole, adamantyl
798 | indole carboxamide, or adamantyl indazole carboxamide structure,
799 | with or without substitution on the indole or indazole ring to
800 | any extent, whether or not substituted on the adamantyl ring to

801 any extent, including, but not limited to:

802 (I) AKB48 (N-Adamant-1-yl 1-pentylindazole-3-carboxamide).

803 (II) Fluoro AKB48 (N-Adamant-1-yl 1-

804 (fluoropentyl)indazole-3-carboxamide).

805 (III) STS-135 (N-Adamant-1-yl 1-(5-fluoropentyl)indole-3-

806 carboxamide).

807 (IV) AM-1248 (1-(1-Methylpiperidine)methyl-3-(1-

808 adamantoyl)indole).

809 (V) AB-001 (1-Pentyl-3-(1-adamantoyl)indole).

810 (VI) APICA (N-Adamant-1-yl 1-pentylindole-3-carboxamide).

811 (VII) Fluoro AB-001 (1-(Fluoropentyl)-3-(1-

812 adamantoyl)indole).

813 j. Quinolinyndolecarboxylates,

814 Quinolinyndazolecarboxylates, Quinolinyndolecarboxamides,

815 and Quinolinyndazolecarboxamides.—Any compound containing a

816 quinolinyndole carboxylate, quinolinyndazole carboxylate,

817 isoquinolinyndole carboxylate, isoquinolinyndazole

818 carboxylate, quinolinyndole carboxamide, quinolinyndazole

819 carboxamide, isoquinolinyndole carboxamide, or

820 isoquinolinyndazole carboxamide structure, with or without

821 substitution on the indole or indazole ring to any extent,

822 whether or not substituted on the quinoline or isoquinoline ring

823 to any extent, including, but not limited to:

824 (I) PB-22 (8-Quinolinyndyl 1-pentylindole-3-carboxylate).

825 (II) Fluoro PB-22 (8-Quinolinyndyl 1-(fluoropentyl)indole-3-

826 | carboxylate).
827 | (III) BB-22 (8-Quinoliny 1-(cyclohexylmethyl)indole-3-
828 | carboxylate).
829 | (IV) FUB-PB-22 (8-Quinoliny 1-(4-fluorobenzyl)indole-3-
830 | carboxylate).
831 | (V) NPB-22 (8-Quinoliny 1-pentylindazole-3-carboxylate).
832 | (VI) Fluoro NPB-22 (8-Quinoliny 1-(fluoropentyl)indazole-
833 | 3-carboxylate).
834 | (VII) FUB-NPB-22 (8-Quinoliny 1-(4-fluorobenzyl)indazole-
835 | 3-carboxylate).
836 | (VIII) THJ (8-Quinoliny 1-pentylindazole-3-carboxamide).
837 | (IX) Fluoro THJ (8-Quinoliny 1-(fluoropentyl)indazole-3-
838 | carboxamide).
839 | k. Naphthylindolecarboxylates and
840 | Naphthylindazolecarboxylates.—Any compound containing a
841 | naphthylindole carboxylate or naphthylindazole carboxylate
842 | structure, with or without substitution on the indole or
843 | indazole ring to any extent, whether or not substituted on the
844 | naphthyl ring to any extent, including, but not limited to:
845 | (I) NM-2201 (1-Naphthalenyl 1-(5-fluoropentyl)indole-3-
846 | carboxylate).
847 | (II) SDB-005 (1-Naphthalenyl 1-pentylindazole-3-
848 | carboxylate).
849 | (III) Fluoro SDB-005 (1-Naphthalenyl 1-
850 | (fluoropentyl)indazole-3-carboxylate).

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

851 (IV) FDU-PB-22 (1-Naphthalenyl 1-(4-fluorobenzyl)indole-3-
852 carboxylate).

853 (V) 3-CAF (2-Naphthalenyl 1-(2-fluorophenyl)indazole-3-
854 carboxylate).

855 1. Naphthylindole carboxamides and Naphthylindazole
856 carboxamides.—Any compound containing a naphthylindole
857 carboxamide or naphthylindazole carboxamide structure, with or
858 without substitution on the indole or indazole ring to any
859 extent, whether or not substituted on the naphthyl ring to any
860 extent, including, but not limited to:

861 (I) NNEI (N-Naphthalen-1-yl 1-pentylindole-3-carboxamide).

862 (II) Fluoro-NNEI (N-Naphthalen-1-yl 1-
863 (fluoropentyl)indole-3-carboxamide).

864 (III) Chloro-NNEI (N-Naphthalen-1-yl 1-
865 (chloropentyl)indole-3-carboxamide).

866 (IV) MN-18 (N-Naphthalen-1-yl 1-pentylindazole-3-
867 carboxamide).

868 (V) Fluoro MN-18 (N-Naphthalen-1-yl 1-
869 (fluoropentyl)indazole-3-carboxamide).

870 m. Alkylcarbonyl indole carboxamides, Alkylcarbonyl
871 indazole carboxamides, Alkylcarbonyl indole carboxylates, and
872 Alkylcarbonyl indazole carboxylates.—Any compound containing an
873 alkylcarbonyl group, including 1-amino-3-methyl-1-oxobutan-2-yl,
874 1-methoxy-3-methyl-1-oxobutan-2-yl, 1-amino-1-oxo-3-
875 phenylpropan-2-yl, 1-methoxy-1-oxo-3-phenylpropan-2-yl, with an

876 indole carboxamide, indazole carboxamide, indole carboxylate, or
 877 indazole carboxylate, with or without substitution on the indole
 878 or indazole ring to any extent, whether or not substituted on
 879 the alkylcarbonyl group to any extent, including, but not
 880 limited to:

881 (I) ADBICA, (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-
 882 pentylindole-3-carboxamide).

883 (II) Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-
 884 yl)-1-(fluoropentyl)indole-3-carboxamide).

885 (III) Fluoro ABICA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-
 886 1-(fluoropentyl)indole-3-carboxamide).

887 (IV) AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
 888 pentylindazole-3-carboxamide).

889 (V) Fluoro AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-
 890 yl)-1-(fluoropentyl)indazole-3-carboxamide).

891 (VI) ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-
 892 1-pentylindazole-3-carboxamide).

893 (VII) Fluoro ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-
 894 oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).

895 (VIII) AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-
 896 1-(4-fluorobenzyl)indazole-3-carboxamide).

897 (IX) ADB-FUBINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-
 898 yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

899 (X) AB-CHMINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-
 900 (cyclohexylmethyl)indazole-3-carboxamide).

901 (XI) MA-CHMINACA (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-
 902 1-(cyclohexylmethyl)indazole-3-carboxamide).

903 (XII) MAB-CHMINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-
 904 yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

905 (XIII) AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-
 906 pentylindazole-3-carboxamide).

907 (XIV) Fluoro-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-
 908 1-(fluoropentyl)indazole-3-carboxamide).

909 (XV) FUB-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(4-
 910 fluorobenzyl)indazole-3-carboxamide).

911 (XVI) MDMB-CHMINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-
 912 2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

913 (XVII) MDMB-FUBINACA (N-(1-Methoxy-3,3-dimethyl-1-
 914 oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

915 (XVIII) MDMB-CHMICA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-
 916 2-yl)-1-(cyclohexylmethyl)indole-3-carboxamide).

917 (XIX) PX-1 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(5-
 918 fluoropentyl)indole-3-carboxamide).

919 (XX) PX-2 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(5-
 920 fluoropentyl)indazole-3-carboxamide).

921 (XXI) PX-3 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-
 922 (cyclohexylmethyl)indazole-3-carboxamide).

923 (XXII) PX-4 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(4-
 924 fluorobenzyl)indazole-3-carboxamide).

925 (XXIII) MO-CHMINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-

926 | 2-yl)-1-(cyclohexylmethyl)indazole-3-carboxylate).

927 | n. Cumylindolecarboxamides and Cumylindazolecarboxamides.—

928 | Any compound containing a N-(2-phenylpropan-2-yl) indole

929 | carboxamide or N-(2-phenylpropan-2-yl) indazole carboxamide

930 | structure, with or without substitution on the indole or

931 | indazole ring to any extent, whether or not substituted on the

932 | phenyl ring of the cumyl group to any extent, including, but not

933 | limited to:

934 | (I) CUMYL-PICA (N-(2-Phenylpropan-2-yl)-1-pentylindole-3-

935 | carboxamide).

936 | (II) Fluoro CUMYL-PICA (N-(2-Phenylpropan-2-yl)-1-

937 | (fluoropentyl)indole-3-carboxamide).

938 | o. Other Synthetic Cannabinoids.—Any material, compound,

939 | mixture, or preparation that contains any quantity of a

940 | Synthetic Cannabinoid, as described in sub-subparagraphs a.-n.:

941 | (I) With or without modification or replacement of a

942 | carbonyl, carboxamide, alkylene, alkyl, or carboxylate linkage

943 | between either two core rings, or linkage between a core ring

944 | and group structure, with or without the addition of a carbon or

945 | replacement of a carbon;

946 | (II) With or without replacement of a core ring or group

947 | structure, whether or not substituted on the ring or group

948 | structures to any extent; and

949 | (III) Is a cannabinoid receptor agonist, unless

950 | specifically excepted or unless listed in another schedule or

951 contained within a pharmaceutical product approved by the United
 952 States Food and Drug Administration.

953 191. Substituted Cathinones.—Unless specifically excepted,
 954 listed in another schedule, or contained within a pharmaceutical
 955 product approved by the United States Food and Drug
 956 Administration, any material, compound, mixture, or preparation,
 957 including its salts, isomers, esters, or ethers, and salts of
 958 isomers, esters, or ethers, whenever the existence of such salts
 959 is possible within any of the following specific chemical
 960 designations:

961 a. Any compound containing a 2-amino-1-phenyl-1-propanone
 962 structure;

963 b. Any compound containing a 2-amino-1-naphthyl-1-
 964 propanone structure; or

965 c. Any compound containing a 2-amino-1-thiophenyl-1-
 966 propanone structure,

967 whether or not the compound is further modified:

968 (I) With or without substitution on the ring system to any
 969 extent with alkyl, alkylthio, thio, fused alkylendioxy, alkoxy,
 970 haloalkyl, hydroxyl, nitro, fused furan, fused benzofuran, fused
 971 dihydrofuran, fused tetrahydropyran, fused alkyl ring, or halide
 972 substituents;

973 (II) With or without substitution at the 3-propanone
 974 position with an alkyl substituent or removal of the methyl
 975 group at the 3-propanone position;

- 976 (III) With or without substitution at the 2-amino nitrogen
 977 atom with alkyl, dialkyl, acetyl, or benzyl groups, whether or
 978 not further substituted in the ring system; or
- 979 (IV) With or without inclusion of the 2-amino nitrogen
 980 atom in a cyclic structure, including, but not limited to:
- 981 (A) Methcathinone.
 982 (B) Ethcathinone.
 983 (C) Methydone (3,4-Methylenedioxy-methcathinone).
 984 (D) 2,3-Methylenedioxy-methcathinone.
 985 (E) MDPV (3,4-Methylenedioxy-pyrovalerone).
 986 (F) Methylmethcathinone.
 987 (G) Methoxymethcathinone.
 988 (H) Fluoromethcathinone.
 989 (I) Methylethcathinone.
 990 (J) Butylone (3,4-Methylenedioxy-alpha-
 991 methylaminobutyrophenone).
 992 (K) Ethylone (3,4-Methylenedioxy-N-ethylcathinone).
 993 (L) BMDP (3,4-Methylenedioxy-N-benzylcathinone).
 994 (M) Naphyrone (Naphthylpyrovalerone).
 995 (N) Bromomethcathinone.
 996 (O) Buphedrone (alpha-Methylaminobutyrophenone).
 997 (P) Eutylone (3,4-Methylenedioxy-alpha-
 998 ethylaminobutyrophenone).
 999 (Q) Dimethylcathinone.
 1000 (R) Dimethylmethcathinone.

- 1001 (S) Pentylone (3,4-Methylenedioxy-alpha-
- 1002 methylaminovalerophenone).
- 1003 (T) Pentedrone (alpha-Methylaminovalerophenone).
- 1004 (U) MDPPP (3,4-Methylenedioxy-alpha-
- 1005 pyrrolidinopropiophenone).
- 1006 (V) MDPBP (3,4-Methylenedioxy-alpha-
- 1007 pyrrolidinobutyrophenone).
- 1008 (W) MPPP (Methyl-alpha-pyrrolidinopropiophenone).
- 1009 (X) PPP (Pyrrolidinopropiophenone).
- 1010 (Y) PVP (Pyrrolidinovalerophenone) or
- 1011 (Pyrrolidinopentiophenone).
- 1012 (Z) MOPPP (Methoxy-alpha-pyrrolidinopropiophenone).
- 1013 (AA) MPHP (Methyl-alpha-pyrrolidinohexanophenone).
- 1014 (BB) F-MABP (Fluoromethylaminobutyrophenone).
- 1015 (CC) Me-EABP (Methylethylaminobutyrophenone).
- 1016 (DD) PBP (Pyrrolidinobutyrophenone).
- 1017 (EE) MeO-PBP (Methoxypyrrolidinobutyrophenone).
- 1018 (FF) Et-PBP (Ethylpyrrolidinobutyrophenone).
- 1019 (GG) 3-Me-4-MeO-MCAT (3-Methyl-4-Methoxymethcathinone).
- 1020 (HH) Dimethylone (3,4-Methylenedioxy-N,N-
- 1021 dimethylcathinone).
- 1022 (II) 3,4-Methylenedioxy-N,N-diethylcathinone.
- 1023 (JJ) 3,4-Methylenedioxy-N-acetylcathinone.
- 1024 (KK) 3,4-Methylenedioxy-N-acetylmethcathinone.
- 1025 (LL) 3,4-Methylenedioxy-N-acetylethcathinone.

1026 (MM) Methylbuphedrone (Methyl-alpha-
1027 methylaminobutyrophenone).
1028 (NN) Methyl-alpha-methylaminohexanophenone.
1029 (OO) N-Ethyl-N-methylcathinone.
1030 (PP) PHP (Pyrrolidinohexanophenone).
1031 (QQ) PV8 (Pyrrolidinoheptanophenone).
1032 (RR) Chloromethcathinone.
1033 (SS) 4-Bromo-2,5-dimethoxy-alpha-aminoacetophenone.
1034 192. Substituted Phenethylamines.—Unless specifically
1035 excepted or unless listed in another schedule, or contained
1036 within a pharmaceutical product approved by the United States
1037 Food and Drug Administration, any material, compound, mixture,
1038 or preparation, including its salts, isomers, esters, or ethers,
1039 and salts of isomers, esters, or ethers, whenever the existence
1040 of such salts is possible within any of the following specific
1041 chemical designations, any compound containing a phenethylamine
1042 structure, without a beta-keto group, and without a benzyl group
1043 attached to the amine group, whether or not the compound is
1044 further modified with or without substitution on the phenyl ring
1045 to any extent with alkyl, alkylthio, nitro, alkoxy, thio,
1046 halide, fused alkylenedioxy, fused furan, fused benzofuran,
1047 fused dihydrofuran, or fused tetrahydropyran substituents,
1048 whether or not further substituted on a ring to any extent, with
1049 or without substitution at the alpha or beta position by any
1050 alkyl substituent, with or without substitution at the nitrogen

- 1051 | atom, and with or without inclusion of the 2-amino nitrogen atom
 1052 | in a cyclic structure, including, but not limited to:
- 1053 | a. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine).
 - 1054 | b. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
 - 1055 | c. 2C-T-4 (4-Isopropylthio-2,5-dimethoxyphenethylamine).
 - 1056 | d. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
 - 1057 | e. 2C-T (4-Methylthio-2,5-dimethoxyphenethylamine).
 - 1058 | f. 2C-T-2 (4-Ethylthio-2,5-dimethoxyphenethylamine).
 - 1059 | g. 2C-T-7 (4-(n)-Propylthio-2,5-dimethoxyphenethylamine).
 - 1060 | h. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
 - 1061 | i. 2C-D (4-Methyl-2,5-dimethoxyphenethylamine).
 - 1062 | j. 2C-H (2,5-Dimethoxyphenethylamine).
 - 1063 | k. 2C-N (4-Nitro-2,5-dimethoxyphenethylamine).
 - 1064 | l. 2C-P (4-(n)-Propyl-2,5-dimethoxyphenethylamine).
 - 1065 | m. MDMA (3,4-Methylenedioxyamphetamine).
 - 1066 | n. MBDB (Methylbenzodioxolylbutanamine) or (3,4-
 1067 | Methylenedioxy-N-methylbutanamine).
 - 1068 | o. MDA (3,4-Methylenedioxyamphetamine).
 - 1069 | p. 2,5-Dimethoxyamphetamine.
 - 1070 | q. Fluoroamphetamine.
 - 1071 | r. Fluoromethamphetamine.
 - 1072 | s. MDEA (3,4-Methylenedioxy-N-ethylamphetamine).
 - 1073 | t. DOB (4-Bromo-2,5-dimethoxyamphetamine).
 - 1074 | u. DOC (4-Chloro-2,5-dimethoxyamphetamine).
 - 1075 | v. DOET (4-Ethyl-2,5-dimethoxyamphetamine).

- 1076 w. DOI (4-Iodo-2,5-dimethoxyamphetamine).
- 1077 x. DOM (4-Methyl-2,5-dimethoxyamphetamine).
- 1078 y. PMA (4-Methoxyamphetamine).
- 1079 z. N-Ethylamphetamine.
- 1080 aa. 3,4-Methylenedioxy-N-hydroxyamphetamine.
- 1081 bb. 5-Methoxy-3,4-methylenedioxyamphetamine.
- 1082 cc. PMMA (4-Methoxymethamphetamine).
- 1083 dd. N,N-Dimethylamphetamine.
- 1084 ee. 3,4,5-Trimethoxyamphetamine.
- 1085 ff. 4-APB (4-(2-Aminopropyl)benzofuran).
- 1086 gg. 5-APB (5-(2-Aminopropyl)benzofuran).
- 1087 hh. 6-APB (6-(2-Aminopropyl)benzofuran).
- 1088 ii. 7-APB (7-(2-Aminopropyl)benzofuran).
- 1089 jj. 4-APDB (4-(2-Aminopropyl)-2,3-dihydrobenzofuran).
- 1090 kk. 5-APDB (5-(2-Aminopropyl)-2,3-dihydrobenzofuran).
- 1091 ll. 6-APDB (6-(2-Aminopropyl)-2,3-dihydrobenzofuran).
- 1092 mm. 7-APDB (7-(2-Aminopropyl)-2,3-dihydrobenzofuran).
- 1093 nn. 4-MAPB (4-(2-Methylaminopropyl)benzofuran).
- 1094 oo. 5-MAPB (5-(2-Methylaminopropyl)benzofuran).
- 1095 pp. 6-MAPB (6-(2-Methylaminopropyl)benzofuran).
- 1096 qq. 7-MAPB (7-(2-Methylaminopropyl)benzofuran).
- 1097 rr. 5-EAPB (5-(2-Ethylaminopropyl)benzofuran).
- 1098 ss. 5-MAPDB (5-(2-Methylaminopropyl)-2,3-
- 1099 dihydrobenzofuran),
- 1100

1101 which does not include phenethylamine, mescaline as described in
 1102 subparagraph 20., substituted cathinones as described in
 1103 subparagraph 191., N-Benzyl phenethylamine compounds as
 1104 described in subparagraph 193., or methamphetamine as described
 1105 in subparagraph (2)(c)4.

1106 193. N-Benzyl Phenethylamine Compounds.—Unless
 1107 specifically excepted or unless listed in another schedule, or
 1108 contained within a pharmaceutical product approved by the United
 1109 States Food and Drug Administration, any material, compound,
 1110 mixture, or preparation, including its salts, isomers, esters,
 1111 or ethers, and salts of isomers, esters, or ethers, whenever the
 1112 existence of such salts is possible within any of the following
 1113 specific chemical designations, any compound containing a
 1114 phenethylamine structure without a beta-keto group, with
 1115 substitution on the nitrogen atom of the amino group with a
 1116 benzyl substituent, with or without substitution on the phenyl
 1117 or benzyl ring to any extent with alkyl, alkoxy, thio,
 1118 alkylthio, halide, fused alkylenedioxy, fused furan, fused
 1119 benzofuran, or fused tetrahydropyran substituents, whether or
 1120 not further substituted on a ring to any extent, with or without
 1121 substitution at the alpha position by any alkyl substituent,
 1122 including, but not limited to:

1123 a. 25B-NBOMe (4-Bromo-2,5-dimethoxy-[N-(2-
 1124 methoxybenzyl)]phenethylamine).

1125 b. 25B-NBOH (4-Bromo-2,5-dimethoxy-[N-(2-

- 1126 hydroxybenzyl)]phenethylamine).
- 1127 c. 25B-NBF (4-Bromo-2,5-dimethoxy-[N-(2-
- 1128 fluorobenzyl)]phenethylamine).
- 1129 d. 25B-NBMD (4-Bromo-2,5-dimethoxy-[N-(2,3-
- 1130 methylenedioxybenzyl)]phenethylamine).
- 1131 e. 25I-NBOMe (4-Iodo-2,5-dimethoxy-[N-(2-
- 1132 methoxybenzyl)]phenethylamine).
- 1133 f. 25I-NBOH (4-Iodo-2,5-dimethoxy-[N-(2-
- 1134 hydroxybenzyl)]phenethylamine).
- 1135 g. 25I-NBF (4-Iodo-2,5-dimethoxy-[N-(2-
- 1136 fluorobenzyl)]phenethylamine).
- 1137 h. 25I-NBMD (4-Iodo-2,5-dimethoxy-[N-(2,3-
- 1138 methylenedioxybenzyl)]phenethylamine).
- 1139 i. 25T2-NBOMe (4-Methylthio-2,5-dimethoxy-[N-(2-
- 1140 methoxybenzyl)]phenethylamine).
- 1141 j. 25T4-NBOMe (4-Isopropylthio-2,5-dimethoxy-[N-(2-
- 1142 methoxybenzyl)]phenethylamine).
- 1143 k. 25T7-NBOMe (4-(n)-Propylthio-2,5-dimethoxy-[N-(2-
- 1144 methoxybenzyl)]phenethylamine).
- 1145 l. 25C-NBOMe (4-Chloro-2,5-dimethoxy-[N-(2-
- 1146 methoxybenzyl)]phenethylamine).
- 1147 m. 25C-NBOH (4-Chloro-2,5-dimethoxy-[N-(2-
- 1148 hydroxybenzyl)]phenethylamine).
- 1149 n. 25C-NBF (4-Chloro-2,5-dimethoxy-[N-(2-
- 1150 fluorobenzyl)]phenethylamine).

1151 | o. 25C-NBMD (4-Chloro-2,5-dimethoxy-[N-(2,3-
1152 | methylenedioxybenzyl)]phenethylamine).

1153 | p. 25H-NBOMe (2,5-Dimethoxy-[N-(2-
1154 | methoxybenzyl)]phenethylamine).

1155 | q. 25H-NBOH (2,5-Dimethoxy-[N-(2-
1156 | hydroxybenzyl)]phenethylamine).

1157 | r. 25H-NBF (2,5-Dimethoxy-[N-(2-
1158 | fluorobenzyl)]phenethylamine).

1159 | s. 25D-NBOMe (4-Methyl-2,5-dimethoxy-[N-(2-
1160 | methoxybenzyl)]phenethylamine),

1161 |

1162 | which does not include substituted cathinones as described in
1163 | subparagraph 191.

1164 | 194. Substituted Tryptamines.—Unless specifically excepted
1165 | or unless listed in another schedule, or contained within a
1166 | pharmaceutical product approved by the United States Food and
1167 | Drug Administration, any material, compound, mixture, or
1168 | preparation containing a 2-(1H-indol-3-yl)ethanamine, for
1169 | example tryptamine, structure with or without mono- or di-
1170 | substitution of the amine nitrogen with alkyl or alkenyl groups,
1171 | or by inclusion of the amino nitrogen atom in a cyclic
1172 | structure, whether or not substituted at the alpha position with
1173 | an alkyl group, whether or not substituted on the indole ring to
1174 | any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy
1175 | groups, including, but not limited to:

- 1176 a. Alpha-Ethyltryptamine.
- 1177 b. Bufotenine.
- 1178 c. DET (Diethyltryptamine).
- 1179 d. DMT (Dimethyltryptamine).
- 1180 e. MET (N-Methyl-N-ethyltryptamine).
- 1181 f. DALT (N,N-Diallyltryptamine).
- 1182 g. EiPT (N-Ethyl-N-isopropyltryptamine).
- 1183 h. MiPT (N-Methyl-N-isopropyltryptamine).
- 1184 i. 5-Hydroxy-AMT (5-Hydroxy-alpha-methyltryptamine).
- 1185 j. 5-Hydroxy-N-methyltryptamine.
- 1186 k. 5-MeO-MiPT (5-Methoxy-N-methyl-N-isopropyltryptamine).
- 1187 l. 5-MeO-AMT (5-Methoxy-alpha-methyltryptamine).
- 1188 m. Methyltryptamine.
- 1189 n. 5-MeO-DMT (5-Methoxy-N,N-dimethyltryptamine).
- 1190 o. 5-Me-DMT (5-Methyl-N,N-dimethyltryptamine).
- 1191 p. 5-MeO-DiPT (5-Methoxy-N,N-Diisopropyltryptamine).
- 1192 q. DiPT (N,N-Diisopropyltryptamine).
- 1193 r. DPT (N,N-Dipropyltryptamine).
- 1194 s. 4-Hydroxy-DiPT (4-Hydroxy-N,N-diisopropyltryptamine).
- 1195 t. 5-MeO-DALT (5-Methoxy-N,N-Diallyltryptamine).
- 1196 u. 4-AcO-DMT (4-Acetoxy-N,N-dimethyltryptamine).
- 1197 v. 4-AcO-DiPT (4-Acetoxy-N,N-diisopropyltryptamine).
- 1198 w. 4-Hydroxy-DET (4-Hydroxy-N,N-diethyltryptamine).
- 1199 x. 4-Hydroxy-MET (4-Hydroxy-N-methyl-N-ethyltryptamine).
- 1200 y. 4-Hydroxy-MiPT (4-Hydroxy-N-methyl-N-

1201 isopropyltryptamine).

1202 z. Methyl-alpha-ethyltryptamine.

1203 aa. Bromo-DALT (Bromo-N,N-diallyltryptamine),

1204

1205 which does not include tryptamine, psilocyn as described in

1206 subparagraph 34., or psilocybin as described in subparagraph 33.

1207 195. Substituted Phenylcyclohexylamines.—Unless

1208 specifically excepted or unless listed in another schedule, or

1209 contained within a pharmaceutical product approved by the United

1210 States Food and Drug Administration, any material, compound,

1211 mixture, or preparation containing a phenylcyclohexylamine

1212 structure, with or without any substitution on the phenyl ring,

1213 any substitution on the cyclohexyl ring, any replacement of the

1214 phenyl ring with a thiophenyl or benzothiophenyl ring, with or

1215 without substitution on the amine with alkyl, dialkyl, or alkoxy

1216 substituents, inclusion of the nitrogen in a cyclic structure,

1217 or any combination of the above, including, but not limited to:

1218 a. BTCP (Benzothiophenylcyclohexylpiperidine) or BCP

1219 (Benocyclidine).

1220 b. PCE (N-Ethyl-1-phenylcyclohexylamine) (Ethylamine analog

1221 of phencyclidine).

1222 c. PCPY (N-(1-Phenylcyclohexyl)-pyrrolidine) (Pyrrolidine

1223 analog of phencyclidine).

1224 d. PCPr (Phenylcyclohexylpropylamine).

1225 e. TCP (1-[1-(2-Thienyl)-cyclohexyl]-piperidine) (Thiophene

- 1226 analog of phencyclidine).
- 1227 f. PCEEA (Phenylcyclohexyl(ethoxyethylamine)).
- 1228 g. PCMPA (Phenylcyclohexyl(methoxypropylamine)).
- 1229 h. Methoxetamine.
- 1230 i. 3-Methoxy-PCE ((3-Methoxyphenyl)cyclohexylethylamine).
- 1231 j. Bromo-PCP ((Bromophenyl)cyclohexylpiperidine).
- 1232 k. Chloro-PCP ((Chlorophenyl)cyclohexylpiperidine).
- 1233 l. Fluoro-PCP ((Fluorophenyl)cyclohexylpiperidine).
- 1234 m. Hydroxy-PCP ((Hydroxyphenyl)cyclohexylpiperidine).
- 1235 n. Methoxy-PCP ((Methoxyphenyl)cyclohexylpiperidine).
- 1236 o. Methyl-PCP ((Methylphenyl)cyclohexylpiperidine).
- 1237 p. Nitro-PCP ((Nitrophenyl)cyclohexylpiperidine).
- 1238 q. Oxo-PCP ((Oxophenyl)cyclohexylpiperidine).
- 1239 r. Amino-PCP ((Aminophenyl)cyclohexylpiperidine).
- 1240 196. W-15, 4-chloro-N-[1-(2-phenylethyl)-2-
- 1241 piperidinylidene]-benzenesulfonamide.
- 1242 197. W-18, 4-chloro-N-[1-[2-(4-nitrophenyl)ethyl]-2-
- 1243 piperidinylidene]-benzenesulfonamide.
- 1244 198. AH-7921, 3,4-dichloro-N-[[1-
- 1245 (dimethylamino)cyclohexyl]methyl]-benzamide.
- 1246 199. U47700, trans-3,4-dichloro-N-[2-
- 1247 (dimethylamino)cyclohexyl]-N-methyl-benzamide.
- 1248 200. MT-45, 1-cyclohexyl-4-(1,2-diphenylethyl)-piperazine,
- 1249 dihydrochloride.
- 1250 Section 5. Paragraph (c) of subsection (6) of section

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

1251 893.13, Florida Statutes, is amended to read:

1252 893.13 Prohibited acts; penalties.-

1253 (6)

1254 (c) Except as provided in this chapter, a person may not
 1255 possess more than 10 grams of any substance named or described
 1256 in s. 893.03(1)(a), ~~or~~ (1)(b), or (2)(b), or any combination
 1257 thereof, or any mixture containing any such substance. A person
 1258 who violates this paragraph commits a felony of the first
 1259 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 1260 775.084.

1261 Section 6. Paragraphs (c), (d), and (k) of subsection (1)
 1262 of section 893.135, Florida Statutes, are amended, and
 1263 paragraphs (m) and (n) are added to that subsection, to read:

1264 893.135 Trafficking; mandatory sentences; suspension or
 1265 reduction of sentences; conspiracy to engage in trafficking.-

1266 (1) Except as authorized in this chapter or in chapter 499
 1267 and notwithstanding the provisions of s. 893.13:

1268 (c)1. A person who knowingly sells, purchases,
 1269 manufactures, delivers, or brings into this state, or who is
 1270 knowingly in actual or constructive possession of, 4 grams or
 1271 more of any morphine, opium, hydromorphone, or any salt,
 1272 derivative, isomer, or salt of an isomer thereof, including
 1273 heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or
 1274 (3)(c)4., or 4 grams or more of any mixture containing any such
 1275 substance, but less than 30 kilograms of such substance or

1276 mixture, commits a felony of the first degree, which felony
 1277 shall be known as "trafficking in illegal drugs," punishable as
 1278 provided in s. 775.082, s. 775.083, or s. 775.084. If the
 1279 quantity involved:

1280 a. Is 4 grams or more, but less than 14 grams, such person
 1281 shall be sentenced to a mandatory minimum term of imprisonment
 1282 of 3 years and shall be ordered to pay a fine of \$50,000.

1283 b. Is 14 grams or more, but less than 28 grams, such
 1284 person shall be sentenced to a mandatory minimum term of
 1285 imprisonment of 15 years and shall be ordered to pay a fine of
 1286 \$100,000.

1287 c. Is 28 grams or more, but less than 30 kilograms, such
 1288 person shall be sentenced to a mandatory minimum term of
 1289 imprisonment of 25 years and shall be ordered to pay a fine of
 1290 \$500,000.

1291 2. A person who knowingly sells, purchases, manufactures,
 1292 delivers, or brings into this state, or who is knowingly in
 1293 actual or constructive possession of, 14 grams or more of
 1294 hydrocodone, as described in s. 893.03(2)(a)1.j., codeine, as
 1295 described in s. 893.03(2)(a)1.g., or any salt, ~~derivative,~~
 1296 ~~isomer, or salt of an isomer~~ thereof, or 14 grams or more of any
 1297 mixture containing any such substance, commits a felony of the
 1298 first degree, which felony shall be known as "trafficking in
 1299 hydrocodone," punishable as provided in s. 775.082, s. 775.083,
 1300 or s. 775.084. If the quantity involved:

1301 a. Is 14 grams or more, but less than 28 grams, such
1302 person shall be sentenced to a mandatory minimum term of
1303 imprisonment of 3 years and shall be ordered to pay a fine of
1304 \$50,000.

1305 b. Is 28 grams or more, but less than 50 grams, such
1306 person shall be sentenced to a mandatory minimum term of
1307 imprisonment of 7 years and shall be ordered to pay a fine of
1308 \$100,000.

1309 c. Is 50 grams or more, but less than 200 grams, such
1310 person shall be sentenced to a mandatory minimum term of
1311 imprisonment of 15 years and shall be ordered to pay a fine of
1312 \$500,000.

1313 d. Is 200 grams or more, but less than 30 kilograms, such
1314 person shall be sentenced to a mandatory minimum term of
1315 imprisonment of 25 years and shall be ordered to pay a fine of
1316 \$750,000.

1317 3. A person who knowingly sells, purchases, manufactures,
1318 delivers, or brings into this state, or who is knowingly in
1319 actual or constructive possession of, 7 grams or more of
1320 oxycodone, as described in s. 893.03(2)(a)1.o., or any salt
1321 ~~derivative, isomer, or salt of an isomer~~ thereof, or 7 grams or
1322 more of any mixture containing any such substance, commits a
1323 felony of the first degree, which felony shall be known as
1324 "trafficking in oxycodone," punishable as provided in s.
1325 775.082, s. 775.083, or s. 775.084. If the quantity involved:

1326 a. Is 7 grams or more, but less than 14 grams, such person
 1327 shall be sentenced to a mandatory minimum term of imprisonment
 1328 of 3 years and shall be ordered to pay a fine of \$50,000.

1329 b. Is 14 grams or more, but less than 25 grams, such
 1330 person shall be sentenced to a mandatory minimum term of
 1331 imprisonment of 7 years and shall be ordered to pay a fine of
 1332 \$100,000.

1333 c. Is 25 grams or more, but less than 100 grams, such
 1334 person shall be sentenced to a mandatory minimum term of
 1335 imprisonment of 15 years and shall be ordered to pay a fine of
 1336 \$500,000.

1337 d. Is 100 grams or more, but less than 30 kilograms, such
 1338 person shall be sentenced to a mandatory minimum term of
 1339 imprisonment of 25 years and shall be ordered to pay a fine of
 1340 \$750,000.

1341 4.a. A person who knowingly sells, purchases,
 1342 manufactures, delivers, or brings into this state, or who is
 1343 knowingly in actual or constructive possession of, 4 grams or
 1344 more of:

1345 (I) Alfentanil, as described in s. 893.03(2)(b)1.;

1346 (II) Carfentanil, as described in s. 893.03(2)(b)6.;

1347 (III) Fentanyl, as described in s. 893.03(2)(b)9.;

1348 (IV) Sufentanil, as described in s. 893.03(2)(b)29.;

1349 (V) A fentanyl derivative, as described in s.

1350 893.03(1)(a)62.;

1351 (VI) A controlled substance analog, as described in s.
 1352 893.0356, of any substance described in sub-sub-subparagraphs
 1353 (I)-(V); or
 1354 (VII) A mixture containing any substance described in sub-
 1355 sub-subparagraphs (I)-(VI),
 1356
 1357 commits a felony of the first degree, which felony shall be
 1358 known as "trafficking in fentanyl," punishable as provided in s.
 1359 775.082, s. 775.083, or s. 775.084.
 1360 b. If the quantity involved under sub-subparagraph a.:
 1361 (I) Is 4 grams or more, but less than 14 grams, such
 1362 person shall be sentenced to a mandatory minimum term of
 1363 imprisonment of 3 years, and shall be ordered to pay a fine of
 1364 \$50,000.
 1365 (II) Is 14 grams or more, but less than 28 grams, such
 1366 person shall be sentenced to a mandatory minimum term of
 1367 imprisonment of 15 years, and shall be ordered to pay a fine of
 1368 \$100,000.
 1369 (III) Is 28 grams or more, such person shall be sentenced
 1370 to a mandatory minimum term of imprisonment of 25 years, and
 1371 shall be ordered to pay a fine of \$500,000.
 1372 ~~5.4.~~ A person who knowingly sells, purchases,
 1373 manufactures, delivers, or brings into this state, or who is
 1374 knowingly in actual or constructive possession of, 30 kilograms
 1375 or more of any morphine, opium, oxycodone, hydrocodone, codeine,

1376 hydromorphone, or any salt, derivative, isomer, or salt of an
 1377 isomer thereof, including heroin, as described in s.
 1378 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or
 1379 more of any mixture containing any such substance, commits the
 1380 first degree felony of trafficking in illegal drugs. A person
 1381 who has been convicted of the first degree felony of trafficking
 1382 in illegal drugs under this subparagraph shall be punished by
 1383 life imprisonment and is ineligible for any form of
 1384 discretionary early release except pardon or executive clemency
 1385 or conditional medical release under s. 947.149. However, if the
 1386 court determines that, in addition to committing any act
 1387 specified in this paragraph:

1388 a. The person intentionally killed an individual or
 1389 counseled, commanded, induced, procured, or caused the
 1390 intentional killing of an individual and such killing was the
 1391 result; or

1392 b. The person's conduct in committing that act led to a
 1393 natural, though not inevitable, lethal result,

1394
 1395 such person commits the capital felony of trafficking in illegal
 1396 drugs, punishable as provided in ss. 775.082 and 921.142. A
 1397 person sentenced for a capital felony under this paragraph shall
 1398 also be sentenced to pay the maximum fine provided under
 1399 subparagraph 1.

1400 6.5. A person who knowingly brings into this state 60

1401 kilograms or more of any morphine, opium, oxycodone,
 1402 hydrocodone, codeine, hydromorphone, or any salt, derivative,
 1403 isomer, or salt of an isomer thereof, including heroin, as
 1404 described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or
 1405 60 kilograms or more of any mixture containing any such
 1406 substance, and who knows that the probable result of such
 1407 importation would be the death of a person, commits capital
 1408 importation of illegal drugs, a capital felony punishable as
 1409 provided in ss. 775.082 and 921.142. A person sentenced for a
 1410 capital felony under this paragraph shall also be sentenced to
 1411 pay the maximum fine provided under subparagraph 1.

1412 (d)1. Any person who knowingly sells, purchases,
 1413 manufactures, delivers, or brings into this state, or who is
 1414 knowingly in actual or constructive possession of, 28 grams or
 1415 more of phencyclidine, as described in s. 893.03(2)(b)23., a
 1416 substituted phenylcyclohexylamine, as described in s.
 1417 893.03(1)(c)195., or a substance described in s.
 1418 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture
 1419 containing phencyclidine, as described in s. 893.03(2)(b)23.
 1420 ~~893.03(2)(b)~~, a substituted phenylcyclohexylamine, as described
 1421 in s. 893.03(1)(c)195., or a substance described in s.
 1422 893.03(1)(c)13., 32., 38., 103., or 146.,
 1423 commits a felony of the first degree, which felony shall be
 1424 known as "trafficking in phencyclidine," punishable as provided
 1425 in s. 775.082, s. 775.083, or s. 775.084. If the quantity

1426 involved:

1427 a. Is 28 grams or more, but less than 200 grams, such
 1428 person shall be sentenced to a mandatory minimum term of
 1429 imprisonment of 3 years, and the defendant shall be ordered to
 1430 pay a fine of \$50,000.

1431 b. Is 200 grams or more, but less than 400 grams, such
 1432 person shall be sentenced to a mandatory minimum term of
 1433 imprisonment of 7 years, and the defendant shall be ordered to
 1434 pay a fine of \$100,000.

1435 c. Is 400 grams or more, such person shall be sentenced to
 1436 a mandatory minimum term of imprisonment of 15 calendar years
 1437 and pay a fine of \$250,000.

1438 2. Any person who knowingly brings into this state 800
 1439 grams or more of phencyclidine, as described in s.
 1440 893.03(2)(b)23., a substituted phenylcyclohexylamine, as
 1441 described in s. 893.03(1)(c)195., or a substance described in s.
 1442 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture
 1443 containing phencyclidine, as described in s. 893.03(2)(b)23.
 1444 ~~893.03(2)(b),~~ a substituted phenylcyclohexylamine, as described
 1445 in s. 893.03(1)(c)195., or a substance described in s.
 1446 893.03(1)(c)13., 32., 38., 103., or 146., and who knows that the
 1447 probable result of such importation would be the death of any
 1448 person commits capital importation of phencyclidine, a capital
 1449 felony punishable as provided in ss. 775.082 and 921.142. Any
 1450 person sentenced for a capital felony under this paragraph shall

1451 also be sentenced to pay the maximum fine provided under
 1452 subparagraph 1.

1453 (k)1. A person who knowingly sells, purchases,
 1454 manufactures, delivers, or brings into this state, or who is
 1455 knowingly in actual or constructive possession of, 10 grams or
 1456 more of a any of the following substances described in s.
 1457 ~~893.03(1)(c):~~

1458 a. Substance described in s. 893.03(1)(c)4., 5., 10., 11.,
 1459 15., 17., 21.-27., 29., 39., 40.-45., 58., 72.-80., 81.-86.,
 1460 90.-102., 104.-108., 110.-113., 143.-145., 148.-150., 160.-163.,
 1461 165., or 187.-189., a substituted cathinone, as described in s.
 1462 893.03(1)(c)191., or substituted phenethylamine, as described in
 1463 s. 893.03(1)(c)192.;

1464 b. Mixture containing any substance described in sub-
 1465 subparagraph a.; or

1466 c. Salt, isomer, ester, or ether or salt of an isomer,
 1467 ester, or ether of a substance described in sub-subparagraph a.,

1468 ~~a. (MDMA) 3,4-Methylenedioxymethamphetamine;~~

1469 ~~b. DOB (4-Bromo-2,5-dimethoxyamphetamine);~~

1470 ~~e. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine);~~

1471 ~~d. 2,5-Dimethoxyamphetamine;~~

1472 ~~e. DOET (4-Ethyl-2,5-dimethoxyamphetamine);~~

1473 ~~f. N-ethylamphetamine;~~

1474 ~~g. 3,4-Methylenedioxy-N-hydroxyamphetamine;~~

1475 ~~h. 5-Methoxy-3,4-methylenedioxyamphetamine;~~

- 1476 ~~i. PMA (4-methoxyamphetamine);~~
- 1477 ~~j. PMMA (4-methoxymethamphetamine);~~
- 1478 ~~k. DOM (4-Methyl-2,5-dimethoxyamphetamine);~~
- 1479 ~~l. MDEA (3,4-Methylenedioxy-N-ethylamphetamine);~~
- 1480 ~~m. MDA (3,4-Methylenedioxyamphetamine);~~
- 1481 ~~n. N,N-dimethylamphetamine;~~
- 1482 ~~o. 3,4,5-Trimethoxyamphetamine;~~
- 1483 ~~p. Methylenone (3,4-Methylenedioxymethcathinone);~~
- 1484 ~~q. MDPV (3,4-Methylenedioxypropylone); or~~
- 1485 ~~r. Methylenecathinone;~~

1486

1487 ~~individually or analogs thereto or isomers thereto or in any~~
 1488 ~~combination of or any mixture containing any substance listed in~~
 1489 ~~sub-subparagraphs a. r.,~~ commits a felony of the first degree,
 1490 which felony shall be known as "trafficking in phenethylamines,"
 1491 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

- 1492 2. If the quantity involved under subparagraph 1.:
- 1493 a. Is 10 grams or more, but less than 200 grams, such
 - 1494 person shall be sentenced to a mandatory minimum term of
 - 1495 imprisonment of 3 years and shall be ordered to pay a fine of
 - 1496 \$50,000.
 - 1497 b. Is 200 grams or more, but less than 400 grams, such
 - 1498 person shall be sentenced to a mandatory minimum term of
 - 1499 imprisonment of 7 years and shall be ordered to pay a fine of
 - 1500 \$100,000.

1501 c. Is 400 grams or more, such person shall be sentenced to
 1502 a mandatory minimum term of imprisonment of 15 years and shall
 1503 be ordered to pay a fine of \$250,000.

1504 3. A person who knowingly manufactures or brings into this
 1505 state 30 kilograms or more of a substance described in sub-
 1506 subparagraph 1.a., a mixture described in sub-subparagraph 1.b.,
 1507 or a salt, isomer, ester, or ether or a salt of an isomer,
 1508 ester, or ether described in sub-subparagraph 1.c., any of the
 1509 following substances described in s. 893.03(1)(c):

- 1510 a. ~~MDMA (3,4-Methylenedioxymethamphetamine);~~
- 1511 b. ~~DOB (4-Bromo-2,5-dimethoxyamphetamine);~~
- 1512 c. ~~2C-B (4-Bromo-2,5-dimethoxyphenethylamine);~~
- 1513 d. ~~2,5-Dimethoxyamphetamine;~~
- 1514 e. ~~DOET (4-Ethyl-2,5-dimethoxyamphetamine);~~
- 1515 f. ~~N-ethylamphetamine;~~
- 1516 g. ~~N-Hydroxy-3,4-methylenedioxyamphetamine;~~
- 1517 h. ~~5-Methoxy-3,4-methylenedioxyamphetamine;~~
- 1518 i. ~~PMA (4-methoxyamphetamine);~~
- 1519 j. ~~PMMA (4-methoxymethamphetamine);~~
- 1520 k. ~~DOM (4-Methyl-2,5-dimethoxyamphetamine);~~
- 1521 l. ~~MDEA (3,4-Methylenedioxy-N-ethylamphetamine);~~
- 1522 m. ~~MDA (3,4-Methylenedioxyamphetamine);~~
- 1523 n. ~~N,N-dimethylamphetamine;~~
- 1524 o. ~~3,4,5-Trimethoxyamphetamine;~~
- 1525 p. ~~Methylone (3,4-Methylenedioxymethcathinone);~~

1526 ~~g. MDPV (3,4-Methylenedioxypropylone); or~~
 1527 ~~r. Methylenedioxypiperone,~~
 1528
 1529 ~~individually or analogs thereto or isomers thereto or in any~~
 1530 ~~combination of or any mixture containing any substance listed in~~
 1531 ~~sub-subparagraphs a. r., and who knows that the probable result~~
 1532 ~~of such manufacture or importation would be the death of any~~
 1533 ~~person commits capital manufacture or importation of~~
 1534 ~~phenethylamines, a capital felony punishable as provided in ss.~~
 1535 ~~775.082 and 921.142. A person sentenced for a capital felony~~
 1536 ~~under this paragraph shall also be sentenced to pay the maximum~~
 1537 ~~fine provided under subparagraph 2. 1.~~
 1538 (m)1. A person who knowingly sells, purchases,
 1539 manufactures, delivers, or brings into this state, or who is
 1540 knowingly in actual or constructive possession of, 280 grams or
 1541 more of a:
 1542 a. Substance described in s. 893.03(1)(c)30., 46.-50.,
 1543 114.-142., 151.-156., 166.-173., or 176.-186. or a synthetic
 1544 cannabinoid, as described in s. 893.03(1)(c)190.; or
 1545 b. Mixture containing any substance described in sub-
 1546 subparagraph a.,
 1547
 1548 commits a felony of the first degree, which felony shall be
 1549 known as "trafficking in synthetic cannabinoids," punishable as
 1550 provided in s. 775.082, s. 775.083, or s. 775.084.

1551 2. If the quantity involved under subparagraph 1.:
 1552 a. Is 280 grams or more, but less than 500 grams, such
 1553 person shall be sentenced to a mandatory minimum term of
 1554 imprisonment of 3 years, and the defendant shall be ordered to
 1555 pay a fine of \$50,000.
 1556 b. Is 500 grams or more, but less than 1,000 grams, such
 1557 person shall be sentenced to a mandatory minimum term of
 1558 imprisonment of 7 years, and the defendant shall be ordered to
 1559 pay a fine of \$100,000.
 1560 c. Is 1,000 grams or more, but less than 30 kilograms such
 1561 person shall be sentenced to a mandatory minimum term of
 1562 imprisonment of 15 years, and the defendant shall be ordered to
 1563 pay a fine of \$200,000.
 1564 d. Is 30 kilograms or more, such person shall be sentenced
 1565 to a mandatory minimum term of imprisonment of 25 years, and the
 1566 defendant shall be ordered to pay a fine of \$750,000.
 1567 (n)1. A person who knowingly sells, purchases,
 1568 manufactures, delivers, or brings into this state, or who is
 1569 knowingly in actual or constructive possession of, 14 grams or
 1570 more of:
 1571 a. A substance described in s. 893.03(1)(c)164., 174., or
 1572 175., a n-benzyl phenethylamine compound, as described in s.
 1573 893.03(1)(c)193.; or
 1574 b. A mixture containing any substance described in sub-
 1575 subparagraph a.,

1576
 1577 commits a felony of the first degree, which felony shall be
 1578 known as "trafficking in n-benzyl phenethylamines," punishable
 1579 as provided in s. 775.082, s. 775.083, or s. 775.084.

1580 2. If the quantity involved under subparagraph 1.:

1581 a. Is 14 grams or more, but less than 100 grams, such
 1582 person shall be sentenced to a mandatory minimum term of
 1583 imprisonment of 3 years, and the defendant shall be ordered to
 1584 pay a fine of \$50,000.

1585 b. Is 100 grams or more, but less than 200 grams, such
 1586 person shall be sentenced to a mandatory minimum term of
 1587 imprisonment of 7 years, and the defendant shall be ordered to
 1588 pay a fine of \$100,000.

1589 c. Is 200 grams or more, such person shall be sentenced to
 1590 a mandatory minimum term of imprisonment of 15 years , and the
 1591 defendant shall be ordered to pay a fine of \$500,000.

1592 3. A person who knowingly manufactures or brings into this
 1593 state 400 grams or more of a substance described in sub-
 1594 subparagraph 1.a. or a mixture described in sub-subparagraph
 1595 1.b., and who knows that the probable result of such manufacture
 1596 or importation would be the death of any person commits capital
 1597 manufacture or importation of a n-benzyl phenethylamine
 1598 compound, a capital felony punishable as provided in ss. 775.082
 1599 and 921.142. A person sentenced for a capital felony under this
 1600 paragraph shall also be sentenced to pay the maximum fine under

1601 subparagraph 2.

1602 Section 7. For the purpose of incorporating the amendments
 1603 made by this act to sections 893.03, 893.13, and 893.135,
 1604 Florida Statutes, in references thereto, paragraphs (a), (b),
 1605 (c), (d), and (e) subsection (3) of section 921.0022, Florida
 1606 Statutes, are reenacted; and paragraphs (g), (h), and (i) of
 1607 subsection (3) of section 921.0022, Florida Statutes, are
 1608 amended to read:

1609 921.0022 Criminal Punishment Code; offense severity
 1610 ranking chart.—

1611 (3) OFFENSE SEVERITY RANKING CHART

1612 (a) LEVEL 1

1613

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

1614

1615

1616

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			less than \$20,000.
1617	316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
1618	319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
1619	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
1620	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
1621	322.212 (1)(a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.
1622	322.212(4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.

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1623	322.212(5)(a)	3rd	False application for driver license or identification card.
1624	414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
1625	443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
1626	509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.
1627	517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
1628	562.27(1)	3rd	Possess still or still apparatus.
1629			

1630	713.69	3rd	Tenant removes property upon which lien has accrued, value more than \$50.
1631	812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
1632	812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
1633	815.04(5)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
1634	817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
1635	817.569(2)	3rd	Use of public record or public records information or providing false information to facilitate commission of a felony.

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1636	826.01	3rd	Bigamy.
1637	828.122(3)	3rd	Fighting or baiting animals.
1638	831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
1639	831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
1640	832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.
1641	832.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
1642	838.15(2)	3rd	Commercial bribe receiving.

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1643	838.16	3rd	Commercial bribery.
1644	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
1645	847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
1646	849.01	3rd	Keeping gambling house.
1647	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.
1648	849.23	3rd	Gambling-related machines; "common offender" as to property rights.
1649	849.25(2)	3rd	Engaging in bookmaking.
	860.08	3rd	Interfere with a railroad signal.

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1650

860.13(1)(a) 3rd Operate aircraft while under
the influence.

1651

893.13(2)(a)2. 3rd Purchase of cannabis.

1652

893.13(6)(a) 3rd Possession of cannabis (more
than 20 grams).

1653

934.03(1)(a) 3rd Intercepts, or procures any
other person to intercept, any
wire or oral communication.

1654

1655 (b) LEVEL 2

1656

Florida	Felony	
Statute	Degree	Description

1657

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

1658

379.2431	3rd	Possession of more than 11
(1)(e)4.		marine turtle eggs in violation

			of the Marine Turtle Protection Act.
1659	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.
1660	517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
1661	590.28(1)	3rd	Intentional burning of lands.
1662	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
1663	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
1664	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public

1665			communication or any other public service.
1666	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
1667	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
1668	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
1669	812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
1670	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.

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1671	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
1672	817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
1673	817.52(3)	3rd	Failure to redeliver hired vehicle.
1674	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
1675	817.60(5)	3rd	Dealing in credit cards of another.
1676	817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
1677	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.

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1678	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
1679	831.01	3rd	Forgery.
1680	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
1681	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
1682	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
1683	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
1684	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.

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1685	832.05 (3) (a)	3rd	Cashing or depositing item with intent to defraud.
1686	843.08	3rd	False personation.
1687	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.
1688	893.147 (2)	3rd	Manufacture or delivery of drug paraphernalia.
1689	(c) LEVEL 3		
1690	Florida	Felony	
1691	Statute	Degree	Description
1692	119.10 (2) (b)	3rd	Unlawful use of confidential information from police reports.
	316.066	3rd	Unlawfully obtaining or using

1693	(3) (b) - (d)		confidential crash reports.
1694	316.193 (2) (b)	3rd	Felony DUI, 3rd conviction.
1695	316.1935 (2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
1696	319.30 (4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
1697	319.33 (1) (a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
1698	319.33 (1) (c)	3rd	Procure or pass title on stolen vehicle.
1699	319.33 (4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.

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1700	327.35 (2) (b)	3rd	Felony BUI.
1701	328.05 (2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
1702	328.07 (4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
1703	376.302 (5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
1704	379.2431 (1) (e) 5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.

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1705	379.2431 (1) (e) 6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
1706	400.9935 (4) (a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
1707	400.9935 (4) (e)	3rd	Filing a false license application or other required information or failing to report information.
1708	440.1051 (3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
1709	501.001 (2) (b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
	624.401 (4) (a)	3rd	Transacting insurance without a

1710			certificate of authority.
	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
1711			
	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
1712			
	697.08	3rd	Equity skimming.
1713			
	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
1714			
	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
1715			
	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
1716			
	810.09(2)(c)	3rd	Trespass on property other than

			structure or conveyance armed with firearm or dangerous weapon.
1717	812.014 (2) (c) 2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
1718	812.0145 (2) (c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
1719	815.04 (5) (b)	2nd	Computer offense devised to defraud or obtain property.
1720	817.034 (4) (a) 3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
1721	817.233	3rd	Burning to defraud insurer.
1722	817.234 (8) (b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
1723			

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1724	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
1725	817.236	3rd	Filing a false motor vehicle insurance application.
1726	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
1727	817.413(2)	3rd	Sale of used goods as new.
1728	817.505(4)	3rd	Patient brokering.
1729	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
1730	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.

1731	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
1732	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
1733	843.19	3rd	Injure, disable, or kill police dog or horse.
1734	860.15(3)	3rd	Overcharging for repairs and parts.
1735	870.01(2)	3rd	Riot; inciting or encouraging.
1736	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).
	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.
1737	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.
1738	893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
1739	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
1740	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.

1741	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
1742	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
1743	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
1744	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.
1745	893.13(8)(a)2.	3rd	Employ a trick or scheme in the

1746	893.13(8)(a)3.	3rd	practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
1747	893.13(8)(a)4.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
1748	918.13(1)(a)	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.
1749	944.47 (1)(a)1. & 2.	3rd	Alter, destroy, or conceal investigation evidence.
1750	944.47(1)(c)	2nd	Introduce contraband to correctional facility.
			Possess contraband while upon

1751			the grounds of a correctional institution.
	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
1752			
1753	(d)	LEVEL 4	
1754			
	Florida Statute	Felony Degree	Description
1755			
	316.1935(3)(a)	2nd	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.
1756			
	499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
1757			

1758	499.0051 (5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
1759	517.07 (1)	3rd	Failure to register securities.
1760	517.12 (1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
1761	784.07 (2) (b)	3rd	Battery of law enforcement officer, firefighter, etc.
1762	784.074 (1) (c)	3rd	Battery of sexually violent predators facility staff.
1763	784.075	3rd	Battery on detention or commitment facility staff.
1764	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
	784.08 (2) (c)	3rd	Battery on a person 65 years of age or older.

1765	784.081(3)	3rd	Battery on specified official or employee.
1766	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
1767	784.083(3)	3rd	Battery on code inspector.
1768	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
1769	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
1770	787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
1771	787.04(3)	3rd	Carrying child beyond state lines with criminal intent to

			avoid producing child at custody hearing or delivering to designated person.
1772	787.07	3rd	Human smuggling.
1773	790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
1774	790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
1775	790.115(2)(c)	3rd	Possessing firearm on school property.
1776	800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
1777	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
1778			

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1779	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
1780	810.06	3rd	Burglary; possession of tools.
1781	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
1782	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
1783	812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
1784	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
	817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s.

1785			893.03(5) drugs.
	817.568(2)(a)	3rd	Fraudulent use of personal identification information.
1786			
	817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
1787			
	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
1788			
	837.02(1)	3rd	Perjury in official proceedings.
1789			
	837.021(1)	3rd	Make contradictory statements in official proceedings.
1790			
	838.022	3rd	Official misconduct.
1791			
	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
1792			

1793	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
1794	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
1795	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
1796	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
1797	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
1798	874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.

1799	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).
1800	914.14(2)	3rd	Witnesses accepting bribes.
1801	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
1802	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
1803	918.12	3rd	Tampering with jurors.
1804	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
1805	(e) LEVEL 5		
1806	Florida	Felony	
1807	Statute	Degree	Description

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1808	316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
1809	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
1810	316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
1811	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
1812	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
	379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply,

aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.

1813

379.367(4)

3rd

Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.

1814

379.407(5)(b)3.

3rd

Possession of 100 or more undersized spiny lobsters.

1815

381.0041(11)(b)

3rd

Donate blood, plasma, or organs knowing HIV positive.

1816

440.10(1)(g)

2nd

Failure to obtain workers' compensation coverage.

1817

1818	440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
1819	440.381 (2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
1820	624.401 (4) (b) 2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
1821	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
1822	790.01 (2)	3rd	Carrying a concealed firearm.
1823	790.162	2nd	Threat to throw or discharge destructive device.
	790.163 (1)	2nd	False report of bomb, explosive, weapon of mass

			destruction, or use of firearms in violent manner.
1824	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
1825	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
1826	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
1827	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
1828	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
1829	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.

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1830	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
1831	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
1832	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
1833	812.131(2)(b)	3rd	Robbery by sudden snatching.
1834	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
1835	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
1836	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
1837	817.2341(1),	3rd	Filing false financial

	(2) (a) & (3) (a)		statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
1838	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 persons.
1839	817.611 (2) (a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
1840	817.625 (2) (b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
1841	825.1025 (4)	3rd	Lewd or lascivious exhibition

1842	827.071(4)	2nd	in the presence of an elderly person or disabled adult.
1843	827.071(5)	3rd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
1844	839.13(2)(b)	2nd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
1845	843.01	3rd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
1846			Resist officer with violence to person; resist arrest with violence.

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1847	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
1848	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
1849	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
1850	874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
1851	874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).

1852

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

1853

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

1854

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.

1855

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.

1856

893.13(4)(b) 2nd Use or hire of minor; deliver
 to minor other controlled
 substance.

1857

893.1351(1) 3rd Ownership, lease, or rental for
 trafficking in or manufacturing
 of controlled substance.

1858

1859 (g) LEVEL 7

1860

Florida Felony Description

	Statute	Degree	
1861	316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
1862	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
1863	316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
1864	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
1865	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.

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1866	409.920 (2) (b) 1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
1867	409.920 (2) (b) 1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
1868	456.065 (2)	3rd	Practicing a health care profession without a license.
1869	456.065 (2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
1870	458.327 (1)	3rd	Practicing medicine without a license.
1871	459.013 (1)	3rd	Practicing osteopathic medicine without a license.
1872	460.411 (1)	3rd	Practicing chiropractic medicine without a license.
1873			

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1874	461.012 (1)	3rd	Practicing podiatric medicine without a license.
1875	462.17	3rd	Practicing naturopathy without a license.
1876	463.015 (1)	3rd	Practicing optometry without a license.
1877	464.016 (1)	3rd	Practicing nursing without a license.
1878	465.015 (2)	3rd	Practicing pharmacy without a license.
1879	466.026 (1)	3rd	Practicing dentistry or dental hygiene without a license.
1880	467.201	3rd	Practicing midwifery without a license.
1881	468.366	3rd	Delivering respiratory care services without a license.
	483.828 (1)	3rd	Practicing as clinical

1882			laboratory personnel without a license.
	483.901(7)	3rd	Practicing medical physics without a license.
1883			
	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
1884			
	484.053	3rd	Dispensing hearing aids without a license.
1885			
	494.0018(2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
1886			
	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.
1887			
	560.125(5)(a)	3rd	Money services business by

			unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
1888	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
1889	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
1890	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
1891	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
1892	782.051(3)	2nd	Attempted felony murder of a

1893	782.07(1)	2nd	<p>person by a person other than the perpetrator or the perpetrator of an attempted felony.</p> <p>Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).</p>
1894	782.071	2nd	<p>Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).</p>
1895	782.072	2nd	<p>Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).</p>
1896	784.045(1)(a)1.	2nd	<p>Aggravated battery; intentionally causing great bodily harm or disfigurement.</p>
1897			

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1898	784.045 (1) (a) 2.	2nd	Aggravated battery; using deadly weapon.
1899	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
1900	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
1901	784.048 (7)	3rd	Aggravated stalking; violation of court order.
1902	784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.
1903	784.074 (1) (a)	1st	Aggravated battery on sexually violent predators facility staff.
1904	784.08 (2) (a)	1st	Aggravated battery on a person 65 years of age or older.
1905	784.081 (1)	1st	Aggravated battery on specified official or employee.

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1906	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
1907	784.083(1)	1st	Aggravated battery on code inspector.
1908	787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
1909	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.
1910	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
1911	790.16(1)	1st	Discharge of a machine gun under specified circumstances.

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1912	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
1913	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
1914	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
1915	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
1916	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
	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.
1917	796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.
1918	796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
1919	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.
1920	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.
1921	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.
1922	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
1923	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
1924	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
1925	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
1926	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
1927	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.
1928	812.014 (2) (b) 2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
1929	812.014 (2) (b) 3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
1930	812.014 (2) (b) 4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
1931	812.0145 (2) (a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
1932	812.019 (2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
1933	812.131 (2) (a)	2nd	Robbery by sudden snatching.

1934	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
1935	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
1936	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
1937	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
1938	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
1939	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.

1940	817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
1941	817.611(2)(b)	2nd	Traffic in or possess 15 to 49 counterfeit credit cards or related documents.
1942	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
1943	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.
1944	827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
1945	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.

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1946	837.05 (2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
1947	838.015	2nd	Bribery.
1948	838.016	2nd	Unlawful compensation or reward for official behavior.
1949	838.021 (3) (a)	2nd	Unlawful harm to a public servant.
1950	838.22	2nd	Bid tampering.
1951	843.0855 (2)	3rd	Impersonation of a public officer or employee.
1952	843.0855 (3)	3rd	Unlawful simulation of legal process.
1953	843.0855 (4)	3rd	Intimidation of a public officer or employee.
1954	847.0135 (3)	3rd	Solicitation of a child, via a

			computer service, to commit an unlawful sex act.
1955	847.0135 (4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
1956	872.06	2nd	Abuse of a dead human body.
1957	874.05 (2) (b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
1958	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
1959	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.
1960	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.
1961	893.13(4)(a)	1st	Use or hire of minor; deliver to minor other controlled substance.
1962	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
1963	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.

1964	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
1965	893.135 (1)(c)2.a.	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.
1966	893.135 (1)(c)2.b.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
1967	893.135 (1)(c)3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
1968	893.135 (1)(c)3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
1969	<u>893.135</u> <u>(1)(c)4.b.(I)</u>	<u>1st</u>	<u>Trafficking in fentanyl, 4</u> <u>grams or more, less than 14</u> <u>grams.</u>
1970			

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1971	<u>893.135(1)(d)1.a.</u> 893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams <u>or more</u> , less than 200 grams.
1972	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams <u>or more</u> , less than 5 kilograms.
1973	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams <u>or more</u> , less than 28 grams.
1974	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
1975	893.135 (1)(h)1.a.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
1976	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.

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1977	893.135 (1) (k) 2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
1978	<u>893.135 (1) (m) 2.a.</u>	<u>1st</u>	<u>Trafficking in synthetic cannabinoids, 280 grams or more, less than 500 grams.</u>
1979	<u>893.135 (1) (m) 2.b.</u>	<u>1st</u>	<u>Trafficking in synthetic cannabinoids, 500 grams or more, less than 1,000 grams.</u>
1980	<u>893.135 (1) (n) 2.a.</u>	<u>1st</u>	<u>Trafficking in n-benzyl phenethylamines, 14 grams or more, less than 100 grams.</u>
1981	893.1351 (2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
1982	896.101 (5) (a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
	896.104 (4) (a) 1.	3rd	Structuring transactions to

			evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
1983	943.0435 (4) (c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
1984	943.0435 (8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
1985	943.0435 (9) (a)	3rd	Sexual offender; failure to comply with reporting requirements.
1986	943.0435 (13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
1987	943.0435 (14)	3rd	Sexual offender; failure to

			report and reregister; failure to respond to address verification; providing false registration information.
1988	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
1989	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
1990	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
1991	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
1992	985.4815(10)	3rd	Sexual offender; failure to

1993			submit to the taking of a digitized photograph.
	985.4815 (12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
1994			
	985.4815 (13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
1995			
1996	(h) LEVEL 8		
1997			
	Florida Statute	Felony Degree	Description
1998			
	316.193 (3) (c) 3.a.	2nd	DUI manslaughter.
1999			
	316.1935 (4) (b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.

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

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2000	327.35 (3) (c) 3.	2nd	Vessel BUI manslaughter.
2001	499.0051 (7)	1st	Knowing trafficking in contraband prescription drugs.
2002	499.0051 (8)	1st	Knowing forgery of prescription labels or prescription drug labels.
2003	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.
2004	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.
2005	655.50 (10) (b) 2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less

			than \$100,000 by financial institutions.
2006	777.03(2)(a)	1st	Accessory after the fact, capital felony.
2007	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.
2008	782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
2009	782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
2010			

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2011	782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
2012	787.06(3)(a)1.	1st	Human trafficking for labor and services of a child.
2013	787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity of an adult.
2014	787.06(3)(c)2.	1st	Human trafficking using coercion for labor and services of an unauthorized alien adult.
2015	787.06(3)(e)1.	1st	Human trafficking for labor and services by the transfer or transport of a child from outside Florida to within the state.
	787.06(3)(f)2.	1st	Human trafficking using coercion for commercial sexual activity by the transfer or transport of any adult from

			outside Florida to within the state.
2016	790.161 (3)	1st	Discharging a destructive device which results in bodily harm or property damage.
2017	794.011 (5) (a)	1st	Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does not use physical force likely to cause serious injury.
2018	794.011 (5) (b)	2nd	Sexual battery; victim and offender 18 years of age or older; offender does not use physical force likely to cause serious injury.
2019	794.011 (5) (c)	2nd	Sexual battery; victim 12 years of age or older; offender younger than 18 years; offender does not use physical force likely to cause injury.

2020	794.011(5)(d)	1st	Sexual battery; victim 12 years of age or older; offender does not use physical force likely to cause serious injury; prior conviction for specified sex offense.
2021	794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
2022	800.04(4)(b)	2nd	Lewd or lascivious battery.
2023	800.04(4)(c)	1st	Lewd or lascivious battery; offender 18 years of age or older; prior conviction for specified sex offense.
2024	806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
2025	810.02(2)(a)	1st, PBL	Burglary with assault or

			battery.
2026	810.02(2)(b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.
2027	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
2028	812.014(2)(a)2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
2029	812.13(2)(b)	1st	Robbery with a weapon.
2030	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
2031	817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
2032	817.535(3)(a)	2nd	Filing false lien or other

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2033	817.535(4)(a)1.	2nd	unauthorized document; property owner is a public officer or employee.
2034	817.535(5)(a)	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.
2035	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.
2036	817.611(2)(c)	1st	Fraudulent use of personal identification information of an individual under the age of 18.
2037	825.102(2)	1st	Traffic in or possess 50 or more counterfeit credit cards or related documents.
			Aggravated abuse of an elderly

2038			person or disabled adult.
	825.1025 (2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
2039			
	825.103 (3) (a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$50,000 or more.
2040			
	837.02 (2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
2041			
	837.021 (2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
2042			
	860.121 (2) (c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
2043			
	860.16	1st	Aircraft piracy.

2044	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).
2045	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
2046	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
2047	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
2048	893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
2049	893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.

2050	893.135 (1)(c)2.c.	1st	Trafficking in hydrocodone, 50 grams or more, less than 200 grams.
2051	893.135 (1)(c)3.c.	1st	Trafficking in oxycodone, 25 grams or more, less than 100 grams.
2052	<u>893.135</u> <u>(1)(c)4.b.(II)</u>	<u>1st</u>	<u>Trafficking in fentanyl, 14 grams or more, less than 28 grams.</u>
2053	893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, more than 200 grams <u>or more</u> , less than 400 grams.
2054	893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, more than 5 kilograms <u>or more</u> , less than 25 kilograms.
2055	893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams <u>or more</u> , less than 200 grams.
2056			

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2057	893.135 (1) (g) 1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
2058	893.135 (1) (h) 1.b.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
2059	893.135 (1) (j) 1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
2060	893.135 (1) (k) 2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
2061	<u>893.135 (1) (m) 2.c.</u>	<u>1st</u>	<u>Trafficking in synthetic cannabinoids, 1,000 grams or more, less than 30 kilograms.</u>
2062	<u>893.135 (1) (n) 2.b.</u>	<u>1st</u>	<u>Trafficking in n-benzyl phenethylamines, 100 grams or more, less than 200 grams.</u>

2063	893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
2064	895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
2065	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
2066	895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
2067	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

2068			requirements, financial transactions totaling or exceeding \$20,000 but less than \$100,000.
2069	(i)	LEVEL 9	
2070			
	Florida	Felony	
	Statute	Degree	Description
2071	316.193	1st	DUI manslaughter; failing to render aid or give information.
	(3) (c) 3.b.		
2072	327.35	1st	BUI manslaughter; failing to render aid or give information.
	(3) (c) 3.b.		
2073	409.920	1st	Medicaid provider fraud; \$50,000 or more.
	(2) (b) 1.c.		
2074	499.0051 (8)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
2075	560.123 (8) (b) 3.	1st	Failure to report currency or payment instruments totaling or

2076	560.125(5)(c)	1st	exceeding \$100,000 by money transmitter.
2077	655.50(10)(b)3.	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
2078	775.0844	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
2079	782.04(1)	1st	Aggravated white collar crime.
2080	782.04(3)	1st, PBL	Attempt, conspire, or solicit to commit premeditated murder.
			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.

2081

782.051(1) 1st Attempted felony murder while
perpetrating or attempting to
perpetrate a felony enumerated
in s. 782.04(3).

2082

782.07(2) 1st Aggravated manslaughter of an
elderly person or disabled
adult.

2083

787.01(1)(a)1. 1st,PBL Kidnapping; hold for ransom or
reward or as a shield or
hostage.

2084

787.01(1)(a)2. 1st,PBL Kidnapping with intent to
commit or facilitate commission
of any felony.

2085

787.01(1)(a)4. 1st,PBL Kidnapping with intent to
interfere with performance of
any governmental or political
function.

2086

787.02(3)(a) 1st,PBL False imprisonment; child under
age 13; perpetrator also

2087	787.06(3)(c)1.	1st	commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
2088	787.06(3)(d)	1st	Human trafficking for labor and services of an unauthorized alien child.
2089	787.06(3)(f)1.	1st,PBL	Human trafficking using coercion for commercial sexual activity of an unauthorized adult alien.
2090	790.161	1st	Human trafficking for commercial sexual activity by the transfer or transport of any child from outside Florida to within the state.
2091	790.166(2)	1st,PBL	Attempted capital destructive device offense.
			Possessing, selling, using, or

			attempting to use a weapon of mass destruction.
2092	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
2093	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
2094	794.011(4)(a)	1st, PBL	Sexual battery, certain circumstances; victim 12 years of age or older but younger than 18 years; offender 18 years or older.
2095	794.011(4)(b)	1st	Sexual battery, certain circumstances; victim and offender 18 years of age or older.
2096	794.011(4)(c)	1st	Sexual battery, certain circumstances; victim 12 years

2097			of age or older; offender younger than 18 years.
	794.011(4)(d)	1st, PBL	Sexual battery, certain circumstances; victim 12 years of age or older; prior conviction for specified sex offenses.
2098			
	794.011(8)(b)	1st, PBL	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
2099			
	794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
2100			
	800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
2101			
	812.13(2)(a)	1st, PBL	Robbery with firearm or other deadly weapon.
2102			

2103	812.133(2) (a)	1st, PBL	Carjacking; firearm or other deadly weapon.
2104	812.135(2) (b)	1st	Home-invasion robbery with weapon.
2105	817.535(3) (b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.
2106	817.535(4) (a)2.	1st	Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.
2107	817.535(5) (b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument.
	817.568(7)	2nd,	Fraudulent use of personal

		PBL	identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
2108			
	827.03(2)(a)	1st	Aggravated child abuse.
2109			
	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
2110			
	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
2111			
	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.
2112			
	893.135	1st	Attempted capital trafficking

			offense.
2113	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
2114	893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
2115	893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
2116	893.135 (1)(c)2.d.	1st	Trafficking in hydrocodone, 200 grams or more, less than 30 kilograms.
2117	893.135 (1)(c)3.d.	1st	Trafficking in oxycodone, 100 grams or more, less than 30 kilograms.
2118	<u>893.135</u> <u>(1)(c)4.b.(III)</u>	<u>1st</u>	<u>Trafficking in fentanyl, 28 grams or more.</u>
2119			

2120	893.135 (1) (d) 1.c.	1st	Trafficking in phencyclidine, more than 400 grams <u>or more.</u>
2121	893.135 (1) (e) 1.c.	1st	Trafficking in methaqualone, more than 25 kilograms <u>or more.</u>
2122	893.135 (1) (f) 1.c.	1st	Trafficking in amphetamine, more than 200 grams <u>or more.</u>
2123	893.135 (1) (h) 1.c.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 10 kilograms or more.
2124	893.135 (1) (j) 1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
2125	893.135 (1) (k) 2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.
2126	<u>893.135</u> <u>(1) (m) 2.d.</u>	<u>1st</u>	<u>Trafficking in synthetic</u> <u>cannabinoids, 30 kilograms or</u> <u>more.</u>
	<u>893.135 (1) (n) 2.c.</u>	<u>1st</u>	<u>Trafficking in n-benzyl</u> <u>phenethylamines, 200 grams or</u>

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

more.

2127

896.101(5)(c) 1st Money laundering, financial instruments totaling or exceeding \$100,000.

2128

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

2129

2130 Section 8. For the purpose of incorporating the amendment
 2131 made by this act to section 782.04, Florida Statutes, in a
 2132 reference thereto, paragraph (d) of subsection (1) of section
 2133 39.806, Florida Statutes, is reenacted to read:

2134 39.806 Grounds for termination of parental rights.—

2135 (1) Grounds for the termination of parental rights may be
 2136 established under any of the following circumstances:

2137 (d) When the parent of a child is incarcerated and either:

2138 1. The period of time for which the parent is expected to
 2139 be incarcerated will constitute a significant portion of the
 2140 child's minority. When determining whether the period of time is
 2141 significant, the court shall consider the child's age and the
 2142 child's need for a permanent and stable home. The period of time

2143 begins on the date that the parent enters into incarceration;
 2144 2. The incarcerated parent has been determined by the
 2145 court to be a violent career criminal as defined in s. 775.084,
 2146 a habitual violent felony offender as defined in s. 775.084, or
 2147 a sexual predator as defined in s. 775.21; has been convicted of
 2148 first degree or second degree murder in violation of s. 782.04
 2149 or a sexual battery that constitutes a capital, life, or first
 2150 degree felony violation of s. 794.011; or has been convicted of
 2151 an offense in another jurisdiction which is substantially
 2152 similar to one of the offenses listed in this paragraph. As used
 2153 in this section, the term "substantially similar offense" means
 2154 any offense that is substantially similar in elements and
 2155 penalties to one of those listed in this subparagraph, and that
 2156 is in violation of a law of any other jurisdiction, whether that
 2157 of another state, the District of Columbia, the United States or
 2158 any possession or territory thereof, or any foreign
 2159 jurisdiction; or
 2160 3. The court determines by clear and convincing evidence
 2161 that continuing the parental relationship with the incarcerated
 2162 parent would be harmful to the child and, for this reason, that
 2163 termination of the parental rights of the incarcerated parent is
 2164 in the best interest of the child. When determining harm, the
 2165 court shall consider the following factors:
 2166 a. The age of the child.
 2167 b. The relationship between the child and the parent.

2168 c. The nature of the parent's current and past provision
 2169 for the child's developmental, cognitive, psychological, and
 2170 physical needs.

2171 d. The parent's history of criminal behavior, which may
 2172 include the frequency of incarceration and the unavailability of
 2173 the parent to the child due to incarceration.

2174 e. Any other factor the court deems relevant.

2175 Section 9. For the purpose of incorporating the amendment
 2176 made by this act to section 782.04, Florida Statutes, in a
 2177 reference thereto, paragraph (b) of subsection (4) of section
 2178 63.089, Florida Statutes, is reenacted to read:

2179 63.089 Proceeding to terminate parental rights pending
 2180 adoption; hearing; grounds; dismissal of petition; judgment.—

2181 (4) FINDING OF ABANDONMENT.—A finding of abandonment
 2182 resulting in a termination of parental rights must be based upon
 2183 clear and convincing evidence that a parent or person having
 2184 legal custody has abandoned the child in accordance with the
 2185 definition contained in s. 63.032. A finding of abandonment may
 2186 also be based upon emotional abuse or a refusal to provide
 2187 reasonable financial support, when able, to a birth mother
 2188 during her pregnancy or on whether the person alleged to have
 2189 abandoned the child, while being able, failed to establish
 2190 contact with the child or accept responsibility for the child's
 2191 welfare.

2192 (b) The child has been abandoned when the parent of a

2193 child is incarcerated on or after October 1, 2001, in a federal,
 2194 state, or county correctional institution and:

2195 1. The period of time for which the parent has been or is
 2196 expected to be incarcerated will constitute a significant
 2197 portion of the child's minority. In determining whether the
 2198 period of time is significant, the court shall consider the
 2199 child's age and the child's need for a permanent and stable
 2200 home. The period of time begins on the date that the parent
 2201 enters into incarceration;

2202 2. The incarcerated parent has been determined by a court
 2203 of competent jurisdiction to be a violent career criminal as
 2204 defined in s. 775.084, a habitual violent felony offender as
 2205 defined in s. 775.084, convicted of child abuse as defined in s.
 2206 827.03, or a sexual predator as defined in s. 775.21; has been
 2207 convicted of first degree or second degree murder in violation
 2208 of s. 782.04 or a sexual battery that constitutes a capital,
 2209 life, or first degree felony violation of s. 794.011; or has
 2210 been convicted of a substantially similar offense in another
 2211 jurisdiction. As used in this section, the term "substantially
 2212 similar offense" means any offense that is substantially similar
 2213 in elements and penalties to one of those listed in this
 2214 subparagraph, and that is in violation of a law of any other
 2215 jurisdiction, whether that of another state, the District of
 2216 Columbia, the United States or any possession or territory
 2217 thereof, or any foreign jurisdiction; or

2218 3. The court determines by clear and convincing evidence
 2219 that continuing the parental relationship with the incarcerated
 2220 parent would be harmful to the child and, for this reason,
 2221 termination of the parental rights of the incarcerated parent is
 2222 in the best interests of the child.

2223 Section 10. For the purpose of incorporating the amendment
 2224 made by this act to section 782.04, Florida Statutes, in a
 2225 reference thereto, subsection (10) of section 95.11, Florida
 2226 Statutes, is reenacted to read:

2227 95.11 Limitations other than for the recovery of real
 2228 property.—Actions other than for recovery of real property shall
 2229 be commenced as follows:

2230 (10) FOR INTENTIONAL TORTS RESULTING IN DEATH FROM ACTS
 2231 DESCRIBED IN S. 782.04 OR S. 782.07.—Notwithstanding paragraph
 2232 (4) (d), an action for wrongful death seeking damages authorized
 2233 under s. 768.21 brought against a natural person for an
 2234 intentional tort resulting in death from acts described in s.
 2235 782.04 or s. 782.07 may be commenced at any time. This
 2236 subsection shall not be construed to require an arrest, the
 2237 filing of formal criminal charges, or a conviction for a
 2238 violation of s. 782.04 or s. 782.07 as a condition for filing a
 2239 civil action.

2240 Section 11. For the purpose of incorporating the amendment
 2241 made by this act to section 782.04, Florida Statutes, in
 2242 references thereto, paragraph (b) of subsection (1) and

2243 paragraphs (a), (b), and (c) of subsection (3) of section
 2244 775.082, Florida Statutes, are reenacted to read:

2245 775.082 Penalties; applicability of sentencing structures;
 2246 mandatory minimum sentences for certain reoffenders previously
 2247 released from prison.—

2248 (1)

2249 (b)1. A person who actually killed, intended to kill, or
 2250 attempted to kill the victim and who is convicted under s.
 2251 782.04 of a capital felony, or an offense that was reclassified
 2252 as a capital felony, which was committed before the person
 2253 attained 18 years of age shall be punished by a term of
 2254 imprisonment for life if, after a sentencing hearing conducted
 2255 by the court in accordance with s. 921.1401, the court finds
 2256 that life imprisonment is an appropriate sentence. If the court
 2257 finds that life imprisonment is not an appropriate sentence,
 2258 such person shall be punished by a term of imprisonment of at
 2259 least 40 years. A person sentenced pursuant to this subparagraph
 2260 is entitled to a review of his or her sentence in accordance
 2261 with s. 921.1402(2)(a).

2262 2. A person who did not actually kill, intend to kill, or
 2263 attempt to kill the victim and who is convicted under s. 782.04
 2264 of a capital felony, or an offense that was reclassified as a
 2265 capital felony, which was committed before the person attained
 2266 18 years of age may be punished by a term of imprisonment for
 2267 life or by a term of years equal to life if, after a sentencing

2268 hearing conducted by the court in accordance with s. 921.1401,
 2269 the court finds that life imprisonment is an appropriate
 2270 sentence. A person who is sentenced to a term of imprisonment of
 2271 more than 15 years is entitled to a review of his or her
 2272 sentence in accordance with s. 921.1402(2)(c).

2273 3. The court shall make a written finding as to whether a
 2274 person is eligible for a sentence review hearing under s.
 2275 921.1402(2)(a) or (c). Such a finding shall be based upon
 2276 whether the person actually killed, intended to kill, or
 2277 attempted to kill the victim. The court may find that multiple
 2278 defendants killed, intended to kill, or attempted to kill the
 2279 victim.

2280 (3) A person who has been convicted of any other
 2281 designated felony may be punished as follows:

2282 (a)1. For a life felony committed before October 1, 1983,
 2283 by a term of imprisonment for life or for a term of at least 30
 2284 years.

2285 2. For a life felony committed on or after October 1,
 2286 1983, by a term of imprisonment for life or by a term of
 2287 imprisonment not exceeding 40 years.

2288 3. Except as provided in subparagraph 4., for a life
 2289 felony committed on or after July 1, 1995, by a term of
 2290 imprisonment for life or by imprisonment for a term of years not
 2291 exceeding life imprisonment.

2292 4.a. Except as provided in sub-subparagraph b., for a life

2293 felony committed on or after September 1, 2005, which is a
 2294 violation of s. 800.04(5)(b), by:

2295 (I) A term of imprisonment for life; or

2296 (II) A split sentence that is a term of at least 25 years'
 2297 imprisonment and not exceeding life imprisonment, followed by
 2298 probation or community control for the remainder of the person's
 2299 natural life, as provided in s. 948.012(4).

2300 b. For a life felony committed on or after July 1, 2008,
 2301 which is a person's second or subsequent violation of s.
 2302 800.04(5)(b), by a term of imprisonment for life.

2303 5. Notwithstanding subparagraphs 1.-4., a person who is
 2304 convicted under s. 782.04 of an offense that was reclassified as
 2305 a life felony which was committed before the person attained 18
 2306 years of age may be punished by a term of imprisonment for life
 2307 or by a term of years equal to life imprisonment if the judge
 2308 conducts a sentencing hearing in accordance with s. 921.1401 and
 2309 finds that life imprisonment or a term of years equal to life
 2310 imprisonment is an appropriate sentence.

2311 a. A person who actually killed, intended to kill, or
 2312 attempted to kill the victim and is sentenced to a term of
 2313 imprisonment of more than 25 years is entitled to a review of
 2314 his or her sentence in accordance with s. 921.1402(2)(b).

2315 b. A person who did not actually kill, intend to kill, or
 2316 attempt to kill the victim and is sentenced to a term of
 2317 imprisonment of more than 15 years is entitled to a review of

2318 | his or her sentence in accordance with s. 921.1402(2)(c).

2319 | c. The court shall make a written finding as to whether a
 2320 | person is eligible for a sentence review hearing under s.
 2321 | 921.1402(2)(b) or (c). Such a finding shall be based upon
 2322 | whether the person actually killed, intended to kill, or
 2323 | attempted to kill the victim. The court may find that multiple
 2324 | defendants killed, intended to kill, or attempted to kill the
 2325 | victim.

2326 | 6. For a life felony committed on or after October 1,
 2327 | 2014, which is a violation of s. 787.06(3)(g), by a term of
 2328 | imprisonment for life.

2329 | (b)1. For a felony of the first degree, by a term of
 2330 | imprisonment not exceeding 30 years or, when specifically
 2331 | provided by statute, by imprisonment for a term of years not
 2332 | exceeding life imprisonment.

2333 | 2. Notwithstanding subparagraph 1., a person convicted
 2334 | under s. 782.04 of a first degree felony punishable by a term of
 2335 | years not exceeding life imprisonment, or an offense that was
 2336 | reclassified as a first degree felony punishable by a term of
 2337 | years not exceeding life, which was committed before the person
 2338 | attained 18 years of age may be punished by a term of years
 2339 | equal to life imprisonment if the judge conducts a sentencing
 2340 | hearing in accordance with s. 921.1401 and finds that a term of
 2341 | years equal to life imprisonment is an appropriate sentence.

2342 | a. A person who actually killed, intended to kill, or

2343 attempted to kill the victim and is sentenced to a term of
 2344 imprisonment of more than 25 years is entitled to a review of
 2345 his or her sentence in accordance with s. 921.1402(2)(b).

2346 b. A person who did not actually kill, intend to kill, or
 2347 attempt to kill the victim and is sentenced to a term of
 2348 imprisonment of more than 15 years is entitled to a review of
 2349 his or her sentence in accordance with s. 921.1402(2)(c).

2350 c. The court shall make a written finding as to whether a
 2351 person is eligible for a sentence review hearing under s.
 2352 921.1402(2)(b) or (c). Such a finding shall be based upon
 2353 whether the person actually killed, intended to kill, or
 2354 attempted to kill the victim. The court may find that multiple
 2355 defendants killed, intended to kill, or attempted to kill the
 2356 victim.

2357 (c) Notwithstanding paragraphs (a) and (b), a person
 2358 convicted of an offense that is not included in s. 782.04 but
 2359 that is an offense that is a life felony or is punishable by a
 2360 term of imprisonment for life or by a term of years not
 2361 exceeding life imprisonment, or an offense that was reclassified
 2362 as a life felony or an offense punishable by a term of
 2363 imprisonment for life or by a term of years not exceeding life
 2364 imprisonment, which was committed before the person attained 18
 2365 years of age may be punished by a term of imprisonment for life
 2366 or a term of years equal to life imprisonment if the judge
 2367 conducts a sentencing hearing in accordance with s. 921.1401 and

2368 finds that life imprisonment or a term of years equal to life
 2369 imprisonment is an appropriate sentence. A person who is
 2370 sentenced to a term of imprisonment of more than 20 years is
 2371 entitled to a review of his or her sentence in accordance with
 2372 s. 921.1402(2)(d).

2373 Section 12. For the purpose of incorporating the amendment
 2374 made by this act to section 782.04, Florida Statutes, in
 2375 references thereto, subsections (1) and (2) of section 775.0823,
 2376 Florida Statutes, are reenacted to read:

2377 775.0823 Violent offenses committed against law
 2378 enforcement officers, correctional officers, state attorneys,
 2379 assistant state attorneys, justices, or judges.—The Legislature
 2380 does hereby provide for an increase and certainty of penalty for
 2381 any person convicted of a violent offense against any law
 2382 enforcement or correctional officer, as defined in s. 943.10(1),
 2383 (2), (3), (6), (7), (8), or (9); against any state attorney
 2384 elected pursuant to s. 27.01 or assistant state attorney
 2385 appointed under s. 27.181; or against any justice or judge of a
 2386 court described in Art. V of the State Constitution, which
 2387 offense arises out of or in the scope of the officer's duty as a
 2388 law enforcement or correctional officer, the state attorney's or
 2389 assistant state attorney's duty as a prosecutor or investigator,
 2390 or the justice's or judge's duty as a judicial officer, as
 2391 follows:

2392 (1) For murder in the first degree as described in s.

2393 782.04(1), if the death sentence is not imposed, a sentence of
 2394 imprisonment for life without eligibility for release.

2395 (2) For attempted murder in the first degree as described
 2396 in s. 782.04(1), a sentence pursuant to s. 775.082, s. 775.083,
 2397 or s. 775.084.

2398
 2399 Notwithstanding the provisions of s. 948.01, with respect to any
 2400 person who is found to have violated this section, adjudication
 2401 of guilt or imposition of sentence shall not be suspended,
 2402 deferred, or withheld.

2403 Section 13. For the purpose of incorporating the amendment
 2404 made by this act to section 782.04, Florida Statutes, in a
 2405 reference thereto, subsection (1) of section 921.16, Florida
 2406 Statutes, is reenacted to read:

2407 921.16 When sentences to be concurrent and when
 2408 consecutive.—

2409 (1) A defendant convicted of two or more offenses charged
 2410 in the same indictment, information, or affidavit or in
 2411 consolidated indictments, informations, or affidavits shall
 2412 serve the sentences of imprisonment concurrently unless the
 2413 court directs that two or more of the sentences be served
 2414 consecutively. Sentences of imprisonment for offenses not
 2415 charged in the same indictment, information, or affidavit shall
 2416 be served consecutively unless the court directs that two or
 2417 more of the sentences be served concurrently. Any sentence for

2418 sexual battery as defined in chapter 794 or murder as defined in
 2419 s. 782.04 must be imposed consecutively to any other sentence
 2420 for sexual battery or murder which arose out of a separate
 2421 criminal episode or transaction.

2422 Section 14. For the purpose of incorporating the amendment
 2423 made by this act to section 782.04, Florida Statutes, in a
 2424 reference thereto, paragraph (c) of subsection (8) of section
 2425 948.06, Florida Statutes, is reenacted to read:

2426 948.06 Violation of probation or community control;
 2427 revocation; modification; continuance; failure to pay
 2428 restitution or cost of supervision.—

2429 (8)

2430 (c) For purposes of this section, the term "qualifying
 2431 offense" means any of the following:

2432 1. Kidnapping or attempted kidnapping under s. 787.01,
 2433 false imprisonment of a child under the age of 13 under s.
 2434 787.02(3), or luring or enticing a child under s. 787.025(2)(b)
 2435 or (c).

2436 2. Murder or attempted murder under s. 782.04, attempted
 2437 felony murder under s. 782.051, or manslaughter under s. 782.07.

2438 3. Aggravated battery or attempted aggravated battery
 2439 under s. 784.045.

2440 4. Sexual battery or attempted sexual battery under s.
 2441 794.011(2), (3), (4), or (8)(b) or (c).

2442 5. Lewd or lascivious battery or attempted lewd or

2443 lascivious battery under s. 800.04(4), lewd or lascivious
 2444 molestation under s. 800.04(5)(b) or (c)2., lewd or lascivious
 2445 conduct under s. 800.04(6)(b), lewd or lascivious exhibition
 2446 under s. 800.04(7)(b), or lewd or lascivious exhibition on
 2447 computer under s. 847.0135(5)(b).

2448 6. Robbery or attempted robbery under s. 812.13,
 2449 carjacking or attempted carjacking under s. 812.133, or home
 2450 invasion robbery or attempted home invasion robbery under s.
 2451 812.135.

2452 7. Lewd or lascivious offense upon or in the presence of
 2453 an elderly or disabled person or attempted lewd or lascivious
 2454 offense upon or in the presence of an elderly or disabled person
 2455 under s. 825.1025.

2456 8. Sexual performance by a child or attempted sexual
 2457 performance by a child under s. 827.071.

2458 9. Computer pornography under s. 847.0135(2) or (3),
 2459 transmission of child pornography under s. 847.0137, or selling
 2460 or buying of minors under s. 847.0145.

2461 10. Poisoning food or water under s. 859.01.

2462 11. Abuse of a dead human body under s. 872.06.

2463 12. Any burglary offense or attempted burglary offense
 2464 that is either a first degree felony or second degree felony
 2465 under s. 810.02(2) or (3).

2466 13. Arson or attempted arson under s. 806.01(1).

2467 14. Aggravated assault under s. 784.021.

2468 15. Aggravated stalking under s. 784.048(3), (4), (5), or
 2469 (7).

2470 16. Aircraft piracy under s. 860.16.

2471 17. Unlawful throwing, placing, or discharging of a
 2472 destructive device or bomb under s. 790.161(2), (3), or (4).

2473 18. Treason under s. 876.32.

2474 19. Any offense committed in another jurisdiction which
 2475 would be an offense listed in this paragraph if that offense had
 2476 been committed in this state.

2477 Section 15. For the purpose of incorporating the amendment
 2478 made by this act to section 782.04, Florida Statutes, in a
 2479 reference thereto, paragraph (a) of subsection (1) of section
 2480 948.062, Florida Statutes, is reenacted to read:

2481 948.062 Reviewing and reporting serious offenses committed
 2482 by offenders placed on probation or community control.—

2483 (1) The department shall review the circumstances related
 2484 to an offender placed on probation or community control who has
 2485 been arrested while on supervision for the following offenses:

2486 (a) Any murder as provided in s. 782.04;

2487 Section 16. For the purpose of incorporating the amendment
 2488 made by this act to section 782.04, Florida Statutes, in a
 2489 reference thereto, paragraph (b) of subsection (3) of section
 2490 985.265, Florida Statutes, is reenacted to read:

2491 985.265 Detention transfer and release; education; adult
 2492 jails.—

2493 (3)
 2494 (b) When a juvenile is released from secure detention or
 2495 transferred to nonsecure detention, detention staff shall
 2496 immediately notify the appropriate law enforcement agency,
 2497 school personnel, and victim if the juvenile is charged with
 2498 committing any of the following offenses or attempting to commit
 2499 any of the following offenses:

- 2500 1. Murder, under s. 782.04;
- 2501 2. Sexual battery, under chapter 794;
- 2502 3. Stalking, under s. 784.048; or
- 2503 4. Domestic violence, as defined in s. 741.28.

2504 Section 17. For the purpose of incorporating the amendment
 2505 made by this act to section 782.04, Florida Statutes, in a
 2506 reference thereto, paragraph (d) of subsection (1) of section
 2507 1012.315, Florida Statutes, is reenacted to read:

2508 1012.315 Disqualification from employment.—A person is
 2509 ineligible for educator certification, and instructional
 2510 personnel and school administrators, as defined in s. 1012.01,
 2511 are ineligible for employment in any position that requires
 2512 direct contact with students in a district school system,
 2513 charter school, or private school that accepts scholarship
 2514 students under s. 1002.39 or s. 1002.395, if the person,
 2515 instructional personnel, or school administrator has been
 2516 convicted of:

- 2517 (1) Any felony offense prohibited under any of the

2518 following statutes:

2519 (d) Section 782.04, relating to murder.

2520 Section 18. For the purpose of incorporating the amendment
 2521 made by this act to section 782.04, Florida Statutes, in a
 2522 reference thereto, paragraph (g) of subsection (2) of section
 2523 1012.467, Florida Statutes, is reenacted to read:

2524 1012.467 Noninstructional contractors who are permitted
 2525 access to school grounds when students are present; background
 2526 screening requirements.—

2527 (2)

2528 (g) A noninstructional contractor for whom a criminal
 2529 history check is required under this section may not have been
 2530 convicted of any of the following offenses designated in the
 2531 Florida Statutes, any similar offense in another jurisdiction,
 2532 or any similar offense committed in this state which has been
 2533 redesignated from a former provision of the Florida Statutes to
 2534 one of the following offenses:

2535 1. Any offense listed in s. 943.0435(1)(h)1., relating to
 2536 the registration of an individual as a sexual offender.

2537 2. Section 393.135, relating to sexual misconduct with
 2538 certain developmentally disabled clients and the reporting of
 2539 such sexual misconduct.

2540 3. Section 394.4593, relating to sexual misconduct with
 2541 certain mental health patients and the reporting of such sexual
 2542 misconduct.

- 2543 | 4. Section 775.30, relating to terrorism.
- 2544 | 5. Section 782.04, relating to murder.
- 2545 | 6. Section 787.01, relating to kidnapping.
- 2546 | 7. Any offense under chapter 800, relating to lewdness and
- 2547 | indecent exposure.
- 2548 | 8. Section 826.04, relating to incest.
- 2549 | 9. Section 827.03, relating to child abuse, aggravated
- 2550 | child abuse, or neglect of a child.
- 2551 | Section 19. This act shall take effect October 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 481 Trusts
SPONSOR(S): Civil Justice & Claims Subcommittee; Moraitis, Jr.
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1554

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	14 Y, 0 N, As CS	MacNamara	Bond
2) Judiciary Committee		MacNamara	Carlechis

SUMMARY ANALYSIS

The Florida Trust Code governs express trusts, charitable or noncharitable, and trusts that are required to be administered in the manner of an express trust. An express trust is created by the intent of a settlor (the individual creating the trust), and is generally evidenced by a written instrument that details the terms of the trust. The trust is administered by a trustee, with the terms of a trust providing benefits for individuals known as beneficiaries. Except as otherwise provided, the terms of a trust prevail over any provision of the Code; the Code is used to fill in gaps and provides for the operation of the trust for issues not addressed in the terms of a trust.

Historically, a trust was administered with the primary intent of accomplishing the intent of the settlor. Recent changes to trust law may be interpreted to require the administration of a trust for the benefit of the beneficiaries instead. This bill deletes language related to benefiting the beneficiaries and thus makes the intent of the settlor the primary intent of trust administration.

The bill changes portions of the Code related to the trustee and their duties, liabilities, and powers to provide which provisions of the Code govern a trustee's duty to provide an accounting to the beneficiaries and extend the period for beneficiaries to file actions alleging a breach of trust. Additionally, the bill limits the application of the portion of the Code relating to posting documents electronically, revises procedural requirements for such postings, and provides consequences for failing to maintain receipts of electronic postings.

The bill also expands the state's decanting statute. Decanting is a trustee's power to cure or avoid issues with a trust by distributing trust property from one trust to a second trust, as opposed to distributing property directly to a beneficiary. The bill expands a trustee's ability to decant trust principal under the terms of the trust; provides support for disabled beneficiaries; and imposes greater notice requirements when a trustee exercises the ability to decant trust principal.

Lastly, the bill modifies portions of the Code related to notices for charitable trusts. The bill requires that notice be sent to only one entity, the Attorney General, rather than to a state attorney in some instances and the Attorney General in others. The bill specifies the method by which the Attorney General is to receive notice and gives the Attorney General standing in actions related to charitable trusts.

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

The effective date for the bill is July 1, 2017. The sections related to the period for which beneficiaries may compel trust accounting apply retroactively to all cases pending or commenced on or after July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Overview of the Florida Trust Code

Chapter 736, F.S., is referred to as the "Florida Trust Code." The Code applies to express trusts, charitable or noncharitable, and trusts created pursuant to law, judgment, or decree that requires the trust to be administered in the manner of an express trust. An express trust is defined as a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property, which arises as a result of a manifestation of an intention to create it.

The term "terms of a trust" is defined to mean the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.¹ Under the Code, "settlor" is defined as a person who creates or contributes property to a trust.² A "beneficiary" of the trust is a person who has a present or future beneficial interest in the trust.³ A trustee is the person in the trust transaction who holds the legal title to the property of the trust.

A trustee is essential to the creation and validity of a trust; however, occupancy of the position by a designated person is not essential since in the absence of a trustee, whether by failure of appointment, nonacceptance, disqualification, or other cause, a court will ordinarily appoint a trustee in order to administer a trust.

The trustee is granted certain powers and is subject to certain duties imposed by the terms of the trust, equity jurisprudence, or by statute. A trustee may have the power or duty to perform various acts of management in administering the trust estate. To be able to enforce the trustee's duties, the beneficiary of a trust must know of the existence of the trust and be informed about the administration of the trust. Accordingly, s. 736.0813, F.S., imposes a duty on a Florida trustee to keep the qualified beneficiaries of an irrevocable trust reasonably informed of the trust and its administration. The duty includes, but is not limited to:

- Notice of the existence of the irrevocable trust, the identity of the settlor or settlors, the right to request a copy of the trust instrument, the right to accountings, and applicability of the fiduciary lawyer-client privilege.
- Notice of the acceptance of the trust, the full name and address of the trustee, and the applicability of the fiduciary lawyer-client privilege.
- Disclosure of a copy of the trust instrument upon reasonable request.
- An annual accounting of the trust to each beneficiary and an accounting on termination of the trust or on change of the trustee. The accounting must address the cash and property transactions in the accounting period and what trust assets are currently on hand.
- Disclosure of relevant information about the assets and liabilities of the trust and the particulars relating to administration upon reasonable request.
- Such additional notices and disclosure requirements related to the trust administration as required by the Florida Trust Code.⁴

¹ s. 736.0103(21), F.S.

² s. 736.0103(18), F.S.

³ s. 736.0103(4), F.S.

⁴ See, e.g., s. 736.0108(6), F.S. (notice of a proposed transfer of a trust's principal place of administration); s. 736.04117(4), F.S. (notice of the trustee's exercise of the power to invade the principal of the trust); s. 736.0414(1), F.S. (notice of terminating certain minimally funded trusts); s. 736.0417(1), F.S. (notice prior to combining or dividing trusts); s. 736.0705 (notice of resignation of trustee); s. 736.0802, F.S. (disclose and provide notice of investments in funds owned

It is from the trust instrument that a trustee derives his or her rule of conduct, extent and limit of authority, and measure of obligation. Thus, the extent of a trustee's duties and powers is determined by the trust instrument and by the applicable rules of law, and not by the trustee's own interpretation of the trust instrument or by his or her own belief as to rules of law. Under the Code, a violation by a trustee of a duty the trustee owes a beneficiary is a breach of trust. A breach of trust by a trustee gives rise to liability by the trustee to the beneficiary for any loss of the trust estate.

A beneficiary must bring an action for breach of trust as to any matter adequately disclosed within an accounting or any other written report of the trustee, also known as trust disclosure documents, within 6 months of *receiving* the trust disclosure document or a limitation *notice* from the trustee that applies to that trust disclosure document, whichever occurs later. A limitation notice informs the beneficiary that an action against the trustee for breach of trust based on any matter adequately disclosed in the trust disclosure document may be barred unless the action is commenced within 6 months.

A trustee is required to provide notice to qualified beneficiaries and other individuals when performing various duties while administering a trust. The Code provides that the only permissible methods of sending notice or a document to such persons are by first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, a properly directed facsimile or other electronic message, or by posting a document to a secure electronic account or website.⁵

Except as otherwise provided in the terms of the trust, the Code governs the duties and powers of a trustee, relations among trustees, and the rights and interests any beneficiaries. The terms of a trust prevail over any provision of the Code, except as provided in s. 736.0105(2), F.S. In all, the Code currently provides 23 terms that are solely governed by the Code and cannot be changed, waived, or otherwise altered by the terms of the trust.⁶

Current Florida Trust Code Provisions and Effect of Proposed Amendments

The bill amends portions of Florida's Trust Code related to the intent of the settlor and interest of the beneficiaries, the duties, and powers of the trustee, procedural requirements for charitable trusts, and the Code's method of electronic notice.

Settlor Intent and Interest of the Beneficiaries

In order for a settlor to create an express trust, he or she must indicate an intention to create it. This requirement is what distinguishes an express trust from an implied trust, such as a constructive or resulting trust. In the case of an express trust, the settlor's intent usually is evidenced by a written trust document such as a will or a trust agreement that designates a trustee and indicates that the trustee is to hold the trust property in trust and designates the beneficial interests of the trust.⁷ A written instrument, however, is not required to create a trust; rather, the terms of the trust may be established by clear and convincing evidence.⁸ Under current law, however, the settlor's intent may be restricted in the interest of protecting the beneficiaries when interpreting and applying the Code.

Under s. 736.0105(2)(c), F.S., the trust and its terms is required to be for the benefits of the trust's beneficiaries. The Code also includes limitations on the purpose for which a trust may be created and

or controlled by trustee; the identity of the investment instruments, and the identity and relationship to the trustee to any affiliate that owns or controls the investment instruments; and notice to beneficiaries whose share of the trust may be affected by certain legal claims); and s. 736.0902(5), F.S. (notice of the non- application of the prudent investor rule to certain transactions).

⁵ s. 736.0109, F.S.

⁶ See s. 736.0105(2)(a-w), F.S.

⁷ The Code defines "interests of the beneficiaries" to mean the beneficial interests provided in the terms of the trust. s. 736.0103(11), F.S.

⁸ s. 736.0407, F.S.

the affect it would have on the beneficiaries of the trust. In order for a trust to be created, the trust must have a lawful purpose that does not contravene public policy, that is possible to achieve, and the trust and its terms must be for the "benefits of its beneficiaries."⁹

The bill amends ss. 736.0103(11), 736.0105(2)(c), and 736.0404, F.S., to remove the current language in those statutes that a trust and its terms be administered for the benefit of the beneficiaries. The effect is to establish the settlor's intent as the guiding principle with respect to the terms, interests, and purposes of a trust. Specifically:

- The definition of "interests of the beneficiaries" under s. 736.0103(11), F.S. is amended to mean the beneficial interests *intended by the settlor* as provided under the terms of the trust.
- The exception to the general rule that the terms of the trust prevail over provisions of the Code contained in s. 736.0105(2)(c), F.S., is amended to remove the mandatory requirement that the terms of the trust be for the benefit of the beneficiaries.
- Section 736.0404, F.S., is likewise amended to remove the requirement that trust and its terms be for the benefit of the beneficiaries. As amended, a trust's purpose only needs to be lawful, not contrary to public policy, and possible to achieve.

The Trustee: Duty to Account

One duty a trustee is required to perform under the Code is a duty to account to trust beneficiaries. The trustee is required to keep beneficiaries reasonably informed and to provide the beneficiaries with a statement of the trust account annually. If the trustee does not keep clear, distinct, and accurate accounts, or if the trustee loses his or her accounts, all presumptions will be made against the trustee and the trustee will bear the costs of any resulting damages. In addition to the Code's requirements to inform and account to beneficiaries, current law provides standards for the form and content of the accounting.¹⁰ Subsection (3) of s. 736.08135, F.S., provides the standards for the accounting and includes the language:

(3) This section applies to all trust accountings rendered for any accounting periods beginning on or after January 1, 2003.

A trustee's liability for failing to perform duties, such as providing trust accounting, is limited by s. 736.1008, F.S. This section provides the limitations on proceedings against the trustee, with subsection (3) addressing a claim against the trustee for a breach of trust related to the trustee's accounting duties. Current law states that any claim against the trustee for a breach of trust based on a matter not adequately disclosed in a trust disclosure document is barred as provided in ch. 95, F.S. A cause of action for such claims begins to accrue when the beneficiary has actual knowledge of:

- (a) The facts upon which the claim is based if such actual knowledge is established by clear and convincing evidence; or
- (b) The trustee's repudiation of the trust or adverse possession of the trust assets.¹¹

In *Corya v. Sanders*,¹² the Fourth District Court of Appeal used both ss. 736.08135(3) and 736.1008(3), F.S., in determining a case involving a trustee's liability for failing to prepare trust accounts and inform the beneficiaries of the trust. With respect to s. 736.08135(3), F.S., the court determined that a trustee was not required to prepare an accounting for dates prior to January 1, 2003, saying:

⁹ s. 736.0404, F.S.

¹⁰ s. 736.08135(1-2), F.S.

¹¹ s. 736.1008(3), F.S.

¹² 155 So.3d 1279 (Fla. 4th DCA 2015).

[W]e construe that language as limiting the beginning period for the first accounting, in situations where an accounting had never been done or was not prepared annually, to be no earlier than January 1, 2003.

In effect, this barred a beneficiary of an express trust from seeking to compel a trust accounting for all periods prior to January 1, 2003.

The court in *Corya* also held that a beneficiary of an express trust who has actual knowledge that he or she is a beneficiary of a trust and has not received a trust accounting is barred by s. 95.11(6), F.S.,¹³ from seeking a trust accounting for any period more than 4 years prior to the filing of the action. In other words, the court held that the right of a beneficiary, with knowledge that they have not received a trust accounting, to seek an accounting is subject to a 4 year limitations period that begins to run as soon as a trust accounting is overdue.¹⁴

The bill amends s. 736.08135(3), F.S., to govern the form of content for all trust accountings rendered, including those for accounting periods prior to 2003. The bill amends s. 736.1008, F.S., to provide that a beneficiary's actual knowledge that he or she has not received a trust accounting does not cause a claim to accrue against the trustee for a breach of trust. Moreover, the beneficiary's actual knowledge of that fact does not commence the running of any statute of limitations concerning such claims.

The Trustee: Posting Documents or Notices Electronically

Ch. 2015-176 L.O.F. added posting to a secure electronic account or website to the list of acceptable methods for delivery of notices and documents. The posting of documents to a secure website or account that is accessible to the recipient is only acceptable if the recipient provides written authorization. The written authorization to provide electronic posting of documents must:

- Be limited solely to posting documents on the electronic account or website.
- Enumerate the documents that may be posted on the electronic website or account.
- Contain specific instructions for accessing the electronic website or account, including any security measures.
- Advise that a separate notice will be sent, and the manner in which it will be sent, when a document is posted to the electronic website or account.
- Advise that the authorization may be amended or revoked at any time and provide instructions to amend or revoke authorization.
- Advise that the posting of a document on the electronic account or website may commence a limitations period as short as 6 months even if the recipient never access the electronic account, website, or document.

The trustee is required to send a notice to a person receiving trust documents by electronic posting, which notice may be made by any permissible method of notice under the Code except electronic posting, at the following intervals:

- Each time a document is posted and the notice must identify each document that has been posted and how the person may access the document.
- Every year (the "annual notice") to advise such persons that posting of a document commences a limitations period as short as 6 months even if the recipient never accesses the website, account, or document. The annual notice must also address the right to amend or revoke a previous authorization to post trust documents on a website or account. The bill provides the suggested form of the annual notice, which is substantially similar to the suggested form of a limitations notice provided in s. 736.1008(4)(c) F.S. The failure of a trustee to provide

¹³ Related to "Laches."

¹⁴ This holding is in direct conflict with *Taplin v. Taplin*, 88 So.3d 344 (Fla. 3d DCA 2012) and *Nayee v. Nayee*, 705 So.2d 961 (Fla. 5th DCA 1998).

the annual notice within 380 days of the previous notice will automatically revoke the person's authorization to post trust documents on an electronic website or account.

The website or account must allow the recipient to download or print the posted document. A document provided solely through electronic posting must be retained on the website or account for at least 4 years after the date it is received.

A document delivered by electronic posting is deemed received by the recipient on the earlier of the date that notice of the document's posting is received or the date that the recipient accesses the document on the electronic account or website. The posting of a document to an electronic account or website is only effective if done in compliance with the requirements of the new provisions. The trustee has the burden of demonstrating compliance with such requirements.

The bill provides that the enumerated procedures for electronic posting are solely for the purposes of meeting the notice requirements of s. 736.0109, F.S., They are not intended to restrict or govern courtesy postings in any way. Moreover, the bill provides that the retention requirements only apply if electronic posting is the only method of giving notice.

The bill requires that the initial customer authorization specifically state whether trust accountings, trust disclosure documents, and limitation notices, each as defined in s. 736.1008(4), F.S., may be posted electronically, but allows a more general description of other types of documents that the sender may provide by posting.

The bill allows a recipient to terminate authorization to receive documents via posting by following the procedures on the web site instead of giving written notice of such termination.

The bill additionally amends the 4 year document retention requirement as follows:

- If access is terminated by the sender before the end of the 4 year retention period, then the running of the applicable statute of limitations periods contained in s. 736.1008(1) & (2), F.S., are suspended until 45 days after the sender sends a notice by separate means to the recipient that either access has been restored, or access has been terminated and that the recipient may request copies of the posted documents at no cost.
- The applicable statute of limitations is also suspended from the time the recipient asks for copies until 20 days after those documents are provided.
- Documents do not need to be maintained on the website once the recipient's access has been terminated.
- No retention is required, and no statute of limitations is suspended, if access is terminated by the action of, or at the request of the recipient. Revocation of authorization by a customer to receive documents via posting is not considered to be a request to terminate access to documents already posted.
- Failure to maintain access does not invalidate the initial notice

The Trustee: The Decanting Statute

In some instances, the terms of a trust may grant the trustee "absolute power" to perform certain duties and responsibilities for the trust. One absolute power that may be granted to a trustee is the power to distribute trust property, or "principal," to or for the benefit of one or more beneficiaries. The term "decanting" describes a trustee's distribution of principal from one trust into a second trust (as opposed to distributing principal directly to the beneficiary).¹⁵

Decanting is generally used by trustees who wish to cure or avoid issues with the terms of the first trust without distributing to a beneficiary outright. In this way, decanting can fix issues with a trust while still

¹⁵ See *Phipps v. Palm Beach Trust Co.*, 196 So. 299 (1940).

preserving the settlor's intention of maintaining the assets in trust. Unlike a trust modification, which often times is only available through a court proceeding, a trust decanting is an exercise of the trustee's discretionary authority to make distributions. This exercise avoids having to expend trust funds for judicial involvement.

Under s. 736.04117, F.S., a trustee is allowed to decant principal to a second trust from a first when the trustee has absolute power to make principal distributions.

Although it is not necessary that the trust instrument use the term "absolute," it is necessary that the trustee's invasion power not be limited to a specific or ascertainable purpose. Thus, a power to invade for a beneficiary's best interests, welfare, comfort, or happiness is an absolute invasion power under the statute but a power to distribute or invade for a beneficiary's health, education, maintenance, or support is not.¹⁶ Moreover, and for purposes of the analysis, a trustee may only decant principal to a supplemental needs trust¹⁷ when the terms of the trust provide that the trustee has absolute power to invade the principal for the benefit of a disabled beneficiary.

The trustee's decision to decant is held to the same fiduciary standards as the decision to make a discretionary principal distribution (i.e., the beneficiary can sue the trustee for a decanting distribution to the same extent the beneficiary could sue the trustee for an outright distribution). Current law also imposes both procedural and substantive restrictions on a trustee's exercise of decanting power. For instance, s. 736.04117(4), F.S. requires notice, in writing, be made to all beneficiaries of the first trust at least 60 days prior to the date the trustee exercises their power to invade the trust principal.

The bill substantially amends s. 736.04117, F.S., related to the trustee's power to invade principal and expands the ability of the trustee to decant when granted less than absolute power under the terms of the trust. The bills three major effects can be summarized as follows:

1. The bill authorizes a trustee to decant principal to a second trust pursuant to a power to distribute that is not absolute. When such power is not absolute, the authorized trustee's decanting authority is restricted so that each beneficiary of the first trust must have a substantially similar interest in the second trust. The bill provides a definition for "substantially similar" to mean, in relevant part, that "there is no material change in a beneficiary's beneficial interest or in the power to make distributions and that the power to make a distribution under a second trust for the benefit of a beneficiary who is an individual is substantially similar to the power under the first trust to make a distribution directly to the beneficiary."¹⁸
2. The bill authorizes a trustee to decant principal to a supplemental needs trust where a beneficiary is disabled. The trustee may take this action regardless of whether the authorized trustee has an absolute discretionary power or discretionary power limited to an ascertainable standard. The bill provides a definition for "supplemental needs trust" to mean a trust that the authorized trustee believes would not be considered a resource for purposes of determining whether the beneficiary who has a disability is eligible for governmental benefits.¹⁹
3. The bill expands the notice requirements under the state's current decanting statute. Specifically, notice is required to be provided to the settlor of the first trust, if the first trust was not a grantor trust and the second trust will be a grantor trust, all trustees of the first trust, and to any person with the power to remove the authorized trustee of the first trust. Moreover, the notice must include copies of both the first and second trust instruments.

In addition to these major changes, the bill amends current law on decanting in the following ways:

¹⁶ s. 736.04117(1)(b), F.S.

¹⁷ The assets in a supplemental needs trust are excluded in the determination of entitlements to government benefits.

¹⁸ CS/HB 481, lines 332-337.

¹⁹ CS/HB 481, lines 348-351.

- Provides definitions for purposes of interpreting and applying the provisions of s. 736.04117, F.S. Specifically, the bill defines the terms absolute power, authorized trustee, beneficiary with a disability, current beneficiary, government benefits, internal revenue code, power of appointment, presently exercisable general power of appointment, substantially similar, supplemental needs trust, and vested interest.
- Provides that, with respect to permissible or impermissible modification of certain trust provisions, the second trust may omit, create or modify a power of appointment.
- Expands the existing prohibition on reducing certain fixed interests to include vested interests.
- Provides that the second trust may extend the term of the first trust, regardless of whether the authorized trustee has an absolute discretionary power or discretionary power limited to an ascertainable standard.
- Adds additional tax benefits associated with the first trust that must be maintained in the second trust to include the gift tax annual exclusion, and any and all other tax benefits for income, gift, estate or generation-skipping transfer for tax purposes.
- Incorporates provisions regarding "grantor" trust status and the trustee's ability to decant from a grantor trust to a non-grantor trust.
- Provides that a second trust may be created under the laws of any jurisdiction and institutes certain safeguards to prohibit an authorized trustee from decanting to a second trust which provides the authorized trustee with increased compensation or greater protection under an exculpatory or indemnification provision.
- Provides that a trustee may decant to a second trust that divides trustee responsibilities among various parties, including one or more trustees and others.

Notice for Charitable Trusts

Under s. 736.0110(3), F.S., the Attorney General may assert the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in the State of Florida. Section 736.0103(16), F.S., defines a "qualified beneficiary" as a living beneficiary who, on the date of the beneficiary's qualification is determined:

- (a) Is a distributee or permissible distributee of trust income or principal;
- (b) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in paragraph (a) terminated on that date without causing the trust to terminate; or
- (c) Would be a distributee or permissible distributee of trust income or principal if the trust terminated in accordance with its terms on that date.

A "charitable trust" for purposes of s. 736.0110, F.S., means a trust, or portion of a trust, created for a charitable purpose as described in s. 736.0405(1), F.S.. Charitable purposes include, but are not limited to, "the relief of poverty; the advancement of arts, sciences, education, or religion; and the promotion of health, governmental, or municipal purposes."²⁰ Part XII of ch. 736, F.S., governs all charitable trusts. Specifically, and in relevant part:

- s. 736.1205, F.S., requires that the trustee of a charitable trust notify the state attorney for the judicial circuit of the principal place of administration of the trust if the power to make distributions are more restrictive than s. 736.1204(2), F.S., or if the trustee's powers are inconsistent with s. 736.1204(3), F.S.
- s. 736.1206(2), F.S., provides that the trustee of a charitable trust may amend the governing instrument with consent of the state attorney to comply with the requirements of a private foundation trust as provided in s. 736.1204(2), F.S.

- s. 736.1207, F.S., specifies that Part XII of the Code does not affect the power of a court to relieve a trustee from restrictions on that trustee's powers and duties for cause shown and upon complaint of the state attorney, among others.
- s. 736.1208(4)(b), F.S., requires that a trustee who has released a power to select charitable donees accomplished by reducing the class of permissible charitable organizations must deliver a copy of the release to the state attorney.
- s. 736.1209, F.S., allows the trustee to file an election with the state attorney to bring the trust under s. 736.1208(5), F.S., relating to public charitable organization(s) as the exclusive beneficiary of a trust.

As such, there is some disconnect between s. 736.0110(3), F.S., and Part XII of the Code; they can be read to require that notice be given to the Attorney General for certain charitable trusts and to the state attorney of the proper judicial circuit for the same or other trusts.

The bill grants these powers and responsibilities regarding charitable trusts solely to the Attorney General.

The bill amends s. 736.0110(3), F.S., to provide the Attorney General with standing to assert the rights of a qualified beneficiary in any judicial proceeding and amends the provisions in Part XII of the Code concerning the state attorney's office. The amendments provide that the Attorney General, rather than the state attorney, receive notifications, releases, and elections for charitable trusts under ss. 736.1205, 736.1207, 736.1208, and 736.1209, F.S., and the Attorney General, rather than the state attorney, must consent to a charitable trust amendment effectuated under s. 736.1206, F.S. Lastly, the bill defines how the Attorney General is to be given notifications, releases, and elections in s. 736.1201(2), F.S., and removes the state attorney from the definitions section of Part XII of the Code.

B. SECTION DIRECTORY:

Section 1 amends s. 736.0103, F.S., relating to definitions.

Section 2 amends s. 736.0105, F.S., relating to default and mandatory rules.

Section 3 amends s. 736.0109, F.S. relating to methods and waiver of notice.

Section 4 amends s. 736.0110, F.S., relating to others treated as qualified beneficiaries.

Section 5 amends s. 736.0404, F.S., relating to trust purposes.

Section 6 amends s. 736.04117, F.S., relating to a trustee's power to invade principal in trust.

Section 7 amends s. 736.08135, F.S., relating to trust accounting.

Section 8 amends s. 736.1008, F.S., relating to limitations on proceedings against trustees.

Section 9 provides for the effect of ss. 736.08135 and 736.1008, F.S., to all cases pending or commenced on or after July 1, 2017.

Section 10 amends s. 736.1201, F.S., relating to definitions.

Section 11 amends s. 736.1205, F.S., relating to notice that this part does not apply.

Section 12 amends s. 736.1206, F.S., relating to power to amend trust instrument.

Section 13 amends s. 736.1207, F.S., relating to power of court to permit deviation.

Section 14 amends s. 736.1208, F.S., relating to release, property and persons affected, manner of effecting.

Section 15 amends s. 736.1209, F.S., relating to election to come under this part.

Section 16 provides an effective date of July 1, 2017, except as otherwise provided in the act.

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:

While the bill does not appear to have an overall impact on state government expenditures, the bill may lead to an increase in costs to the Attorney General's office and a corresponding decrease in work costs for the state attorney's offices. The exact costs associated with such shift is unknown and likely minimal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 23, 2017, the Civil Justice & Claims Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by removing the section related to compensation for multiple trustees. Additionally, the committee substitute limits the application of the portion of the Code relating to posting documents electronically, revises procedural requirements for such postings, and provides consequences for failing to maintain receipts of electronic postings. This analysis is drafted to the committee substitute as passed by the Civil Justice & Claims Subcommittee.

1 A bill to be entitled
 2 An act relating to trusts; amending s. 736.0103, F.S.;
 3 revising the definition of the term "interests of the
 4 beneficiaries"; amending s. 736.0105, F.S.; deleting a
 5 requirement that a trust be for the benefit of the
 6 trust's beneficiaries; amending s. 736.0109, F.S.;
 7 revising provisions relating to notice or sending of
 8 electronic trust documents; providing requirements for
 9 such documents to be deemed sent; requiring a certain
 10 authorization to specify documents subject to
 11 electronic posting; revising requirements for a
 12 recipient to electronically access such documents;
 13 prohibiting the termination of a recipient's
 14 electronic access to such documents from invalidating
 15 certain notice or sending; tolling specified
 16 limitations periods under certain circumstances;
 17 providing requirements for electronic access to such
 18 documents to be deemed terminated by a sender;
 19 providing applicability; amending s. 736.0110, F.S.;
 20 providing that the Attorney General has standing to
 21 assert certain rights in certain proceedings; amending
 22 s. 736.0404, F.S.; deleting a restriction on the
 23 purpose for which a trust is created; amending s.
 24 736.04117, F.S.; providing and revising definitions;
 25 authorizing an authorized trustee to appoint all or

26 part of the principal of a trust to a second trust
 27 under certain circumstances; providing requirements
 28 for the second trust and its beneficiaries; providing
 29 that the second trust may retain, omit, or create
 30 specified powers; authorizing the term of the second
 31 trust to extend beyond the term of the first trust;
 32 providing requirements for distributions to a second
 33 trust when the authorized trustee does not have
 34 absolute power; providing requirements for such second
 35 trust; providing requirements for grants of power by
 36 the second trust; authorizing a second trust created
 37 by an authorized trustee without absolute power to
 38 grant absolute power to the second trust's trustee;
 39 authorizing an authorized trustee to appoint the
 40 principal of a first trust to a supplemental needs
 41 trust under certain circumstances; providing
 42 requirements for such supplemental needs trust;
 43 prohibiting an authorized trustee from distributing
 44 the principal of a trust in a manner that would reduce
 45 specified tax benefits; prohibiting the distribution
 46 of S corporation stock from a first trust to a second
 47 trust under certain circumstances; prohibiting a
 48 settlor to be treated as the owner of a second trust
 49 if he or she was not treated as the owner of the first
 50 trust; prohibiting an authorized trustee from

51 distributing a trust's interest in property to a
 52 second trust if it is subject to specified rules of
 53 the Internal Revenue Code; prohibiting the exercise of
 54 power to invade a trust's principal to increase an
 55 authorized trustee's compensation or relieve him or
 56 her from certain liability; specifying who an
 57 authorized trustee must notify when he or she
 58 exercises his or her power to invade the trust's
 59 principal; specifying the documents that the
 60 authorized trustee must provide with such notice;
 61 amending s. 736.08135, F.S.; revising applicability;
 62 amending s. 736.1008, F.S.; clarifying that certain
 63 knowledge by a beneficiary does not cause a claim for
 64 breach of trust or commence the running of a period of
 65 limitations or laches; providing intent; providing for
 66 retroactive application; amending s. 736.1201, F.S.;
 67 defining the term "delivery of notice"; conforming a
 68 provision to changes made by the act; amending s.
 69 736.1205, F.S.; requiring an authorized trustee to
 70 provide certain notice to the Attorney General rather
 71 than the state attorney; amending ss. 736.1206,
 72 736.1207, 736.1208, and 736.1209, F.S.; conforming
 73 provisions; providing effective dates.

74
 75 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Subsection (11) of section 736.0103, Florida Statutes, is amended to read:

736.0103 Definitions.—Unless the context otherwise requires, in this code:

(11) "Interests of the beneficiaries" means the beneficial interests intended by the settlor as provided in the terms of a ~~the~~ trust.

Section 2. Paragraph (c) of subsection (2) of section 736.0105, Florida Statutes, is amended to read:

736.0105 Default and mandatory rules.—

(2) The terms of a trust prevail over any provision of this code except:

(c) The requirement that a trust ~~and its terms be for the benefit of the trust's beneficiaries, and that the trust~~ have a purpose that is lawful, not contrary to public policy, and possible to achieve.

Section 3. Subsections (1) and (3) of section 736.0109, Florida Statutes, are amended to read:

736.0109 Methods and waiver of notice.—

(1) Notice to a person under this code or the sending of a document to a person under this code must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail,

101 personal delivery, delivery to the person's last known place of
 102 residence or place of business, ~~or~~ a properly directed facsimile
 103 or other electronic message, or posting to a secure electronic
 104 account or website in accordance with subsection (3).

105 (3) A document that is sent solely by posting to an
 106 electronic account or website is not deemed sent for purposes of
 107 this section unless the sender complies with this subsection.
 108 The sender has the burden of proving compliance with this
 109 subsection ~~In addition to the methods listed in subsection (1)~~
 110 ~~for sending a document, a sender may post a document to a secure~~
 111 ~~electronic account or website where the document can be~~
 112 ~~accessed.~~

113 (a) ~~Before a document may be posted to an electronic~~
 114 ~~account or website,~~ The recipient must sign a separate written
 115 authorization solely for the purpose of authorizing the sender
 116 to post documents on an electronic account or website before
 117 such posting. The written authorization must:

118 1. Specifically indicate whether a trust accounting, trust
 119 disclosure document, or limitation notice, as those terms are
 120 defined in s. 736.1008(4), will be posted in this manner, and
 121 generally enumerate the other types of documents that may be
 122 posted in this manner.

123 2. Contain specific instructions for accessing the
 124 electronic account or website, including the security procedures
 125 required to access the electronic account or website, such as a

126 | username and password.

127 | 3. Advise the recipient that a separate notice will be
 128 | sent when a document is posted to the electronic account or
 129 | website and the manner in which the separate notice will be
 130 | sent.

131 | 4. Advise the recipient that the authorization to receive
 132 | documents by electronic posting may be amended or revoked at any
 133 | time and include specific instructions for revoking or amending
 134 | the authorization, including the address designated for the
 135 | purpose of receiving notice of the revocation or amendment.

136 | 5. Advise the recipient that posting a document on the
 137 | electronic account or website may commence a limitations period
 138 | as short as 6 months even if the recipient never actually
 139 | accesses the electronic account, electronic website, or ~~the~~
 140 | document.

141 | (b) Once the recipient signs the written authorization,
 142 | the sender must provide a separate notice to the recipient when
 143 | a document is posted to the electronic account or website. As
 144 | used in this subsection, the term "separate notice" means a
 145 | notice sent to the recipient by means other than electronic
 146 | posting that, ~~which~~ identifies each document posted to the
 147 | electronic account or website and provides instructions for
 148 | accessing the ~~posted~~ document. The separate notice requirement
 149 | is deemed satisfied if the recipient accesses the document on
 150 | the electronic account or website.

151 (c) A document sent by electronic posting is deemed
 152 received by the recipient on the earlier of the date on which
 153 ~~that~~ the separate notice is received or the date on which ~~that~~
 154 the recipient accesses the document on the electronic account or
 155 website.

156 (d) At least annually after a recipient signs a written
 157 authorization, a sender shall send a notice advising recipients
 158 who have authorized one or more documents to be posted to an
 159 electronic account or website that such posting may commence a
 160 limitations period as short as 6 months even if the recipient
 161 never accesses the electronic account or website or the document
 162 and that authority to receive documents by electronic posting
 163 may be amended or revoked at any time. This notice must be given
 164 by means other than electronic posting and may not be
 165 accompanied by any other written communication. Failure to
 166 provide such notice within 380 days after the last notice is
 167 deemed to automatically revoke the authorization to receive
 168 documents in the manner permitted under this subsection 380 days
 169 after the last notice is sent.

170 (e) The notice required in paragraph (d) may be in
 171 substantially the following form: "You have authorized the
 172 receipt of documents through posting to an electronic account or
 173 website on which ~~where~~ the documents can be accessed. This
 174 notice is being sent to advise you that a limitations period,
 175 which may be as short as 6 months, may be running as to matters

176 disclosed in a trust accounting or other written report of a
 177 trustee posted to the electronic account or website even if you
 178 never actually access the electronic account or website or the
 179 documents. You may amend or revoke the authorization to receive
 180 documents by electronic posting at any time. If you have any
 181 questions, please consult your attorney."

182 (f) A sender may rely on the recipient's authorization
 183 until the recipient amends or revokes the authorization by
 184 sending a notice to the address designated for that purpose in
 185 the authorization or in the manner specified on the electronic
 186 account or website. The recipient, at any time, may amend or
 187 revoke an authorization to have documents posted on the
 188 electronic account or website.

189 (g) If a document is provided to a recipient solely
 190 through electronic posting and is deemed sent for purposes of
 191 this section:

192 1. The recipient must be able to access and print or
 193 download the document until the earlier of:

194 a. The date on which the recipient's access to the
 195 electronic account or website is terminated for any reason; or

196 b. ~~Four must remain accessible to the recipient on the~~
 197 ~~electronic account or website for at least 4 years after the~~
 198 date on which ~~that~~ the document is deemed received by the
 199 recipient.

200 2. If the recipient's access to the electronic account or

201 website is terminated for any reason, such termination does not
 202 invalidate the notice or sending of any document previously
 203 posted on the electronic account or website in accordance with
 204 this subsection ~~The electronic account or website must allow the~~
 205 ~~recipient to download or print the document. This subsection~~
 206 ~~does not affect or alter the duties of a trustee to keep clear,~~
 207 ~~distinct, and accurate records pursuant to s. 736.0810 or affect~~
 208 ~~or alter the time periods for which the trustee must maintain~~
 209 ~~those records.~~

210 3. If the recipient's access to the electronic account or
 211 website is terminated by the sender before the time period set
 212 forth in sub-subparagraph 1.b., any applicable limitations
 213 period set forth in s. 736.1008(1) or (2) that is still open is
 214 tolled for any information adequately disclosed in such document
 215 as follows:

216 a. From the date on which the recipient's access to the
 217 electronic account or website is terminated by the sender until
 218 45 days after the date on which the sender provides notification
 219 of such termination to the recipient by means other than
 220 electronic posting, and:

221 (I) The recipient requests that any documents sent during
 222 the prior 4 years solely through electronic posting be provided
 223 to him or her by other means at no cost; or

224 (II) The recipient's access to the electronic account or
 225 website is restored; or

226 b. From the date on which any request is made pursuant to
 227 sub-sub-subparagraph 3.a.(I) until 20 days after the date on
 228 which the requested documents are provided to the recipient by
 229 means other than electronic posting.

230 (h) For purposes of this subsection, access to an
 231 electronic account or website is terminated by the sender when
 232 the sender unilaterally terminates the recipient's ability to
 233 access the electronic website or account or download or print
 234 any document posted on such website or account. Access is not
 235 terminated by the sender when access is terminated by an action
 236 of the recipient or by an action of the sender in response to
 237 the recipient's request to terminate access. The recipient's
 238 revocation of authorization pursuant to paragraph (f) is not
 239 considered a request to terminate access ~~To be effective, the~~
 240 ~~posting of a document to an electronic account or website must~~
 241 ~~be done in accordance with this subsection. The sender has the~~
 242 ~~burden of establishing compliance with this subsection.~~

243 (i) This subsection does not affect or alter the duties of
 244 a trustee to keep clear, distinct, and accurate records pursuant
 245 to s. 736.0810 or affect or alter the time periods for which the
 246 trustee must maintain such records ~~preclude the sending of a~~
 247 ~~document by other means.~~

248 (j) This subsection governs the posting of a document
 249 solely for the purpose of giving notice under this code or the
 250 sending of a document to a person under this code and does not

251 prohibit or otherwise apply to the posting of a document to an
 252 electronic account or website for any other purpose or preclude
 253 the sending of a document by any other means.

254 Section 4. Subsection (3) of section 736.0110, Florida
 255 Statutes, is amended to read:

256 736.0110 Others treated as qualified beneficiaries.—

257 (3) The Attorney General may assert the rights of a
 258 qualified beneficiary with respect to a charitable trust having
 259 its principal place of administration in this state. The
 260 Attorney General has standing to assert such rights in any
 261 judicial proceedings.

262 Section 5. Section 736.0404, Florida Statutes, is amended
 263 to read:

264 736.0404 Trust purposes.—A trust may be created only to
 265 the extent the purposes of the trust are lawful, not contrary to
 266 public policy, and possible to achieve. ~~A trust and its terms~~
 267 ~~must be for the benefit of its beneficiaries.~~

268 Section 6. Effective upon this act becoming a law, section
 269 736.04117, Florida Statutes, is amended to read:

270 736.04117 Trustee's power to invade principal in trust.—

271 (1)(a) DEFINITIONS.—As used in this section, the term:
 272 ~~Unless the trust instrument expressly provides otherwise, a~~
 273 ~~trustee who has absolute power under the terms of a trust to~~
 274 ~~invade the principal of the trust, referred to in this section~~
 275 ~~as the "first trust," to make distributions to or for the~~

276 ~~benefit of one or more persons may instead exercise the power by~~
 277 ~~appointing all or part of the principal of the trust subject to~~
 278 ~~the power in favor of a trustee of another trust, referred to in~~
 279 ~~this section as the "second trust," for the current benefit of~~
 280 ~~one or more of such persons under the same trust instrument or~~
 281 ~~under a different trust instrument; provided:~~

282 ~~1. The beneficiaries of the second trust may include only~~
 283 ~~beneficiaries of the first trust;~~

284 ~~2. The second trust may not reduce any fixed income,~~
 285 ~~annuity, or unitrust interest in the assets of the first trust,~~
 286 ~~and~~

287 ~~3. If any contribution to the first trust qualified for a~~
 288 ~~marital or charitable deduction for federal income, gift, or~~
 289 ~~estate tax purposes under the Internal Revenue Code of 1986, as~~
 290 ~~amended, the second trust shall not contain any provision which,~~
 291 ~~if included in the first trust, would have prevented the first~~
 292 ~~trust from qualifying for such a deduction or would have reduced~~
 293 ~~the amount of such deduction.~~

294 ~~(b) For purposes of this subsection, an absolute power to~~
 295 ~~invade principal shall include~~

296 (a) "Absolute power" means a power to invade principal
 297 that is not limited to specific or ascertainable purposes, such
 298 as health, education, maintenance, and support, regardless of
 299 whether ~~or not~~ the term "absolute" is used. A power to invade
 300 principal for purposes such as best interests, welfare, comfort,

301 or happiness constitutes ~~shall constitute~~ an absolute power not
 302 limited to specific or ascertainable purposes.

303 (b) "Authorized trustee" means a trustee, other than the
 304 settlor or a beneficiary, who has the power to invade the
 305 principal of a trust.

306 (c) "Beneficiary with a disability" means a beneficiary of
 307 the first trust who the authorized trustee believes may qualify
 308 for government benefits based on disability, regardless of
 309 whether the beneficiary currently receives those benefits or has
 310 been adjudicated incapacitated.

311 (d) "Current beneficiary" means a beneficiary who, on the
 312 date his or her qualification is determined, is a distributee or
 313 permissible distributee of trust income or principal. The term
 314 includes the holder of a presently exercisable general power of
 315 appointment, but does not include a person who is a beneficiary
 316 only because he or she holds another power of appointment.

317 (e) "Government benefits" means financial aid or services
 318 from any state, federal, or other public agency.

319 (f) "Internal Revenue Code" means the Internal Revenue
 320 Code of 1986, as amended.

321 (g) "Power of appointment" has the same meaning as
 322 provided in s. 731.201(30).

323 (h) "Presently exercisable general power of appointment"
 324 means a power of appointment exercisable by the powerholder at
 325 the relevant time. The term:

326 1. Includes a power of appointment that is exercisable
 327 only after the occurrence of a specified event or that is
 328 subject to a specified restriction, but only after the event has
 329 occurred or the restriction has been satisfied.

330 2. Does not include a power exercisable only upon the
 331 powerholder's death.

332 (i) "Substantially similar" means there is no material
 333 change in a beneficiary's beneficial interests or in the power
 334 to make distributions and that the power to make a distribution
 335 under a second trust for the benefit of a beneficiary who is an
 336 individual is substantially similar to the power under the first
 337 trust to make a distribution directly to the beneficiary. A
 338 distribution is deemed to be for the benefit of a beneficiary
 339 if:

340 1. The distribution is applied for the benefit of a
 341 beneficiary;

342 2. The beneficiary is under a legal disability or the
 343 trustee reasonably believes the beneficiary is incapacitated,
 344 and the distribution is made as permitted under this code; or

345 3. The distribution is made as permitted under the terms
 346 of the first trust instrument and the second trust instrument
 347 for the benefit of the beneficiary.

348 (j) "Supplemental needs trust" means a trust that the
 349 authorized trustee believes would not be considered a resource
 350 for purposes of determining whether the beneficiary who has a

351 disability is eligible for government benefits.

352 (k) "Vested interest" means a current unconditional right
 353 to receive a mandatory distribution of income, a specified
 354 dollar amount, or a percentage of value of a trust, or a current
 355 unconditional right to withdraw income, a specified dollar
 356 amount, or a percentage of value of a trust, which right is not
 357 subject to the occurrence of a specified event, the passage of a
 358 specified time, or the exercise of discretion.

359 1. The term includes a presently exercisable general power
 360 of appointment.

361 2. The term does not include a beneficiary's interest in a
 362 trust if the trustee has discretion to make a distribution of
 363 trust property to a person other than such beneficiary.

364 (2) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN
 365 AUTHORIZED TRUSTEE HAS ABSOLUTE POWER TO INVADE.-

366 (a) Unless a trust instrument expressly provides
 367 otherwise, an authorized trustee who has absolute power under
 368 the terms of the trust to invade its principal, referred to in
 369 this section as the "first trust," to make current distributions
 370 to or for the benefit of one or more beneficiaries, may instead
 371 exercise such power by appointing all or part of the principal
 372 of the trust subject to such power in favor of a trustee of one
 373 or more other trusts, whether created under the same trust
 374 instrument as the first trust or a different trust instrument,
 375 including a trust instrument created for the purposes of

376 exercising the power granted by this section, each referred to
 377 in this section as the "second trust," for the current benefit
 378 of one or more of such beneficiaries only if:

379 1. The beneficiaries of the second trust include only
 380 beneficiaries of the first trust.

381 2. The second trust does not reduce any vested interest.

382 (b) In an exercise of absolute power, the second trust
 383 may:

384 1. Retain a power of appointment granted in the first
 385 trust.

386 2. Omit a power of appointment granted in the first trust,
 387 other than a presently exercisable general power of appointment.

388 3. Create or modify a power of appointment if the
 389 powerholder is a current beneficiary of the first trust.

390 4. Create or modify a power of appointment if the
 391 powerholder is a beneficiary of the first trust who is not a
 392 current beneficiary, but the exercise of the power of
 393 appointment may take effect only after the powerholder becomes,
 394 or would have become if then living, a current beneficiary of
 395 the first trust.

396 5. Extend the term of the second trust beyond the term of
 397 the first trust.

398 (c) The class of permissible appointees in favor of which
 399 a created or modified power of appointment may be exercised may
 400 differ from the class identified in the first trust.

401 (3) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN
 402 AUTHORIZED TRUSTEE DOES NOT HAVE ABSOLUTE POWER TO INVADE.—
 403 Unless the trust instrument expressly provides otherwise, an
 404 authorized trustee who has a power, other than an absolute
 405 power, under the terms of a first trust to invade principal to
 406 make current distributions to or for the benefit of one or more
 407 beneficiaries may instead exercise such power by appointing all
 408 or part of the principal of the first trust subject to such
 409 power in favor of a trustee of one or more second trusts. If the
 410 authorized trustee exercises such power:

411 (a) The second trusts, in the aggregate, shall grant each
 412 beneficiary of the first trust beneficial interests in the
 413 second trusts which are substantially similar to the beneficial
 414 interests of the beneficiary in the first trust.

415 (b) If the first trust grants a power of appointment to a
 416 beneficiary of the first trust, the second trust shall grant
 417 such power of appointment in the second trust to such
 418 beneficiary and the class of permissible appointees shall be the
 419 same as in the first trust.

420 (c) If the first trust does not grant a power of
 421 appointment to a beneficiary of the first trust, then the second
 422 trust may not grant a power of appointment in the second trust
 423 to such beneficiary.

424 (d) Notwithstanding paragraphs (a), (b), and (c), the term
 425 of the second trust may extend beyond the term of the first

426 trust, and, for any period after the first trust would have
 427 otherwise terminated, in whole or in part, under the provisions
 428 of the first trust, the trust instrument of the second trust
 429 may, with respect to property subject to such extended term:

430 1. Include language providing the trustee with the
 431 absolute power to invade the principal of the second trust
 432 during such extended term.

433 2. Create a power of appointment, if the powerholder is a
 434 current beneficiary of the first trust, or expand the class of
 435 permissible appointees in favor of which a power of appointment
 436 may be exercised.

437 (4) DISTRIBUTION FROM FIRST TRUST TO SUPPLEMENTAL NEEDS
 438 TRUST.—

439 (a) Notwithstanding subsections (2) and (3), unless the
 440 trust instrument expressly provides otherwise, an authorized
 441 trustee who has the power under the terms of a first trust to
 442 invade the principal of the first trust to make current
 443 distributions to or for the benefit of a beneficiary with a
 444 disability, may instead exercise such power by appointing all or
 445 part of the principal of the first trust in favor of a trustee
 446 of a second trust that is a supplemental needs trust if:

447 1. The supplemental needs trust benefits the beneficiary
 448 with a disability.

449 2. The beneficiaries of the second trust include only
 450 beneficiaries of the first trust.

451 3. The authorized trustee determines that the exercise of
 452 such power will further the purposes of the first trust.

453 (b) Except as affected by any change to the interests of
 454 the beneficiary with a disability, the second trusts, in the
 455 aggregate, shall grant each other beneficiary of the first trust
 456 beneficial interests in the second trusts which are
 457 substantially similar to such beneficiary's beneficial interests
 458 in the first trust.

459 (5) PROHIBITED DISTRIBUTIONS.-

460 (a) An authorized trustee may not distribute the principal
 461 of a trust under this section in a manner that would prevent a
 462 contribution to that trust from qualifying for, or that would
 463 reduce the exclusion, deduction, or other federal tax benefit
 464 that was originally claimed or could have been claimed for, that
 465 contribution, including:

466 1. The exclusions under s. 2503(b) or (c) of the Internal
 467 Revenue Code;

468 2. A marital deduction under s. 2056, s. 2056A, or s. 2523
 469 of the Internal Revenue Code;

470 3. A charitable deduction under s. 170(a), s. 642(c), s.
 471 2055(a), or s. 2522(a) of the Internal Revenue Code;

472 4. Direct skip treatment under s. 2642(c) of the Internal
 473 Revenue Code; or

474 5. Any other tax benefit for income, gift, estate, or
 475 generation-skipping transfer tax purposes under the Internal

476 Revenue Code.

477 (b) If S corporation stock is held in the first trust, an
 478 authorized trustee may not distribute all or part of that stock
 479 to a second trust that is not a permitted shareholder under s.
 480 1361(c)(2) of the Internal Revenue Code. If the first trust
 481 holds stock in an S corporation and is, or but for provisions of
 482 paragraphs (a), (c), and (d) would be, a qualified subchapter S
 483 trust within the meaning of s. 1361(d) of the Internal Revenue
 484 Code, the second trust instrument may not include or omit a term
 485 that prevents it from qualifying as a qualified subchapter S
 486 trust.

487 (c) Except as provided in paragraphs (a), (b), and (d), an
 488 authorized trustee may distribute the principal of a first trust
 489 to a second trust regardless of whether the settlor is treated
 490 as the owner of either trust under ss. 671-679 of the Internal
 491 Revenue Code; however, if the settlor is not treated as the
 492 owner of the first trust, he or she may not be treated as the
 493 owner of the second trust unless he or she at all times has the
 494 power to cause the second trust to cease being treated as if it
 495 was owned by the settlor.

496 (d) If an interest in property which is subject to the
 497 minimum distribution rules of s. 401(a)(9) of the Internal
 498 Revenue Code is held in trust, an authorized trustee may not
 499 distribute such an interest to a second trust under subsection
 500 (2), subsection (3), or subsection (4) if the distribution would

501 shorten the otherwise applicable maximum distribution period.

502 (6) EXERCISE BY WRITING.—The exercise of a power to invade
 503 principal under subsection (2), subsection (3), or subsection
 504 (4) must ~~The exercise of a power to invade principal under~~
 505 ~~subsection (1) shall~~ be by a written ~~an~~ instrument ~~in writing,~~
 506 signed and acknowledged by the authorized trustee, and filed
 507 with the records of the first trust.

508 (7) ~~(3)~~ RESTRICTIONS ON EXERCISE OF POWER.—The exercise of
 509 a power to invade principal under subsection (2), subsection
 510 (3), or subsection (4):

511 (a) Is ~~(1) shall be~~ considered the exercise of a power of
 512 appointment, excluding other than a power to appoint to the
 513 authorized trustee, the authorized trustee's creditors, the
 514 authorized trustee's estate, or the creditors of the authorized
 515 trustee's estate.

516 (b) Is, ~~and shall be~~ subject to the provisions of s.
 517 689.225 covering the time at which the permissible period of the
 518 rule against perpetuities begins and the law that determines the
 519 permissible period of the rule against perpetuities of the first
 520 trust.

521 (c) May be to a second trust created or administered under
 522 the law of any jurisdiction.

523 (d) May not:

524 1. Increase the authorized trustee's compensation beyond
 525 the compensation specified in the first trust instrument; or

526 2. Relieve the authorized trustee from liability for
 527 breach of trust or provide for indemnification of the authorized
 528 trustee for any liability or claim to a greater extent than the
 529 first trust instrument; however, the exercise of the power may
 530 divide and reallocate fiduciary powers among fiduciaries and
 531 relieve a fiduciary from liability for an act or failure to act
 532 of another fiduciary as otherwise allowed under law or common
 533 law.

534 (8) NOTICE.—

535 (a) ~~(4)~~ The authorized trustee shall provide written
 536 notification of the manner in which he or she intends to
 537 exercise his or her power to invade principal to ~~notify~~ all
 538 ~~qualified beneficiaries~~ of the following parties ~~first trust, in~~
 539 ~~writing,~~ at least 60 days before ~~prior to~~ the effective date of
 540 the authorized trustee's exercise of such power ~~the trustee's~~
 541 ~~power to invade principal~~ pursuant to subsection (2), subsection
 542 (3), or subsection (4): ~~(1), of the manner in which the trustee~~
 543 ~~intends to exercise the power.~~

544 1. All qualified beneficiaries of the first trust.

545 2. If paragraph (5)(c) applies, the settlor of the first
 546 trust.

547 3. All trustees of the first trust.

548 4. Any person who has the power to remove or replace the
 549 authorized trustee of the first trust.

550 (b) The authorized ~~A copy of the proposed instrument~~

551 ~~exercising the power shall satisfy the trustee's notice~~
 552 obligation to provide notice under this subsection is satisfied
 553 by his or her providing copies of the proposed instrument
 554 exercising the power, the trust instrument of the first trust,
 555 and the proposed trust instrument of the second trust.

556 (c) If all of those required to be notified ~~qualified~~
 557 ~~beneficiaries~~ waive the notice period by signed written
 558 instrument delivered to the authorized trustee, the authorized
 559 trustee's power to invade principal shall be exercisable
 560 immediately.

561 (d) The authorized trustee's notice under this subsection
 562 does ~~shall~~ not limit the right of any beneficiary to object to
 563 the exercise of the authorized trustee's power to invade
 564 principal except as otherwise provided in other applicable
 565 provisions of this code.

566 (9) ~~(5)~~ INAPPLICABILITY OF SPENDTHRIFT CLAUSE OR OTHER
 567 PROHIBITION.—The exercise of the power to invade principal under
 568 subsection (2), subsection (3), or subsection (4) ~~(1)~~ is not
 569 prohibited by a spendthrift clause or by a provision in the
 570 trust instrument that prohibits amendment or revocation of the
 571 trust.

572 (10) ~~(6)~~ NO DUTY TO EXERCISE.—Nothing in this section is
 573 intended to create or imply a duty to exercise a power to invade
 574 principal, and no inference of impropriety may ~~shall~~ be made as
 575 a result of an authorized trustee's failure to exercise a

576 | ~~trustee not exercising~~ the power to invade principal conferred
 577 | under subsections (2), (3), and (4) ~~subsection (1)~~.

578 | (11)(7) NO ABRIDGEMENT OF COMMON LAW RIGHTS. ~~The~~
 579 | ~~provisions of~~ This section may ~~shall~~ not be construed to abridge
 580 | the right of any trustee who has a power of invasion to appoint
 581 | property in further trust that arises under the terms of the
 582 | first trust or under any other section of this code or under
 583 | another provision of law or under common law.

584 | Section 7. Subsection (3) of section 736.08135, Florida
 585 | Statutes, is amended to read:

586 | 736.08135 Trust accountings.—

587 | (3) Subsections (1) and (2) govern the form and content of
 588 | ~~This section applies to~~ all trust accountings rendered for any
 589 | accounting periods beginning on or after January 1, 2003, and
 590 | all trust accountings rendered on or after July 1, 2017. This
 591 | subsection does not affect the beginning period from which a
 592 | trustee is required to render a trust accounting.

593 | Section 8. Subsection (3) of section 736.1008, Florida
 594 | Statutes, is amended to read:

595 | 736.1008 Limitations on proceedings against trustees.—

596 | (3) When a trustee has not issued a final trust accounting
 597 | or has not given written notice to the beneficiary of the
 598 | availability of the trust records for examination and that
 599 | claims with respect to matters not adequately disclosed may be
 600 | barred, a claim against the trustee for breach of trust based on

601 a matter not adequately disclosed in a trust disclosure document
 602 is barred as provided in chapter 95 and accrues when the
 603 beneficiary has actual knowledge of:

604 (a) The facts upon which the claim is based, if such
 605 actual knowledge is established by clear and convincing
 606 evidence; or

607 (b) The trustee's repudiation of the trust or adverse
 608 possession of trust assets.

609

610 Paragraph (a) applies to claims based upon acts or omissions
 611 occurring on or after July 1, 2008. A beneficiary's actual
 612 knowledge that he or she has not received a trust accounting
 613 does not cause a claim to accrue against the trustee for breach
 614 of trust based upon the failure to provide a trust accounting
 615 required by s. 736.0813 or former s. 737.303, and does not
 616 commence the running of any period of limitations or laches for
 617 such a claim, and paragraph (a) and chapter 95 do not bar any
 618 such claim.

619 Section 9. The changes to ss. 736.08135 and 736.1008,
 620 Florida Statutes, made by this act are intended to clarify
 621 existing law, are remedial in nature, and apply retroactively to
 622 all cases pending or commenced on or after July 1, 2017.

623 Section 10. Subsections (2), (3), and (4) of section
 624 736.1201, Florida Statutes, are renumbered as subsections (3),
 625 (4), and (5), respectively, present subsection (5) of that

626 section is amended, and a new subsection (2) is added to that
 627 section, to read:

628 736.1201 Definitions.—As used in this part:

629 (2) "Delivery of notice" means delivery of a written
 630 notice required under this part using any commercial delivery
 631 service requiring a signed receipt or by any form of mail
 632 requiring a signed receipt.

633 ~~(5) "State attorney" means the state attorney for the~~
 634 ~~judicial circuit of the principal place of administration of the~~
 635 ~~trust pursuant to s. 736.0108.~~

636 Section 11. Section 736.1205, Florida Statutes, is amended
 637 to read:

638 736.1205 Notice that this part does not apply.—In the case
 639 of a power to make distributions, if the trustee determines that
 640 the governing instrument contains provisions that are more
 641 restrictive than s. 736.1204(2), or if the trust contains other
 642 powers, inconsistent with the provisions of s. 736.1204(3) that
 643 specifically direct acts by the trustee, the trustee shall
 644 notify the ~~state~~ Attorney General by delivery of notice when the
 645 trust becomes subject to this part. Section 736.1204 does not
 646 apply to any trust for which notice has been given pursuant to
 647 this section unless the trust is amended to comply with the
 648 terms of this part.

649 Section 12. Subsection (2) of section 736.1206, Florida
 650 Statutes, is amended to read:

651 736.1206 Power to amend trust instrument.-

652 (2) In the case of a charitable trust that is not subject
 653 to ~~the provisions of~~ subsection (1), the trustee may amend the
 654 governing instrument to comply with ~~the provisions of~~ s.
 655 736.1204(2) after delivery of notice to, and with the consent
 656 of, ~~the state~~ Attorney General.

657 Section 13. Section 736.1207, Florida Statutes, is amended
 658 to read:

659 736.1207 Power of court to permit deviation.-This part
 660 does not affect the power of a court to relieve a trustee from
 661 any restrictions on the powers and duties that are placed on the
 662 trustee by the governing instrument or applicable law for cause
 663 shown and on complaint of the trustee, the Attorney General
 664 ~~state attorney~~, or an affected beneficiary and notice to the
 665 affected parties.

666 Section 14. Paragraph (b) of subsection (4) of section
 667 736.1208, Florida Statutes, is amended to read:

668 736.1208 Release; property and persons affected; manner of
 669 effecting.-

670 (4) Delivery of a release shall be accomplished as
 671 follows:

672 (b) If the release is accomplished by reducing the class
 673 of permissible charitable organizations, by delivery of notice a
 674 ~~copy~~ of the release to the ~~state~~ Attorney General, including a
 675 copy of the release.


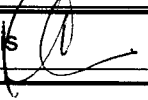
676 Section 15. Section 736.1209, Florida Statutes, is amended
 677 to read:

678 736.1209 Election to come under this part.—With the
 679 consent of that organization or organizations, a trustee of a
 680 trust for the benefit of a public charitable organization or
 681 organizations may come under s. 736.1208(5) by delivery of
 682 notice to filing ~~with the state~~ Attorney General of the an
 683 election, accompanied by the proof of required consent.
 684 Thereafter the trust shall be subject to s. 736.1208(5).

685 Section 16. Except as otherwise provided in this act and
 686 except for this section, which shall take effect upon becoming a
 687 law, this act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HCR 631 Groveland Four
SPONSOR(S): Judiciary Committee
TIED BILLS: None **IDEN./SIM. BILLS:** SCR 920

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee		Homburg 	Camechis 

SUMMARY ANALYSIS

In HCR 631, the Legislature acknowledges that Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas, the Groveland Four, were the victims of gross injustices and that their abhorrent treatment by the criminal justice system is a shameful chapter in this state's history. The Legislature also extends a heartfelt apology to the families of Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas for the enduring sorrow caused by the criminal justice system's failure to protect their basic constitutional rights. Lastly, the Legislature urges the Governor and Cabinet to expedite review of the cases of Charles Greenlee, Walter Irvin, Samuel Shephard, and Ernest Thomas as part of their constitutional authority to grant clemency, including granting full pardons.

The concurrent resolution requires a copy of the resolution to be provided to the Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, and the families of the Groveland Four as a tangible token of the sentiments expressed therein.

This resolution is not subject to action by the Governor and does not have the effect of law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. PRESENT SITUATION:

On July 16, 1949, a 17-year-old white woman and her estranged husband reported to police that she had been abducted at approximately 2:30 a.m., driven about 25 minutes to a dead-end road, and raped by 4 black men after the car in which she and her estranged husband were riding broke down on a rural road outside Groveland in Lake County.¹ Charles Greenlee, Walter Irvin, and Samuel Shepherd were charged with rape, while Ernest Thomas was presumed guilty of the crime.

Charles Greenlee, who was sixteen years old in July 1949, was being detained 20 miles away by two retail store night-watchmen at about the same time as the attack was alleged to have occurred;² the alleged rape victim's husband stated on 2 separate occasions that Mr. Greenlee was not one of the young men present when the car broke down on July 16, 1949;³ and, Mr. Greenlee denied that he and Mr. Thomas ever met Mr. Shephard, Mr. Irvin, the alleged victim, or her estranged husband.⁴

Walter Irvin and Samuel Shepherd, both World War II veterans,⁵ acknowledged that they had stopped by the broken-down vehicle to see if they could assist the couple, but denied any involvement in the alleged rape.⁶

After their arrest that evening, Mr. Greenlee, Mr. Irvin, and Mr. Shepherd were severely beaten in the basement of the county jail. Mr. Greenlee and Mr. Shepherd were coerced into confessing to the crime while Mr. Irvin steadfastly maintained his innocence despite repeated beatings.⁷

Ernest Thomas, understanding the racial realities of the time and the danger he was in, escaped Lake County before law enforcement could locate him.⁸ When he was located by an armed, deputized posse, in the woods of Madison County, Florida, Mr. Thomas was shot as he slept beside a tree.⁹

Charles Greenlee, Walter Irvin, and Samuel Shepherd, were tried and convicted of rape.¹⁰ Mr. Greenlee was sentenced to life imprisonment due to his young age,¹¹ and Mr. Irvin and Mr. Shepherd were sentenced to death.¹² The judge who presided at the men's trial denied their attorneys access to an exculpatory medical report of the alleged rape victim and barred testimony regarding the three men being repeatedly and brutally beaten by law enforcement officers.¹³ Thurgood Marshall, then Executive Director of the NAACP Legal Defense and Educational Fund, appealed the convictions of Walter Irvin and Samuel Shepherd to the United States Supreme Court, which unanimously overturned the judgments on April 9, 1951, and ordered a retrial.¹⁴

Seven months later, on November 6, 1951, as Walter Irvin and Samuel Shepherd were being transported by Lake County Sheriff Willis McCall from Florida State Prison in Raiford to Tavares Road Prison for a pretrial

¹ Gary Corsair, LEGAL LYNCHING: THE SAD SAGA OF THE GROVELAND FOUR 14, 15 (2012).

² Gilbert King, DEVIL IN THE GROVE at 65, 172 (2012).

³ King at 66,67.

⁴ King at 66, Corsair at 85.

⁵ King at 36.

⁶ King at 38, Corsair at 17-19.

⁷ Corsair at 18,19,33.

⁸ King at 73.

⁹ King at 117.

¹⁰ Corsair at 183.

¹¹ Corsair at 186.

¹² *Id.*

¹³ King at 162.

¹⁴ Corsair at 221.

hearing, the sheriff pulled over on a dirt road and shot both men, claiming the handcuffed men were trying to escape. Samuel Shepherd died at the scene as a result of his wounds.¹⁵

During an interview with an investigator sent by then Governor Fuller Warren, Walter Irvin stated that, after he had been shot twice by the Sheriff, Deputy Sheriff James L. Yates shot him through the neck as he lay on the ground handcuffed to the deceased Samuel Shephard.¹⁶ The FBI later discovered a .38-caliber bullet directly beneath a blood spot marking where Walter Irvin lay, providing forensic corroboration of Mr. Irvin's statement that he was shot while lying on the ground.¹⁷ Walter Irvin, who pretended to be dead, survived despite a delay in treatment caused by the hospital's refusal to transport him in an ambulance due to his race.¹⁸ Mr. Irvin was retried and convicted a second time for the alleged rape and was sentenced to death, despite the fact that a former FBI criminologist stated that he believed forensic evidence had been manufactured by law enforcement.¹⁹ Mr. Irvin's sentence was commuted to life in prison in 1955 by then Governor LeRoy Collins after the prosecuting attorney, who twice convicted Mr. Irvin, stated in a letter that not only was a life sentence more appropriate, but that Mr. Irvin maintained his innocence even after being shot when he believed himself to be dying.²⁰

Walter Irvin was found dead in his car while visiting Lake County for a funeral in 1969, 1 year after being paroled by then Governor Claude Kirk.²¹ Charles Greenlee, who was paroled in 1960 at the age of 27, died in April 2012 at the age of 78.²²

Clemency Powers

The Florida Constitution grants the power to pardon to the Governor, with the consent of at least two Cabinet members.²³ Except in cases of treason and cases in which impeachment results in conviction, the Governor may, by executive order filed with the Secretary of State, suspend collection of fines and forfeitures, grant reprieves not exceeding 60 days, and with the approval of two members of the Cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.²⁴

In Florida, the Supreme Court has long held that the Governor's power to commute and pardon sentences tracks with that of the President of the United States under the United States Constitution.²⁵

The language of Florida's Constitution today is substantially the same as the language was in Florida's Constitution in 1872, specifically in Article V Sections 11 and 12 relating to pardons. The only difference then was that the Governor could only pardon "after conviction." No such limitation exists today.

It is well settled that the President has the power to grant pardons prior to convictions. Cases can be found as far back as the Civil War, when President Johnson issued a pardon for a former Confederate Officer never convicted of a crime, and as recently as when President Ford pardoned President Nixon for any offenses that he "committed or may have committed or taken part in."

In 2004, Justice Anstead of the Florida Supreme Court, arguing that the majority opinion limited the Constitutional authority of the executive branch improperly, said that the decision "restricted the authority of the

¹⁵ Corsair at 242.

¹⁶ King at 242-244.

¹⁷ King at 254.

¹⁸ King at 236,237.

¹⁹ King at 310-314, 329.

²⁰ King at 349, 354.

²¹ King at 358, 359.

²² Barbara Liston, Families Seek Exoneration in Florida Rape After 63 Years, CHICAGO TRIBUNE (Sept. 7, 2012), http://articles.chicagotribune.com/2012-09-07/news/sns-rt-us-florida-race-rapebre8861er-20120907_1_groveland-four-groveland-four-charles-greenlee

²³ Art. IV, s. 8(a), FLA. CONST.

²⁴ Section 940.01, F.S.

²⁵ *In re Executive Communications*, 14 Fla. 318 (Fla. 1872).

executive to grant a full pardon *after* conviction, while leaving undisturbed the executive's authority to grant a full pardon *before* conviction."²⁶

EFFECT OF PROPOSED CHANGES

In the concurrent resolution, the House and Senate:

- Acknowledge that Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas, the Groveland Four, were the victims of gross injustices and that their abhorrent treatment by the criminal justice system is a shameful chapter in this state's history;
- Extend a heartfelt apology to the families of Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas for the enduring sorrow caused by the criminal justice system's failure to protect their basic constitutional rights; and
- Urge the Governor and Cabinet to expedite review of the cases of Charles Greenlee, Walter Irvin, Samuel Shephard, and Ernest Thomas as part of their constitutional authority to grant clemency, including granting full pardons.

The concurrent resolution requires a copy of the resolution to be provided to the Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, and the families of the Groveland Four as a tangible token of the sentiments expressed therein.

B. SECTION DIRECTORY: Not applicable

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None
2. Expenditures: None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None
2. Expenditures: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None

D. FISCAL COMMENTS: None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

²⁶ *R.J.L. v. State*, 887 So.2d 1268, 1282 (Fla. 2004)(emphasis in original).
STORAGE NAME: pcs0631.JDC
DATE: 4/4/2017

1. Applicability of Municipality/County Mandates Provision: Not applicable

2. Other: None

B. RULE-MAKING AUTHORITY: None

C. DRAFTING ISSUES OR OTHER COMMENTS: None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

House Concurrent Resolution

A concurrent resolution acknowledging the grave injustices perpetrated against Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas, who came to be known as the "Groveland Four;" offering a formal and heartfelt apology to these victims of racial hatred and to their families; and urging the Governor and Cabinet to perform an expedited clemency review, including full pardons, of the cases of Charles Greenlee, Walter Irvin, Samuel Shephard, and Ernest Thomas.

WHEREAS, on July 16, 1949, a 17-year-old white woman and her estranged husband reported to police that she had been abducted at approximately 2:30 a.m., driven about 25 minutes to a dead-end road, and raped by 4 black men after the car in which she and her estranged husband were riding broke down on a rural road outside Groveland in Lake County, and

WHEREAS, Charles Greenlee, Walter Irvin, and Samuel Shepherd, were charged with rape, while Ernest Thomas was presumed guilty of the crime, and

WHEREAS, Charles Greenlee, who was 16 years old in July 1949, was being detained 20 miles away by two retail store night-watchmen at about the same time as the attack was alleged to have occurred, and

26 WHEREAS, the husband stated on 2 separate occasions that
 27 Charles Greenlee was not one of the young men present when the
 28 car broke down on July 16, 1949, and

29 WHEREAS, Charles Greenlee denied that he and Ernest Thomas
 30 ever met Samuel Shephard, Walter Irvin, the alleged victim, or
 31 her estranged husband, and

32 WHEREAS, Walter Irvin and Samuel Shepherd, both World War
 33 II veterans, acknowledged that they had stopped by the broken-
 34 down vehicle to see if they could assist the couple, but denied
 35 any involvement in the alleged rape, and

36 WHEREAS, after their arrest that evening, Charles Greenlee,
 37 Walter Irvin, and Samuel Shepherd were severely beaten in the
 38 basement of the county jail; Mr. Greenlee and Mr. Shepherd were
 39 coerced into confessing to the crime; and Mr. Irvin steadfastly
 40 maintained his innocence despite repeated beatings, and

41 WHEREAS, Ernest Thomas, understanding the racial realities
 42 of the time and the danger he was in, escaped Lake County before
 43 law enforcement could locate him, and

44 WHEREAS, after being hunted for more than 30 hours through
 45 at least 25 miles of swampland in Madison County, Florida, by an
 46 armed, deputized posse of 1,000 men with bloodhounds, Ernest
 47 Thomas was killed in a hail of gunfire as he slept beside a
 48 tree, before he could answer questions or declare his innocence,
 49 and

50 WHEREAS, the three surviving men, Charles Greenlee, Walter

51 Irvin, and Samuel Shepherd, were tried and convicted in the
 52 case, with Mr. Greenlee sentenced to life imprisonment due to
 53 his young age and Mr. Irvin and Mr. Shepherd sentenced to death,
 54 and

55 WHEREAS, the judge who presided at the men's trial denied
 56 the men's attorneys access to an exculpatory medical report of
 57 the alleged rape victim and barred testimony regarding the three
 58 men being repeatedly and brutally beaten by law enforcement
 59 officers, and

60 WHEREAS, Thurgood Marshall, then Executive Director of the
 61 NAACP Legal Defense and Educational Fund, appealed the
 62 convictions of Walter Irvin and Samuel Shepherd to the United
 63 States Supreme Court, which unanimously overturned the judgments
 64 on April 9, 1951, and ordered a retrial, and

65 WHEREAS, 7 months later, on November 6, 1951, as Walter
 66 Irvin and Samuel Shepherd were being transported from Florida
 67 State Prison in Raiford to Tavares Road Prison for a pretrial
 68 hearing, Lake County Sheriff Willis McCall shot both men on a
 69 dirt road leading into Umatilla, claiming the handcuffed men
 70 were trying to escape, and

71 WHEREAS, Samuel Shepherd died at the scene as a result of
 72 his wounds, immeasurably compounding the suffering of his
 73 hardworking, close-knit family whose home had been burned to the
 74 ground by a mob in the days immediately following reports of the
 75 alleged rape, and

76 WHEREAS, during an interview with an investigator sent by
 77 then Governor Fuller Warren, Walter Irvin stated that, after he
 78 had been shot twice by the Sheriff, Deputy Sheriff James L.
 79 Yates shot him through the neck as he lay on the ground
 80 handcuffed to the deceased Samuel Shephard, and

81 WHEREAS, the FBI discovered a .38-caliber bullet directly
 82 beneath a blood spot marking where Walter Irvin lay, providing
 83 forensic corroboration of Walter Irvin's statement that he was
 84 shot while lying on the ground, and

85 WHEREAS, Walter Irvin, who pretended to be dead, survived
 86 despite a delay in treatment caused by the hospital's refusal to
 87 transport him in an ambulance due to his race, and

88 WHEREAS, Walter Irvin was retried and convicted a second
 89 time for the alleged rape and was sentenced to death, despite
 90 the fact that a former Federal Bureau of Investigation
 91 criminologist stated that he believed forensic evidence had been
 92 manufactured by law enforcement, and

93 WHEREAS, Walter Irvin's sentence was commuted to life in
 94 prison in 1955 by then Governor LeRoy Collins after the
 95 prosecuting attorney, who twice convicted Mr. Irvin, stated in a
 96 letter that not only was a life sentence more appropriate, but
 97 that Mr. Irvin maintained his innocence even after being shot
 98 when he believed himself to be dying; and

99 WHEREAS, Walter Irvin was found dead in his car while
 100 visiting Lake County for a funeral in 1969, 1 year after being

101 | paroled by then Governor Claude Kirk, and

102 | WHEREAS, Charles Greenlee, who was paroled in 1960 at the
103 | age of 27, died in April 2012 at the age of 78, and

104 | WHEREAS, the people of this state recognize that no action
105 | on the part of the Legislature can make right the egregious
106 | wrongs perpetrated against Charles Greenlee, Walter Irvin,
107 | Samuel Shepherd, and Ernest Thomas and their families by the
108 | criminal justice system, law enforcement agencies, and
109 | individuals whose actions were fueled by racial hatred, and

110 | WHEREAS, the families of Charles Greenlee, Walter Irvin,
111 | Samuel Shepherd, and Ernest Thomas have demanded that steps be
112 | taken to clear the men's names, NOW, THEREFORE,

113 |

114 | Be It Resolved by the House of Representatives of the State of
115 | Florida, the Senate Concurring:

116 |

117 | That we hereby acknowledge that Charles Greenlee, Walter
118 | Irvin, Samuel Shepherd, and Ernest Thomas, the Groveland Four,
119 | were the victims of gross injustices and that their abhorrent
120 | treatment by the criminal justice system is a shameful chapter
121 | in this state's history.

122 | BE IT FURTHER RESOLVED that we hereby extend a heartfelt
123 | apology to the families of Charles Greenlee, Walter Irvin,
124 | Samuel Shepherd, and Ernest Thomas for the enduring sorrow
125 | caused by the criminal justice system's failure to protect their

126 | basic constitutional rights.

127 | BE IT FURTHER RESOLVED that the Legislature urges the
128 | Governor and Cabinet to expedite review of the cases of Charles
129 | Greenlee, Walter Irvin, Samuel Shephard, and Ernest Thomas as
130 | part of their constitutional authority to grant clemency,
131 | including granting full pardons.

132 | BE IT FURTHER RESOLVED that a copy of this resolution be
133 | provided to the Governor, the Attorney General, the Chief
134 | Financial Officer, the Commissioner of Agriculture, and the
135 | families of the Groveland Four as a tangible token of the
136 | sentiments expressed herein.

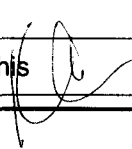
137 |

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 939 Use or Operation of a Drone by Certain Offenders

SPONSOR(S): Metz

TIED BILLS: IDEN./SIM. **BILLS:** SB 1122

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N	Hall	White
2) Justice Appropriations Subcommittee	15 Y, 0 N	Smith	Gusky
3) Judiciary Committee		Hall <i>WH</i>	Camechis 

SUMMARY ANALYSIS

A drone is an unmanned aircraft that is manufactured in varying sizes and can be flown by remote control or on a programmed flight path. Drones can be equipped with surveillance devices such as thermal imaging cameras, laser scanners, and devices that intercept electronic transmissions. The Federal Aviation Administration ("FAA") is in charge of overseeing the integration of drones into U.S. airspace. In order to comply with FAA regulations, a drone being used for recreational purposes must be registered and its user must comply with safety guidelines. Drones used for research or commercial purposes are subject to greater regulation.

The Florida Sexual Predators Act ("Act") contains various registration requirements for sexual predators, and provides in part, that a person must be designated a sexual predator if the person is convicted, on or after October 1, 1993, of a list of enumerated offenses.

The bill creates a third degree felony for a sexual predator to use or operate a drone for the purpose of viewing or recording an image of a minor who is on or at the minor's domicile or on or at a business, school, child care facility, park, playground, or other place where children regularly congregate. The bill ranks the new criminal offense as a level seven offense in the Offense Severity Ranking Chart.

The Criminal Justice Impact Conference (CJIC) met on March 29, 2017, and determined the bill has a positive insignificant impact on the prison population, meaning an increase of 10 or fewer prison beds. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

The bill provides an effective date of October 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Drones

A drone is an unmanned aircraft that can be flown by remote control or on a programmed flight path¹ and can be as small as an insect or as large as a commercial airliner.² Drones can be equipped with various devices such as thermal imaging cameras,³ laser scanners,⁴ and devices that intercept electronic transmissions.⁵ While historically the use of drones was concentrated primarily in military, civil government, and commercial use, in recent years the demand for civilian drones used for recreational purposes has been on the rise.⁶

The Federal Aviation Administration (“FAA”) is in charge of overseeing the integration of drones into U.S. airspace.⁷ In doing so, it must balance the integration of drones with the safety of the nation’s airspace.⁸ The FAA has allowed the use of drones since 1990 for essential public operations such as firefighting, disaster relief, search and rescue, law enforcement, border patrol, and scientific research.⁹ More recently the FAA has exercised more control over the operation of drones in national airspace, such as prohibiting drone operations over major urban areas.¹⁰

The FAA requires recreational users to register drones and to follow the laws and safety guidelines that apply to operating drones in national airspace.¹¹ As of mid-March 2016, the FAA estimates there have been over 408,000 registrations for model aircraft and recreational drones.¹²

Florida law prohibits the use of a drone¹³ by law enforcement agencies or private persons or entities to record an image for the purpose of conducting surveillance on private property, where persons have a reasonable expectation of privacy, without the person’s consent.¹⁴ Under this law, a person is presumed to have a reasonable expectation of privacy on his or her privately owned property if he or

¹ Richard M. Thompson, II, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Legislative Responses*, CONGRESSIONAL RESEARCH SERVICE (April 3, 2013), www.fas.org/sgp/crs/natsec/R42701.pdf.

² Jeremiah Gertler, *U.S. Unmanned Aerial Systems*, CONGRESSIONAL RESEARCH SERVICE (Jan. 3, 2012), www.fas.org/sgp/crs/natsec/R42136.pdf.

³ See, e.g., MICRODRONES, *Applications*, <https://www.microdrones.com/en/applications/> (last visited March 10, 2017).

⁴ *Id.*

⁵ Andy Greenberg, *Flying Drone Can Crack Wi-Fi Networks, Snoop on Cell Phones*, FORBES (July 28, 2011), <http://www.forbes.com/sites/andygreenberg/2011/07/28/flying-drone-can-crack-wifi-networks-snoop-on-cell-phones/#48ff77237856> (last visited March 10, 2017).

⁶ Nick Wingfield, *A Field Guide to Civilian Drones*, THE NEW YORK TIMES (August 29, 2016), https://www.nytimes.com/interactive/2015/technology/guide-to-civilians-drones.html?_r=0.

⁷ FEDERAL AVIATION ADMIN., *Unmanned Aircraft Systems*, <https://www.faa.gov/uas/> (last visited March 10, 2017).

⁸ FEDERAL AVIATION ADMIN., *Fact Sheet—Unmanned Aircraft Systems (UAS)*, (Feb. 15, 2015) http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=18297 (last visited March 10, 2017).

⁹ *Id.*

¹⁰ *Id.*

¹¹ FEDERAL AVIATION ADMIN., *Unmanned Aircraft Systems (UAS (Unmanned Aircraft Systems)) Frequently Asked Questions*, <https://www.faa.gov/uas/faqs/#ffr> (last visited March 10, 2017).

¹² FEDERAL AVIATION ADMIN., *FAA Aerospace Forecast, Fiscal Years 2016-2036*, https://www.faa.gov/data_research/aviation/aerospace_forecasts/media/FY2016-36_FAA_Aerospace_Forecast.pdf (last visited March 10, 2017).

¹³ “Drone” is defined to mean “a powered, aerial vehicle that: 1. Does not carry a human operator; 2. Uses aerodynamic forces to provide vehicle lift; 3. Can fly autonomously or be piloted remotely; 4. Can be expendable or recoverable; and 5. Can carry a lethal or nonlethal payload.” s. 934.50(2)(a), F.S.

¹⁴ Law enforcement must first obtain a search warrant signed by a judge to authorize the use of a drone for this purpose. See s. 934.50(3), F.S.

she is not observable by other persons located at ground level in a place where they have a legal right to be.¹⁵ Florida law currently does not regulate the use of drones in any other manner.

Sexual Predators

Section 775.21, F.S., provides the Florida Sexual Predators Act ("Act"). The Act contains various registration requirements for sexual predators, and provides in part, that a person must be designated a sexual predator if the person is convicted, on or after October 1, 1993, of:

- A capital, life, or first degree felony violation, or any attempt thereof, of any of the criminal offenses prescribed in the following statutes in this state or a similar offense in another jurisdiction:
 - Sections 787.01 (kidnapping) or 787.02, F.S. (false imprisonment), where the victim is a minor and the defendant is not the victim's parent or guardian;¹⁶
 - Section 794.011, F.S. (sexual battery);
 - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
 - Section 847.0145, F.S. (buying or selling minors); or
- Any felony violation, or attempted violation of:
 - Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability);
 - Section 394.4593(2), F.S. (sexual misconduct with a patient);
 - Sections 787.01 (kidnapping), 787.02 (false imprisonment), or 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the offender is not the victim's parent or guardian;¹⁷
 - Section 787.06(3)(b),(d),(f),(g), or former (h), F.S. (relating to human trafficking);
 - Section 794.011, F.S. (sexual battery), excluding s. 794.011(10), F.S.;¹⁸
 - Section 794.05, F.S. (unlawful activity with certain minors);
 - Former s. 796.03, F.S. (procuring a person under the age of 18 for prostitution);
 - Former s. 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution);
 - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
 - Section 810.145(8)(b), F.S. (relating to video voyeurism);
 - Section 825.1025, F.S. (lewd or lascivious battery upon or in the presence of an elderly person or disabled person);
 - Section 827.071, F.S. (sexual performance by a child);
 - Section 847.0135, F.S., excluding s. 847.0135(6), F.S. (computer pornography);
 - Section 847.0145, F.S. (selling or buying of minors);
 - Section 916.1075(2), F.S. (sexual misconduct with a forensic client); or
 - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and
- The offender has previously been convicted of any of the statutes enumerated above, including s. 847.0133, F.S. (protection of minors / obscenity).¹⁹

If the court makes a written finding that the offender is a sexual predator, the offender must be designated as a sexual predator, must register or be registered as a sexual predator with the

¹⁵ s. 934.50(3)(b), F.S.

¹⁶ These convictions can only be used as a qualifying offense for designation as a sexual predator if there is a finding that the conviction has a sexual component. The Fourth District Court of Appeal has held that the sexual offender designation that resulted from a false imprisonment conviction that had no sexual motivation failed the "rationally related" test. The Court held the state has an interest in protecting the public from sexual offenders and the designation of a person as a sexual offender is rationally related to that goal. However, if it is clear that the qualifying crime is totally devoid of a sexual component, such rational basis is lost. *Raines v. State*, 805 So. 2d 999, 1003 (Fla. 4th DCA 2001).

¹⁷ *Id.*

¹⁸ Section 794.011(10), F.S., relates to falsely accusing specified persons of sexual battery.

¹⁹ s. 775.21(4)(a)1.a., F.S.

department as provided²⁰ in the Act, and is subject to the community and public notification as provided²¹ in the Act.²²

Section 775.21(10)(b), F.S. creates a third degree felony²³ for failure to comply with the registration requirements for a person designated as a sexual predator. Additionally, s. 775.21(10)(b), F.S., creates a third degree felony²⁴ for certain acts committed by a sexual predator who has been held criminally liable for committing crimes enumerated in the Act. Specifically, the section provides that a sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication of guilt, any violation, or attempted violation, of ss. 787.01, 787.02, or 787.025(2)(c), F.S., where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, F.S., excluding s. 794.011(10), F.S.; ss. 794.05; former 796.03; former 796.035; 800.04; 827.071; 847.0133; 847.0135(5); 847.0145; or 985.701(1), F.S.; or a violation of a similar law of another jurisdiction when the victim of the offense was a minor, and who works, whether for compensation or as a volunteer, at any business, school, child care facility, park, playground, or other place where children regularly congregate, commits a felony of the third degree felony.

Florida law currently does not have any similar provisions in place to prohibit a sexual offender from using a drone or similar device for the purpose of viewing a minor.

Effect of the Bill

The bill creates s. 810.146, F.S., prohibiting a sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, a violation or attempted violation of a qualifying offense, from using or operating a drone for the purpose of viewing or recording an image of a minor who is on or at the minor's domicile or on or at a business, school, child care facility, park, playground, or other place where children regularly congregate.

The bill defines key terms:

- A drone is defined in accordance with s. 934.50, F.S.
- A qualifying offense is an offense under:
 - Sections 787.01 (kidnapping), 787.02 (false imprisonment), or 787.025(2)(c), F.S. (luring or enticing a child), when the victim of the offense was a minor;
 - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.;
 - Section 794.05, F.S. (unlawful activity with certain minors);
 - Former s. 796.03, F.S. (procuring a person under the age of 18 for prostitution);
 - Former s. 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution);
 - Section 800.04, F.S. (lewd or lascivious offenses involving persons less than 16 years of age);
 - Section 827.071, F.S. (sexual performance by a child);
 - Section 847.0133, F.S. (protection of minors / obscenity);
 - Section 847.0135(5), F.S. (lewd and lascivious exhibition via a computer transmission);
 - Section 847.0145, F.S. (selling or buying of minors);
 - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); or
 - A violation of another jurisdiction's similar law when the victim of the offense was a minor.

The bill provides that a violation of s. 810.146, F.S., is a third felony and adds the new criminal prohibition to the Offense Severity Ranking Chart as a level seven offense.

The bill provides an effective date of October 1, 2017.

²⁰ Registration requirements are provided under s. 775.21(6), F.S.

²¹ Community and public notification requirements are provided under s. 775.21(7), F.S.

²² s. 775.21(4)(c), F.S.

²³ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

²⁴ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

B. SECTION DIRECTORY:

Section 1. Creates s. 810.146, F.S., relating to use or operation of a drone by certain offenders; penalty.

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

Section 3. Provides an effective date of October 1, 2017.

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: The Criminal Justice Impact Conference (CJIC) met on March 29, 2017, and determined the bill has a positive insignificant impact on the prison population, meaning an increase of 10 or fewer prison beds.

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: The bill may implicate the First Amendment rights of freedom of speech and freedom of press by limiting a person's ability to photograph minors who are in a public place. When a law restricts fundamental rights, the courts have examined how narrowly tailored the law is to accomplishing the government's purpose. The bill is narrowly tailored in that it applies only to sexual predators and applies only to using a drone for the purpose of viewing or recording an image of a minor. However, because of a lack of case law directly addressing this issue, it would be speculative to predict what the outcome would be if a court were asked to examine its constitutionality based on a First Amendment challenge.

B. RULE-MAKING AUTHORITY: The bill does not appear to create the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

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A bill to be entitled
 An act relating to use or operation of a drone by
 certain offenders; creating s. 810.146, F.S.;
 prohibiting the use or operation of a drone by certain
 offenders for the purpose of viewing or recording an
 image of a minor in specified locations; providing a
 definition; providing criminal penalties; amending s.
 921.0022, F.S.; assigning an offense severity ranking
 in the Criminal Punishment Code; providing an
 effective date.

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

Section 1. Section 810.146, Florida Statutes, is created
 to read:

810.146 Use or operation of a drone by certain offenders;
 penalty.-

(1) A sexual predator who has been convicted of or found
 to have committed, or has pled nolo contendere or guilty to,
 regardless of adjudication, a violation or attempted violation
 of a qualifying offense may not use or operate a drone, as
 defined in s. 934.50, for the purpose of viewing or recording an
 image of a minor who is on or at the minor's domicile or on or
 at a business, school, child care facility, park, playground, or
 other place where children regularly congregate.

(2) For the purposes of this section, a qualifying offense

27 is an offense under s. 787.01 or s. 787.02, when the victim of
 28 the offense was a minor; s. 787.025(2)(c); s. 794.011, excluding
 29 s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035;
 30 s. 800.04; s. 827.071; s. 847.0133; s. 847.0135(5); s. 847.0145;
 31 or s. 985.701(1); or a violation of a similar law of another
 32 jurisdiction when the victim of the offense was a minor.

33 (3) A violation of this section is a felony of the third
 34 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 35 775.084.

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

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

40 (3) OFFENSE SEVERITY RANKING CHART

41 (g) LEVEL 7

42

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

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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.

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

47

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

48

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

49

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

50

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

51	456.065 (2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
52	458.327 (1)	3rd	Practicing medicine without a license.
53	459.013 (1)	3rd	Practicing osteopathic medicine without a license.
54	460.411 (1)	3rd	Practicing chiropractic medicine without a license.
55	461.012 (1)	3rd	Practicing podiatric medicine without a license.
56	462.17	3rd	Practicing naturopathy without a license.
57	463.015 (1)	3rd	Practicing optometry without a license.
58	464.016 (1)	3rd	Practicing nursing without a license.

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

68	494.0018 (2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
69	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.
70	560.125 (5) (a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
71	655.50 (10) (b) 1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
	775.21 (10) (a)	3rd	Sexual predator; failure to register; failure to renew driver license or

			identification card; other registration violations.
72	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
73	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
74	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
75	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
76	782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular

77			homicide).
78	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
79	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
80	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
81	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
82	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
83	784.048(7)	3rd	Aggravated stalking; violation of court order.
84	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.

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85	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
86	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
87	784.081(1)	1st	Aggravated battery on specified official or employee.
88	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
89	784.083(1)	1st	Aggravated battery on code inspector.
90	787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
	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.

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91

790.07(4) 1st Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).

92

790.16(1) 1st Discharge of a machine gun under specified circumstances.

93

790.165(2) 2nd Manufacture, sell, possess, or deliver hoax bomb.

94

790.165(3) 2nd Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.

95

790.166(3) 2nd Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.

96

790.166(4) 2nd Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.

97	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
98	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.
99	796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.
100	796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
101	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.
102	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.
103	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.
104	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
105	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
106	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
107	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
108	810.02(3)(e)	2nd	Burglary of authorized

109			emergency vehicle.
	<u>810.146</u>	<u>3rd</u>	<u>Use or operation of a drone by certain offenders.</u>
110	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.
111	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
112	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
113	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
114	812.0145(2)(a)	1st	Theft from person 65 years of

			age or older; \$50,000 or more.
115	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
116	812.131(2)(a)	2nd	Robbery by sudden snatching.
117	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
118	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
119	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
120	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
121	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
122			

	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.
123	817.535 (2) (a)	3rd	Filing false lien or other unauthorized document.
124	817.611 (2) (b)	2nd	Traffic in or possess 15 to 49 counterfeit credit cards or related documents.
125	825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
126	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.
127	827.03 (2) (b)	2nd	Neglect of a child causing

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			great bodily harm, disability, or disfigurement.
128	827.04 (3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
129	837.05 (2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
130	838.015	2nd	Bribery.
131	838.016	2nd	Unlawful compensation or reward for official behavior.
132	838.021 (3) (a)	2nd	Unlawful harm to a public servant.
133	838.22	2nd	Bid tampering.
134	843.0855 (2)	3rd	Impersonation of a public officer or employee.
135	843.0855 (3)	3rd	Unlawful simulation of legal process.

136	843.0855(4)	3rd	Intimidation of a public officer or employee.
137	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
138	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
139	872.06	2nd	Abuse of a dead human body.
140	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
141	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
142	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.

143

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.

144

893.13(4)(a) 1st Use or hire of minor; deliver
to minor other controlled
substance.

145

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

146

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147	893.135 (1) (b) 1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
148	893.135 (1) (c) 1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
149	893.135 (1) (c) 2.a.	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.
150	893.135 (1) (c) 2.b.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
151	893.135 (1) (c) 3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
152	893.135 (1) (c) 3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
	893.135 (1) (d) 1.	1st	Trafficking in phencyclidine, more than 28 grams, less than

			200 grams.
153	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
154	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
155	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
156	893.135 (1)(h)1.a.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
157	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
158	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.

159	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
160	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
161	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
162	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
163	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
164	943.0435(9)(a)	3rd	Sexual offender; failure to

165	943.0435 (13)	3rd	comply with reporting requirements.
166	943.0435 (14)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
167	944.607 (9)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
168	944.607 (10) (a)	3rd	Sexual offender; failure to comply with reporting requirements.
169	944.607 (12)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
			Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

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170

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

171

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

172

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

173

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

174

175

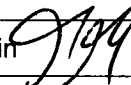
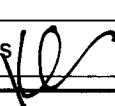
Section 3. This act shall take effect October 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1203 Pub. Rec./DOC/Health Information

SPONSOR(S): Gonzalez

TIED BILLS: CS/CS/HB 1201 **IDEN./SIM. BILLS:** SB 1526

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 0 N	Merlin	White
2) Oversight, Transparency & Administration Subcommittee	14 Y, 0 N	Whittaker	Harrington
3) Judiciary Committee		Merlin 	Camechis 

SUMMARY ANALYSIS

Federal law provides a right to privacy for health and medical records under the Health Insurance Portability and Accountability Act ("HIPAA"). The HIPPA Privacy Rule sets national standards for the use and disclosure of individuals' health information, called protected health information ("PHI"), by covered entities. Although an individual's health and medical records are generally private under HIPPA, there are exceptions which allow disclosure for purposes of promoting health and safety, protecting law enforcement, and assisting in criminal and other types of investigations. The HIPPA Privacy Rule establishes a baseline or floor of privacy protections for PHI, not a ceiling. Where state laws are more protective of privacy than HIPPA, the state requirements will remain in effect.

The bill, which is linked to the passage of CS/HB 1201, expands the types of inmate health information held by DOC, which are confidential and exempt from disclosure. It also expands the entities to which the DOC may disclose such information. Under the bill, state attorneys, law enforcement agencies, the Executive Office of the Governor, the Correctional Medical Authority, the Division of Risk Management of the Department of Financial Services, the Department of Legal Affairs, the Department of Children and Families, and other entities may receive such confidential and exempt information if specified requirements are met. The bill provides for disclosure of a deceased inmate's PHI and other health records under specified circumstances.

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

The bill takes effect on the same date that HB 1201 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. HB 1201 takes effect on July 1, 2017.

The bill provides for repeal of the public records exemption on October 2, 2022, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

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 or expanded public record or public meeting exemption. The bill expands a 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 Law

Article I, s. 24(a), of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹ The Legislature, however, may exempt records from the requirements of Article I, s. 24 of the Florida Constitution, provided the exemption is passed by two-thirds vote of each chamber and:

- States with specificity the public necessity justifying the exemption (public necessity statement); and
- Is no broader than necessary to meet that public purpose.²

The Florida Statutes also address the public policy regarding access to government records through a variety of statutes in ch. 119, F.S. Currently, s. 119.07, F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, unless the record is exempt.

The Open Government Sunset Review Act³ provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose *and* the "[l]egislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁴ However, the exemption 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; or
- Protects trade or business secrets.⁵

The Open Government Sunset Review Act requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁶ The Act also requires specified questions to be considered during the review process.⁷

¹ FLA. CONST. art 1, s. 24(a).

² FLA. CONST. art 1, s. 24(c).

³ s. 119.15, F.S.

⁴ *Id.*

⁵ *Id.*

⁶ s. 119.15(3), F.S.

⁷ Section 119.15(6)(a), F.S., states that the specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

Medical Privacy under Federal Law

Federal law provides a right to privacy for health and medical records. In 1996, Congress passed the Health Insurance Portability and Accountability Act ("HIPAA").⁸ Among its purposes are the following:

- To provide the ability to transfer and continue health insurance coverage for workers and their families when they change or lose their jobs;
- To reduce health care fraud and abuse;
- To mandate industry-wide standards for health care information on electronic billing and other processes; and
- To require the protection and confidential handling of protected health information.

Under HIPPA, the Secretary of Health and Human Services ("HHS") is required to publicize national standards for the electronic exchange, privacy, and security of health information. These standards are collectively known as the Administrative Simplification provisions. HIPPA also required the Secretary of HHS to issue privacy regulations governing individually identifiable health information if Congress did not enact privacy legislation within three years of the Act's passage.⁹

As Congress did not enact the privacy legislation within three years of HIPPA's passage, the Secretary of HHS developed the HIPPA Privacy Rule, which was first published in 2000 and modified in 2002.¹⁰ The Privacy Rule sets national standards for the use and disclosure of individuals' health information, called protected health information ("PHI"), by three types of covered entities: health plans, health care clearinghouses, and health care providers who conduct the standard health care transactions electronically.¹¹ A state agency or department which performs functions that make it a "covered entity," must comply with the HIPPA Privacy Rule.

The HIPPA Privacy Rule defines PHI as individually identifiable health information,¹² held or maintained by a covered entity or its business associates acting for the covered entity, which is transmitted or maintained in any form or medium. This includes identifiable demographic and other information relating to the past, present, or future physical or mental health or condition of an individual, or the provision or payment of health care to an individual that is created or received by a health care provider, health plan, employer, or health care clearinghouse.

Although many disclosures about an individual's health and medical records are private under HIPPA, there are also exceptions which are applicable to health and safety. This includes things such as the protection of the public and members of law enforcement, as well as the furtherance of investigative functions, judicial proceedings, food safety investigation, crime prevention, disease prevention, child abuse, neglect, and domestic violence investigations, school-related health and safety concerns, medical examinations, research, and national security.¹³ These exceptions also specifically include correctional facilities,¹⁴ where disclosure of PHI for inmates and other covered individuals is permitted if it is necessary for:

⁸ Pub. L. 104-91, 110 Stat. 1936 (1996).

⁹ *Summary of HIPPA Privacy Rule*, United States Department of Health and Human Services, May 2003, available at <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html> (Last viewed April 4, 2017); see also *HIPPA for Professionals*, United States Department of Health and Human Services, available at <https://www.hhs.gov/hipaa/for-professionals/> (Last viewed April 4, 2017).

¹⁰ See 45 C.F.R. Parts 160 and 164, Subparts A and E.

¹¹ As defined in 45 C.F.R. 160.103, a "[h]ealth plan means an individual or group plan that provides, or pays the cost of, medical care..." *Id.* "Healthcare clearinghouse means a public or private entity, including a billing service, repricing company, community health management information system or community health information system, and 'value-added' networks and switches, that [performs one or another function described in the rule]." *Id.* "Health care provider means a provider of services..., a provider of medical or health services..., and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business." *Id.*

¹² "Personal health information" or "PHI" is defined in 45 CFR 160.103, along with the related definitions of "individually identifiable health information" and "health information."

¹³ See generally 45 C.F.R. 164.512.

¹⁴ 45 C.F.R. 164.512(k)(5)(i)(A)-(F).

- The provision of health care to such individuals;
- The health and safety of such individual or other inmates;
- The health and safety of the officers or employees of or others at the correctional institution;
- The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
- Law enforcement on the premises of the correctional institution; or
- The administration and maintenance of the safety, security, and good order of the correctional institution.

Under HIPPA, a covered entity that is a correctional institution may use the PHI of individuals who are inmates for any purpose for which such information may be disclosed.¹⁵

If a state law is contrary to HIPPA, then the latter preempts it and is controlling. However, where state laws are more protective of privacy than HIPPA, the state requirements will remain in effect. HIPPA sets a floor, not a ceiling.¹⁶

Right to Privacy in Medical Records in Florida

In Florida, citizens have a fundamental right to privacy, as provided in the Florida Constitution.¹⁷ This includes information about a patient's medical records, health condition, treatment, and care, and imposes a high burden on a member of the public or a government agency to obtain this information or permit it to be disclosed.¹⁸

Along with the constitutional right to privacy, there are also specific statutory provisions which protect an individual's health and medical records. For example, s. 456.057, F.S., involves the confidentiality of both medical records and communications between a person and his doctor, who is the "record owner."¹⁹ Consistent with the constitutional right of privacy, s. 456.057, F.S., indicates that medical records may not be furnished, and discussions about a patient's medical condition may not be disclosed, to any person other than the patient or the patient's legal representative or other health care practitioners and providers involved in the patient's care or treatment, except upon written authorization from the patient, and subject to limited exceptions.²⁰

Likewise, there is a statutory right to privacy in medical records held by the Florida Department of Corrections ("DOC"). Section 945.10(1), F.S., states that mental, medical, and substance abuse

¹⁵ 45 C.F.R. 164.512(k)(5)(ii).

¹⁶ 45 C.F.R. 160.201-05.

¹⁷ FLA. CONST., art. I, s. 23 ("Every natural person has the right to be let alone and free from governmental intrusion into the person's private life. . .").

¹⁸ *State v. Johnson*, 814 So. 2d 390, 393 (Fla. 2002) (noting, "[a] patient's medical records enjoy a confidential status by virtue of the right to privacy contained in the Florida Constitution, and any attempt on the part of the government to obtain such records must first meet constitutional muster."); *Fla. Dep't of Corrs. v. Abril*, 969 So. 2d 201, 205-06 (Fla. 2007); *State v. Strickling*, 164 So. 3d 727, 731 (Fla. 3d DCA 2015); *Johnson*, 814 So. 2d 393 (noting, "The right to privacy is not absolute and will yield to compelling governmental interests.").

¹⁹ Chapter 456, F.S., generally governs health professions and occupations, while s. 456.057, F.S., pertains to ownership and control of patient records; reports or copies of records to be furnished; and disclosure of information. Section 456.057(1), F.S., defines a "record owner" as "any health care practitioner who generates a medical record after making a physical or mental examination of, or administering treatment or dispensing legend drugs to, any person; any health care practitioner to whom records are transferred by a previous records owner; or any health care practitioner's employer, including, but not limited to, group practices and staff-model health maintenance organizations, provided the employment contract or agreement between the employer and the health care practitioner designates the employer as the records owner." *Id.*

²⁰ s. 456.057(7)(a), F.S. (providing a list of exceptions where records can be furnished, including a patient's consent for care or treatment; compulsory physical examination in a civil case where records are furnished to both the plaintiff and defendant; issuance of a subpoena in a civil action or criminal proceeding; statistical and scientific research; or treatment of poison control). *See also State v. Sun*, 82 So. 3d 866 (Fla. 4th DCA 2011).

records of inmates and offenders held by DOC are confidential and exempt.²¹ Section 945.10, F.S., also requires DOC to adopt rules to prevent disclosure of such records or information to unauthorized persons.²² Presently, s. 945.10(2)(g), F.S., only allows record sharing of an inmate or offender's mental, medical, and substance abuse information in one circumstance – to the Department of Health and the county health department where an inmate plans to reside if he or she has tested positive for the presence of the antibody or antigen to human immunodeficiency virus infection (“HIV”).²³ The definition of an HIV test is set forth in the public health chapter of the Florida Statutes, s. 381.004, F.S.²⁴

DOC is a “covered entity” for purposes of the HIPPA Privacy Rule.²⁵ Further, because DOC creates and maintains hospital records through its licensed hospital, the Reception Medical Center, DOC is a “record owner” subject to ss. 456.057 and 945.10, F.S. Section 945.10, F.S., provides greater privacy protection than, and is more restrictive than, the HIPPA Privacy Rule.

Effect of the Bill

The bill amends s. 945.10(1), F.S., so that the following additional information held by DOC is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

- PHI of an inmate or an offender; and
- The identity of an inmate or offender upon whom an HIV test has been performed and the inmate or offender's test results.

The bill provides the following definitions:

- PHI has the same meaning as provided in 45 C.F.R. 160.103, the HIPPA Privacy Rule.
- HIV test has the same meaning as provided in s. 381.004, F.S.

The bill provides for the repeal of each of these exemptions on October 2, 2022, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

The bill amends s. 945.10(2), F.S., to add clarifying language in conformity with the changes to s. 945.10(1), F.S.

The bill also amends s. 945.10(2), F.S., so that PHI and mental health, medical, or substance abuse records of an inmate or offender may be released to the following persons or groups unless expressly prohibited by federal law:

- To the Executive Office of the Governor, the Correctional Medical Authority, and the Department of Health for health care oversight activities authorized by state or federal law, including:
 - Audits;
 - Civil, Administrative, or Criminal Investigations; or
 - Inspections relating to the provision of health services, in accordance with 45 C.F.R. part 164, subpart E.

²¹ s. 945.10(1)(a), F.S. (noting, “Except as otherwise provided by law or in this section, the following records and information held by the Department of Corrections are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution: Mental health, medical, or substance abuse records of an inmate or an offender.”).

²² Section 945.10(4), F.S., requires DOC to “adopt rules to prevent disclosure of confidential records or information to unauthorized persons.” *Id.* The corresponding provisions of the Florida Administrative Code are Rule 33.601.901, F.A.C. (Confidential Records) and Rule 33-401.701, F.A.C. (Medical and Substance Abuse Clinical Files).

²³ See s. 945.10(2)(g), F.S., which involves an exception for positive testing of the Human Immunodeficiency Virus (“HIV”). This is consistent with HIV testing under s. 381.004(2), F.S., providing exceptions for disclosure due to risk of exposure, health, and treatment.

²⁴ s. 381.004(1)(b), F.S. (indicating that an “HIV test” means “a test ordered after July 6, 1988, to determine the presence of the antibody or antigen to human immunodeficiency virus or the presence of human immunodeficiency virus infection.”).

²⁵ See *Christie v. Dep’t of Corr.*, Case No. 09-2312RP, at 9, 2009 WL 3663682, at *4 (Fla. DOAH, Nov. 2, 2009).

- To a state attorney, a state court, or a law enforcement agency (“LEA”) conducting an ongoing criminal investigation if:
 - The inmate agrees to the disclosure and provides written consent; or
 - The inmate refuses to provide written consent, in response to:
 - An order of a court of competent jurisdiction;
 - A subpoena, including a grand jury, investigative, or administrative subpoena;
 - A court-ordered warrant; or
 - A statutorily authorized investigative demand or other process as authorized by law in accordance with 45 C.F.R. part 164, subpart E, provided that:
 - The PHI and records sought are relevant and material to a legitimate law enforcement inquiry;
 - There is a clear connection between the investigated incident and the inmate whose PHI and records are sought;
 - The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information or records are sought; and
 - De-identified information could not reasonably be used.
- To a state attorney or LEA, regarding an inmate who is suspected of being the victim of a crime, if:
 - The inmate agrees to the disclosure and provides written consent; or
 - The inmate is unable to agree because of incapacity or other emergency circumstance in accordance with 45 C.F.R. part 164, subpart E, provided that:
 - The PHI and records are needed to determine whether a violation of law by a person other than the inmate victim has occurred;
 - The PHI or records are not intended to be used against the inmate victim;
 - The immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the inmate is able to agree with the disclosure; and
 - The disclosure is in the best interests of the inmate victim, as determined by DOC.
- To a state attorney or LEA if DOC believes in good faith that the information and records constitute evidence of criminal conduct that occurred in a correctional institution or facility, in accordance with 45 C.F.R. part 164, subpart E, provided that:
 - The PHI and records disclosed are specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information or records are sought;
 - There is a clear connection between the criminal conduct and the inmate whose PHI and records are sought; and
 - De-identified information could not reasonably be used.
- To the Division of Risk Management (“DRM”) of the Department of Financial Services, in accordance with 45 C.F.R. part 164, subpart E, upon certification by DRM that such information and records are necessary to investigate and provide legal representation for a claim against DOC.
- To the Department of Legal Affairs or to an attorney retained to represent DOC in a legal proceeding, by an inmate who is bringing a legal action against DOC, in accordance with 45 C.F.R. part 164, subpart E.
- To another correctional institution or facility or law enforcement official having lawful custody of the inmate, in accordance with 45 C.F.R. part 164, subpart E, if the PHI or records are necessary for:
 - The provision of health care to the inmate;
 - The health and safety of the inmate or other inmates;
 - The health and safety of the officers, employees, or others at the correctional institution or facility;
 - The health and safety of the individuals or officers responsible for transporting the inmate from one correctional institution, facility, or setting to another;
 - Law enforcement on the premises of the correctional institution or facility; or

- The administration and maintenance of the safety, security, and good order of the correctional institution or facility.
- To the Department of Children and Families and the Florida Commission on Offender Review, in accordance with 45 C.F.R. part 164, subpart E, if the inmate received mental health treatment while in the custody of DOC and becomes eligible for release under supervision or upon the end of his or her sentence.

The bill also permits persons who have authority to act on behalf of a deceased inmate, upon request, to have access to the deceased inmate's PHI, mental health, medical, or substance abuse records. This request applies notwithstanding s. 456.057, F.S., and in accordance with 45 C.F.R. Part 164, subpart E. The bill provides that the following individuals have authority to make such requests:

- A person appointed by a court to act as the personal representative, executor, administrator, curator, or temporary administrator of the deceased inmate's or offender's estate;
- If a judicial appointment has not been made by the court, then a person designated by the inmate or offender to act as his or her personal representative in a last will that is self-proved; or
- If no judicial appointment has been made, or if no person has been designated in a last will, then the section would apply to:
 - A surviving spouse;
 - If there is no surviving spouse, to a surviving adult child of the inmate or offender; or
 - If there is no surviving spouse or adult child, to a parent of the inmate or offender.

The bill provides that all requests for access to a deceased inmate or offender's PHI or mental health, medical, or substance abuse records must be in writing and must include the following:

- If there was an appointment by the court, the requestor must provide a copy of the letter of administration and a copy of the court order appointing such person as the representative of the inmate or offender's estate; or
- If there was a designation in a self-proved will, the requestor must provide a copy of the self-proved last will designating the person as the inmate or offender's representative; or
- If there was no judicial appointment or designation in a will, the requestor must provide a letter from the person's attorney verifying the person's relationship to the inmate or offender and the absence of a court-appointed representative and self-proved last will.

The bill also provides that it does not limit any rights to obtain records by subpoena or other court process.

In the bill's public necessity statement, it provides legislative findings relating to PHI and HIV testing information held by DOC. Specifically, the bill finds:

- It is a public necessity that an inmate or offender's PHI and HIV testing information held by DOC pursuant to s. 945.10, F.S., remain confidential and exempt from public disclosure "as envisioned by the Legislature in this statute and as provided in department rules."
- Allowing PHI to be publicly disclosed would in some cases cause a conflict with existing federal law and would be a violation of an inmate or offender's privacy under the state constitution.
- Maintaining the confidentiality of an inmate or offender's HIV testing information is essential to his or her participation in such testing. Thus, the harm from disclosure would outweigh the public benefit derived from it.
- Appropriate records and PHI are available to various governmental entities in order for them to perform their duties.
- It is mandatory that prisons function as effectively, efficiently, and nonviolently as possible and to release such information to the public would severely impede that function and would jeopardize the health and safety of those within and outside the prison system.

Finally, the bill provides that it will take effect on the same date as that of HB 1201 or similar legislation, if such legislation is passed during the same session, or an extension of that session, and becomes law.

B. SECTION DIRECTORY:

Section 1. Amends s. 945.10, F.S., relating to confidential information.

Section 2. Provides a public necessity statement.

Section 3. Provides an effective date that is the same as that of HB 1201 or similar legislation, if such legislation is passed during the same session, or an extension of that session, and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have an impact on local government revenues.

2. Expenditures:

This bill does not appear to have an impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may create a minimal fiscal impact on the Department of Corrections because staff responsible for complying with public record requests could require training related to the expansion of the public record exemption. In addition, the Department of Corrections could incur costs associated with redacting the exempt information prior to the releasing the record.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. 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 or expanded public record or public meeting exemption. The bill expands a public record 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 a public record 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 a public record exemption to protect certain inmate and offender health information and HIV testing information to maintain the confidentiality of such personal health records and to facilitate the operation of prison functions. 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:

Section 945.10(4), F.S., currently requires DOC to adopt rules to prevent the disclosure of confidential records or information to unauthorized persons. This bill will require DOC to amend its existing rules set forth in Rules 33-401.701 and 33.601.901, F.A.C.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.

26 (a)1. Mental health, medical, or substance abuse records
 27 of an inmate or an offender; and

28 2. Protected health information of an inmate or an
 29 offender. Protected health information, as used in this section,
 30 has the same meaning as provided in 45 C.F.R. s. 160.103. This
 31 subparagraph is subject to the Open Government Sunset Review Act
 32 of 1995 in accordance with s. 119.15 and shall stand repealed on
 33 October 2, 2022, unless reviewed and saved from repeal through
 34 reenactment by the Legislature.

35 (h) The identity of any inmate or offender upon whom an
 36 HIV test has been performed and the inmate's or offender's test
 37 results, in accordance with s. 381.004. The term "HIV test" has
 38 the same meaning as provided in s. 381.004. This paragraph is
 39 subject to the Open Government Sunset Review Act of 1995 in
 40 accordance with s. 119.15 and shall stand repealed on October 2,
 41 2022, unless reviewed and saved from repeal through reenactment
 42 by the Legislature.

43 (2) The records and information specified in paragraphs
 44 (1)(a)-(i) ~~(1)(a)-(h)~~ may be released as follows unless
 45 expressly prohibited by federal law:

46 (a) Information specified in paragraphs (1)(b), (d), and
 47 (f) to the Executive Office of the Governor, the Legislature,
 48 the Florida Commission on Offender Review, the Department of
 49 Children and Families, a private correctional facility or
 50 program that operates under a contract, the Department of Legal

51 | Affairs, a state attorney, the court, or a law enforcement
52 | agency. A request for records or information pursuant to this
53 | paragraph need not be in writing.

54 | (b) Information specified in paragraphs (1)(c), (e), and
55 | (i) ~~(h)~~ to the Executive Office of the Governor, the
56 | Legislature, the Florida Commission on Offender Review, the
57 | Department of Children and Families, a private correctional
58 | facility or program that operates under contract, the Department
59 | of Legal Affairs, a state attorney, the court, or a law
60 | enforcement agency. A request for records or information
61 | pursuant to this paragraph must be in writing and a statement
62 | provided demonstrating a need for the records or information.

63 | (c) Information specified in paragraph (1)(b) to an
64 | attorney representing an inmate under sentence of death, except
65 | those portions of the records containing a victim's statement or
66 | address, or the statement or address of a relative of the
67 | victim. A request for records of information pursuant to this
68 | paragraph must be in writing and a statement provided
69 | demonstrating a need for the records or information.

70 | (d) Information specified in paragraph (1)(b) to a public
71 | defender representing a defendant, except those portions of the
72 | records containing a victim's statement or address, or the
73 | statement or address of a relative of the victim. A request for
74 | records or information pursuant to this paragraph need not be in
75 | writing.

76 (e) Information specified in paragraph (1)(b) to state or
 77 local governmental agencies. A request for records or
 78 information pursuant to this paragraph must be in writing and a
 79 statement provided demonstrating a need for the records or
 80 information.

81 (f) Information specified in paragraph (1)(b) to a person
 82 conducting legitimate research. A request for records and
 83 information pursuant to this paragraph must be in writing, the
 84 person requesting the records or information must sign a
 85 confidentiality agreement, and the department must approve the
 86 request in writing.

87 (g) Protected health information and records specified in
 88 ~~paragraphs~~ ~~paragraph~~ (1)(a) and (h) to the Department of Health
 89 and the county health department where an inmate plans to reside
 90 if he or she has tested positive for the presence of the
 91 antibody or antigen to human immunodeficiency virus infection or
 92 as authorized in s. 381.004.

93 (h) Protected health information and mental health,
 94 medical, or substance abuse records specified in paragraph
 95 (1)(a) to the Executive Office of the Governor, the Correctional
 96 Medical Authority, and the Department of Health for health care
 97 oversight activities authorized by state or federal law,
 98 including audits; civil, administrative, or criminal
 99 investigations; or inspections relating to the provision of
 100 health services, in accordance with 45 C.F.R. part 164, subpart

101 | E.
 102 | (i) Protected health information and mental health,
 103 | medical, or substance abuse records specified in paragraph
 104 | (1)(a) to a state attorney, a state court, or a law enforcement
 105 | agency conducting an ongoing criminal investigation, if the
 106 | inmate agrees to the disclosure and provides written consent or,
 107 | if the inmate refuses to provide written consent, in response to
 108 | an order of a court of competent jurisdiction, a subpoena,
 109 | including a grand jury, investigative, or administrative
 110 | subpoena, a court-ordered warrant, or a statutorily authorized
 111 | investigative demand or other process as authorized by law, in
 112 | accordance with 45 C.F.R. part 164, subpart E, provided that:
 113 | 1. The protected health information and records sought are
 114 | relevant and material to a legitimate law enforcement inquiry;
 115 | 2. There is a clear connection between the investigated
 116 | incident and the inmate whose protected health information and
 117 | records are sought;
 118 | 3. The request is specific and limited in scope to the
 119 | extent reasonably practicable in light of the purpose for which
 120 | the information or records are sought; and
 121 | 4. De-identified information could not reasonably be used.
 122 | (j) Protected health information and mental health,
 123 | medical, or substance abuse records specified in paragraph
 124 | (1)(a) of an inmate who is or is suspected of being the victim
 125 | of a crime, to a state attorney or a law enforcement agency if

126 the inmate agrees to the disclosure and provides written consent
 127 or if the inmate is unable to agree because of incapacity or
 128 other emergency circumstance, in accordance with 45 C.F.R. part
 129 164, subpart E, provided that:

130 1. Such protected health information and records are
 131 needed to determine whether a violation of law by a person other
 132 than the inmate victim has occurred;

133 2. Such protected health information or records are not
 134 intended to be used against the inmate victim;

135 3. The immediate law enforcement activity that depends
 136 upon the disclosure would be materially and adversely affected
 137 by waiting until the inmate victim is able to agree to the
 138 disclosure; and

139 4. The disclosure is in the best interests of the inmate
 140 victim, as determined by the department.

141 (k) Protected health information and mental health,
 142 medical, or substance abuse records specified in paragraph
 143 (1)(a) to a state attorney or a law enforcement agency if the
 144 department believes in good faith that the information and
 145 records constitute evidence of criminal conduct that occurred in
 146 a correctional institution or facility, in accordance with 45
 147 C.F.R. part 164, subpart E, provided that:

148 1. The protected health information and records disclosed
 149 are specific and limited in scope to the extent reasonably
 150 practicable in light of the purpose for which the information or

151 | records are sought;

152 | 2. There is a clear connection between the criminal
 153 | conduct and the inmate whose protected health information and
 154 | records are sought; and

155 | 3. De-identified information could not reasonably be used.

156 | (l) Protected health information and mental health,
 157 | medical, or substance abuse records specified in paragraph
 158 | (1)(a) to the Division of Risk Management of the Department of
 159 | Financial Services, in accordance with 45 C.F.R. part 164,
 160 | subpart E, upon certification by the Division of Risk Management
 161 | that such information and records are necessary to investigate
 162 | and provide legal representation for a claim against the
 163 | Department of Corrections.

164 | (m) Protected health information and mental health,
 165 | medical, or substance abuse records specified in paragraph
 166 | (1)(a) of an inmate who is bringing a legal action against the
 167 | department, to the Department of Legal Affairs or to an attorney
 168 | retained to represent the department in a legal proceeding, in
 169 | accordance with 45 C.F.R. part 164, subpart E.

170 | (n) Protected health information and mental health,
 171 | medical, or substance abuse records of an inmate as specified in
 172 | paragraph (1)(a) to another correctional institution or facility
 173 | or law enforcement official having lawful custody of the inmate,
 174 | in accordance with 45 C.F.R. part 164, subpart E, if the
 175 | protected health information or records are necessary for:

- 176 1. The provision of health care to the inmate;
 177 2. The health and safety of the inmate or other inmates;
 178 3. The health and safety of the officers, employees, or
 179 others at the correctional institution or facility;
 180 4. The health and safety of the individuals or officers
 181 responsible for transporting the inmate from one correctional
 182 institution, facility, or setting to another;
 183 5. Law enforcement on the premises of the correctional
 184 institution or facility; or
 185 6. The administration and maintenance of the safety,
 186 security, and good order of the correctional institution or
 187 facility.
- 188 (o) Protected health information and mental health,
 189 medical, or substance abuse records of an inmate as specified in
 190 paragraph (1)(a) to the Department of Children and Families and
 191 the Florida Commission on Offender Review, in accordance with 45
 192 C.F.R. part 164, subpart E, if the inmate received mental health
 193 treatment while in the custody of the Department of Corrections
 194 and becomes eligible for release under supervision or upon the
 195 end of his or her sentence.
- 196 (p) Notwithstanding s. 456.057 and in accordance with 45
 197 C.F.R. part 164, subpart E, protected health information and
 198 mental health, medical, or substance abuse records specified in
 199 paragraph (1)(a) of a deceased inmate or offender to an
 200 individual with authority to act on behalf of the deceased

201 inmate or offender, upon the individual's request. For purposes
 202 of this section, the following individuals have authority to act
 203 on behalf of a deceased inmate or offender only for the purpose
 204 of requesting access to such protected health information and
 205 records:

206 1. A person appointed by a court to act as the personal
 207 representative, executor, administrator, curator, or temporary
 208 administrator of the deceased inmate's or offender's estate;

209 2. If a court has not made a judicial appointment under
 210 subparagraph 1., a person designated by the inmate or offender
 211 to act as his or her personal representative in a last will that
 212 is self-proved under s. 732.503; or

213 3. If a court has not made a judicial appointment under
 214 subparagraph 1. or if the inmate or offender has not designated
 215 a person in a self-proved last will as provided in subparagraph
 216 2., only the following individuals:

217 a. A surviving spouse.

218 b. If there is no surviving spouse, a surviving adult
 219 child of the inmate or offender.

220 c. If there is no surviving spouse or adult child, a
 221 parent of the inmate or offender.

222 (q) All requests for access to a deceased inmate's or
 223 offender's protected health information or mental health,

224 medical, or substance abuse records specified in paragraph
 225 (1)(a) must be in writing and must be accompanied by the

226 following:

227 1. If made by a person authorized under subparagraph
 228 (p)1., a copy of the letter of administration and a copy of the
 229 court order appointing such person as the representative of the
 230 inmate's or offender's estate.

231 2. If made by a person authorized under subparagraph
 232 (p)2., a copy of the self-proved last will designating the
 233 person as the inmate's or offender's representative.

234 3. If made by a person authorized under subparagraph
 235 (p)3., a letter from the person's attorney verifying the
 236 person's relationship to the inmate or offender and the absence
 237 of a court-appointed representative and self-proved last will.

238
 239 Records and information released under this subsection remain
 240 confidential and exempt from the provisions of s. 119.07(1) and
 241 s. 24(a), Art. I of the State Constitution when held by the
 242 receiving person or entity.

243 (6) This section does not limit any right to obtain
 244 records by subpoena or other court process.

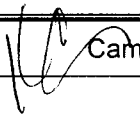
245 Section 2. The Legislature finds that it is a public
 246 necessity that an inmate or offender's protected health
 247 information and HIV testing information held by the Department
 248 of Corrections pursuant to s. 945.10, Florida Statutes, remain
 249 confidential and exempt from public disclosure as the
 250 Legislature envisioned in this statute and as provided in

251 department rules. Allowing protected health information to be
252 publicly disclosed would in some cases cause a conflict with
253 existing federal law and would be a violation of an inmate or
254 offender's privacy under the state constitution. Maintaining the
255 confidentiality of an inmate or offender's HIV testing
256 information is essential to his or her participation in such
257 testing. Thus, the harm from disclosure would outweigh any
258 public benefit derived therefrom. Appropriate records and
259 protected health information are available, however, to various
260 governmental entities in order for them to perform their duties.
261 It is mandatory that prisons function as effectively,
262 efficiently, and nonviolently as possible. To release such
263 information to the public would severely impede that function
264 and would jeopardize the health and safety of those within and
265 outside the prison system.

266 Section 3. This act shall take effect on the same date
267 that HB 1201 or similar legislation takes effect, if such
268 legislation is adopted in the same legislative session or an
269 extension thereof and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HR 1335 Arthur G. Dozier School for Boys
SPONSOR(S): Davis
TIED BILLS: **IDEN./SIM. BILLS:** SR 1440

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee		Camechis	 Camechis
1) Rules & Policy Committee			

SUMMARY ANALYSIS

PCS for HR 1335 recognizes the widespread and considerable abuse that took place at the Arthur G. Dozier School for Boys (Dozier) in Marianna and the campus in Okeechobee, Florida. The State of Florida operated the school in Marianna from 1900 to 2011, and the Okeechobee campus from 1955 to 2011.

The resolution declares that:

- The House of Representatives regrets that the treatment of boys who were sent to the Dozier School and the Okeechobee School was cruel, unjust, and a violation of human decency, and acknowledges this shameful part of the State's history.
- The House of Representatives apologizes to the boys who were confined to the Dozier School and the Okeechobee School and their family members, for the wrongs committed against them by employees of the State of Florida.
- The House of Representatives expresses its commitment to ensuring that children who have been placed in the State's care are protected from abuse and violations of fundamental human decency.

Legislative resolutions do not have the force of law and are not subject to the approval and veto powers of the Governor.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

From January 1, 1900, to June 30, 2011, the state operated a reform school in the panhandle town of Marianna. Over the years, the school operated under several different names: the Florida State Reform School (1900-1913), the Florida Industrial School for Boys (1914-1957), the Florida School for Boys (1957-1967), and, lastly, the Arthur G. Dozier School for Boys (1967-2011).¹ This analysis will refer to the Marianna school as “Dozier School.”

Children were sent to the school for serious crimes, but also for “incorrigibility,” “truancy,” and “dependency.”² Originally, the school housed children as young as 5 years old. As early as 1901, reports surfaced of children being chained to walls in irons, brutal whippings, and peonage (involuntary servitude).³ In the first 13 years of operation, more than 6 state-led investigations took place. Over the years, allegations of severe abuse, including physical and sexual abuse, and suspicious disappearances and death of children in the care of Dozier continued. Of the 100 deaths recorded in historical documents maintained by the school, and available for review up through the year 1960, just two persons who died were staff, and the remaining were boys ranging in age from 6 to 18.⁴ Investigators noted that deaths were significantly underreported.⁵ Also, investigators were able to ascertain a correlation between attempted escapes and mortality of the children.⁶

The state opened a new reform school in Okeechobee in 1955 to address overcrowding at Dozier School, and staff of Dozier School was transferred to the Okeechobee School where similar practices were implemented. Former students of the Okeechobee School report abuses similar to those practiced at the Dozier school in Marianna.

In 2005, former students of the school began to publish accounts of the abuse they experienced at Dozier.⁷ In 2008, Governor Charlie Crist directed the Florida Department of Law Enforcement (FDLE) to investigate 32 unmarked graves located on the property surrounding the school in response to complaints lodged by former students at Dozier.⁸ Former students of Dozier alleged that fellow students who died as a result of abuse were buried at the school cemetery.⁹ The University of South Florida (USF) subsequently conducted an investigation, which included excavations and exhumations.¹⁰

¹ FDLE Office of Executive Investigations, *Arthur G. Dozier School for Boys, Marianna, Florida, Investigative Summary*, Case No. EI-73-8455 (May 14, 2009).

² Erin H. Kimmerle, Ph.D.; E. Christian Wells, Ph.D.; and Antoinette Jackson, Ph.D.; Florida Institute for Forensic Anthropology & Applied Sciences, University of South Florida, *Report on the Investigation into the Deaths and Burials at the Former Arthur G. Dozier School for Boys in Marianna, Florida*, pg. 12 (Jan. 18, 2016) (on file with the House Judiciary Committee).

³ *Id.*

⁴ *Id.* at 14.

⁵ *Id.* at 22.

⁶ *Id.* at 14.

⁷ *Id.* at 30. The men who had been sent to Dozier from the late 1950's through the 1960's organized themselves as “The White House Boys Survivors Organization.”

⁸ Office of Executive Investigations, Florida Department of Law Enforcement, *FDLE Investigative Report* (May 14, 2009); available at <http://thewhitehouseboys.com/fdlereport.html> (last visited March 31, 2017).

⁹ *Id.* at 1.

¹⁰ *Id.* at 4.

University of South Florida Investigation

The University of South Florida received funding to determine the location of the children buried at Dozier School.¹¹ Funding was provided by the Legislature, USF, a grant from the National Institute of Justice, the U.S. Department of Justice, and private donations.¹² In January of 2016, the USF team submitted its report to the Florida Cabinet and Governor, and the Department of Environmental Protection.¹³

Using a forensic team, USF employed a Ground Penetrating Radar at the site of the school to detect graves, followed by archaeological test excavations in those areas.¹⁴ During the course of its investigation, USF excavated 55 graves at Dozier school, discovering 51 sets of human remains.¹⁵ As of April 2017, USF had made 7 positive identifications and 14 presumptive identifications.

Class Action Lawsuits

In 1983, Dozier School was the subject of a class action regarding the conditions of confinement. Plaintiffs alleged that youth continued to be hogtied, shackled, and held in solitary confinement, amidst media reports that continued to emerge of significant abuse perpetrated by staff on the children.¹⁶ In 2011, plaintiffs filed another class action lawsuit against the facility alleging abusive and unsafe conditions of confinement.¹⁷

United States Department of Justice Investigation

On April 7, 2010, the U.S. Department of Justice (DOJ) launched its own investigation of practices at Dozier and at the Jackson Juvenile Offender Center (JJOC), which together comprised the North Florida Youth Development Center (NYFDC). The DOJ found reasonable cause that the NYFDC had committed and was continuing to commit unconstitutional practices and violations of federal law protecting youths from harm.

On May 26, 2011, Florida's Department of Juvenile Justice announced the pending closure of the two facilities at the NYFDC, based on budgetary limitations. The DOJ released its report on conditions at Dozier and JJOC on December 1, 2011.¹⁸

2016 Legislation - Dozier Task Force and Funeral Expenses

In 2016, the Legislature passed CS/CS/SB 708¹⁹ to create the Dozier Task Force under DOS.²⁰ The task force was required to make recommendations to DOS regarding the creation and maintenance of

¹¹ Erin H. Kimmerle, Ph.D.; E. Christian Wells, Ph.D.; and Antoinette Jackson, Ph.D.; Florida Institute for Forensic Anthropology & Applied Sciences, University of South Florida, *Report on the Investigation into the Deaths and Burials at the Former Arthur G. Dozier School for Boys in Marianna, Florida*, pg. 11 (Jan. 18, 2016) (on file with the Senate Judiciary Committee).

¹² *Id.* at 4.

¹³ Erin H. Kimmerle, Ph.D.; E. Christian Wells, Ph.D.; and Antoinette Jackson, Ph.D.; Florida Institute for Forensic Anthropology & Applied Sciences, University of South Florida, *Report on the Investigation into the Deaths and Burials at the Former Arthur G. Dozier School for Boys in Marianna, Florida* (Jan. 18, 2016).

¹⁴ *Id.* at 11.

¹⁵ Erin H. Kimmerle, Ph.D.; E. Christian Wells, Ph.D.; and Antoinette Jackson, Ph.D.; Florida Institute for Forensic Anthropology & Applied Sciences, University of South Florida, *Report on the Investigation into the Deaths and Burials at the Former Arthur G. Dozier School for Boys in Marianna, Florida*, p. 11 (Jan. 18, 2016).

¹⁶ In the case of *Bobby M v. Chiles*, 907 F.Supp. 368, 372-373 (N.D. Fla. 1995), the court dismissed with prejudice the consent decree that had been entered into by the class and the defendant, on the basis that the Dozier school had remedied the abuse.

¹⁷ *J.B. v. Walters, et al.*, 4:11-cv-00083-RH (N.D. Fla. 2011).

¹⁸ U.S. Department of Justice, *Investigation of the Arthur G. Dozier School for Boys and the Jackson Juvenile Offender Center, Marianna, Florida* (Dec. 1, 2011), <https://www.justice.gov/opa/pr/department-justice-releases-investigative-findings-arthur-g-dozier-school-boys-and-jackson> (last visited March 31, 2017).

¹⁹ Chapter 2016-163, Laws of Fla. (CS/CS/SB 708).

²⁰ The Legislature provided for the membership of the task force to include: the Secretary of State, or his or her designee, to serve as chair; an appointee by the President of the Florida State Conference of the National Association for the Advancement of Colored People (NAACP); an appointee from the Florida Council of Churches; an appointee by the Attorney General who is a next of kin of a child buried at Dozier; an appointee by the Chief Financial Officer who promotes the welfare of people who were formerly sent to

a memorial, and the location of a site for the reinterment of unidentified or unclaimed remains.²¹ The task force was required to submit, by October 1, 2016, its recommendations to DOS, the Governor and Cabinet, the President of the Senate, the Speaker of the House of Representatives, and the Minority Leaders of the Senate and the House of Representatives.

The task force submitted the following recommendations:

1. The remains of the 1914 dormitory fire should be reinterred at Boot Hill Cemetery on the Dozier property.
2. Unidentified or unclaimed remains should be reinterred in Tallahassee, with the location to be determined by the Legislature.
3. Two memorials should be established, one in Jackson County and one in Tallahassee. Both memorials should be dedicated to the memories of the boys who lived and died at Dozier, as well as the 1914 dormitory fire victims.

The Legislature also approved payment of up to \$7,500 for each child whose body was buried at and exhumed from the Dozier School for Boys, for funeral, reinterment, and grave marker expenses. The legislation requires the Department of State (Department) to contract with the University of South Florida to identify and locate eligible next of kin for the children. By February 1, 2018, the Department must submit a report to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives regarding payments and reimbursements made for these expenses.

To fund these provisions, the bill included an appropriation from the General Revenue Fund in the amount of \$500,000 in nonrecurring funds to the Department. The legislation directed any amount remaining as of July 1, 2017, to revert back to General Revenue and be reappropriated for the same purpose in the 2017-2018 fiscal year.

EFFECT OF PROPOSED CHANGES

HR 1335 recognizes the widespread and considerable abuse that took place at the Arthur G. Dozier School for Boys in Marianna, which the state operated the school from 1900 to 2011, and the campus in Okeechobee, Florida.

The resolution declares that:

- The House of Representatives regrets that the treatment of boys who were sent to the Dozier School and the Okeechobee School was cruel, unjust, and a violation of human decency, and acknowledges this shameful part of the State's history.
- The House of Representatives apologizes to the boys who were confined to the Dozier School and the Okeechobee School and their family members, for the wrongs committed against them by employees of the State of Florida.
- The House of Representatives expresses its commitment to ensuring that children who have been placed in the State's care are protected from abuse and violations of fundamental human decency.

In support of the resolution, HR 1335 states that:

- The Florida State Reform School, also called the Florida Industrial School for Boys and later known as Arthur G. Dozier School for Boys, was opened by the State of Florida in 1900 in Marianna to house children who had committed minor criminal offenses such as incorrigibility, truancy, and smoking, as well as more serious offenses such as theft and murder.

Dozier; an appointee each by the President of the Senate and the Speaker of the House of Representatives; an appointee by the Jackson County Board of County Commissioners; and an appointee by the Commissioner of Agriculture. *Id.*

²¹ Ch. 2016-163, Laws of Florida.

- Many of the children who were sent to Dozier School were sentenced without legal representation before the court, often without a known basis for being sent to the school or specific duration of confinement.
- Within the first 13 years of Dozier School's operation, 6 state-led investigations were conducted in response to reports of children being chained to walls in irons, severely beaten, and used for child labor
- Throughout Dozier School's history, reports of abuse, suspicious deaths, and threats of closure plagued the school.
- Many former students of Dozier School have sworn under oath that they were beaten at a facility known as the "White House" located on school grounds.
- A psychologist employed at Dozier School testified under oath at a 1958 U.S. Senate Judiciary Hearing that boys at the school were beaten by an administrator, that the blows were severe and dealt with a great deal of force with a full arm swing over the head and down, that a leather strap approximately 10 inches long was used, and that the beatings were "brutality".
- A former Dozier School employee stated in interviews with law enforcement that in 1962 several employees of the school were removed from the facility based upon allegations that they made sexual advances towards boys at the facility.
- A forensic investigation funded by the Florida Legislature and conducted from 2013 to 2016 by the University of South Florida found incomplete records regarding deaths and burials that occurred at Dozier School between 1900 and 1960, and that families were often notified after the child was buried or denied access to their remains at the time of burial.
- The excavations conducted as part of the forensic investigation yielded 55 burial sites, 24 more sites than reported in official records.
- Given the lack of documentation and contradictions in the historical record, questions persist regarding the identity of persons buried at Dozier School and the circumstances surrounding their deaths.
- The State of Florida opened a new reform school in Okeechobee ("Okeechobee School") in 1955 to address overcrowding at Dozier School, and staff of Dozier School were transferred to the Okeechobee School where similar practices were implemented.
- Many former students of the Okeechobee School have sworn under oath that they were beaten at a facility known as the "Adjustment Unit" located on school grounds.
- Former Governor Claude Kirk toured Dozier School in 1968 and stated, "If one of your kids were kept in such circumstances, you'd be up there with rifles".
- Dozier School was closed in 2011 after investigations by the Florida Department of Law Enforcement and the Civil Rights Division of the United States Department of Justice.
- More than 500 former students of Dozier School and the Okeechobee School have come forward with reports of physical, mental, and sexual abuse by school staff during the 1940s, 1950s, and 1960s, and resulting trauma that has endured throughout their adult lives.

B. SECTION DIRECTORY: N/A

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None
2. Expenditures: None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None

2. Expenditures: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None

D. FISCAL COMMENTS: None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: N/A

2. Other: None

B. RULE-MAKING AUTHORITY: N/A

C. DRAFTING ISSUES OR OTHER COMMENTS: None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

House Resolution

A resolution acknowledging the abuses experienced by children confined to the Arthur G. Dozier School for Boys and the Okeechobee School, expressing the Legislature's regret for such abuses, apologizing to the boys who were confined to the Dozier School and the Okeechobee School and their family members, and expressing a commitment to ensuring that children placed in the state's care are protected from abuse and violations of human decency.

WHEREAS, the Florida State Reform School, also called the Florida Industrial School for Boys and later known as Arthur G. Dozier School for Boys, referred to in this resolution as "Dozier School", was opened by the State of Florida in 1900 in Marianna to house children who had committed minor criminal offenses such as incorrigibility, truancy, and smoking, as well as more serious offenses such as theft and murder, and

WHEREAS, many of the children who were sent to Dozier School were sentenced without legal representation before the court, often without a known basis for being sent to the school or specific duration of confinement, and

WHEREAS, within the first 13 years of Dozier School's operation, 6 state-led investigations were conducted in response to reports of children being chained to walls in irons, severely

26 | beaten, and used for child labor, and

27 | WHEREAS, throughout Dozier School's history, reports of
28 | abuse, suspicious deaths, and threats of closure plagued the
29 | school, and

30 | WHEREAS, many former students of Dozier School have sworn
31 | under oath that they were beaten at a facility located on Dozier
32 | School grounds known as the "White House", and

33 | WHEREAS, a psychologist employed at Dozier School testified
34 | under oath at a 1958 U.S. Senate Judiciary Hearing that boys at
35 | the school were beaten by an administrator, that the blows were
36 | severe and dealt with a great deal of force with a full arm
37 | swing over the head and down, that a leather strap approximately
38 | 10 inches long was used, and that the beatings were "brutality,"
39 | and

40 | WHEREAS, a former Dozier School employee stated in
41 | interviews with law enforcement that, in 1962, several employees
42 | of the school were removed from the facility based upon
43 | allegations that they made sexual advances towards boys at the
44 | facility, and

45 | WHEREAS, a forensic investigation funded by the Florida
46 | Legislature and conducted from 2013 to 2016 by the University of
47 | South Florida found incomplete records regarding deaths and
48 | burials that occurred at Dozier School between 1900 and 1960,
49 | and that families were often notified after the child was buried
50 | or denied access to their remains at the time of burial, and

51 WHEREAS, the excavations conducted as part of the forensic
 52 investigation yielded 55 burial sites, 24 more sites than
 53 reported in official records, and

54 WHEREAS, given the lack of documentation and contradictions
 55 in the historical record, questions persist regarding the
 56 identity of persons buried at Dozier School and the
 57 circumstances surrounding their deaths, and

58 WHEREAS, in 1955, the State of Florida opened a new reform
 59 school in Okeechobee, called the Flroida School for Boys at
 60 Okeechobee School, referred to in this resolution as "Okeechobee
 61 School," to address overcrowding at Dozier School, and staff of
 62 Dozier School were transferred to the Okeechobee School where
 63 similar practices were implemented, and

64 WHEREAS, many former students of the Okeechobee School have
 65 sworn under oath that they were beaten at a facility on school
 66 grounds known as the "Adjustment Unit", and

67 WHEREAS, former Governor Claude Kirk toured Dozier School
 68 in 1968 and stated, "If one of your kids were kept in such
 69 circumstances, you'd be up there with rifles," and

70 WHEREAS, Dozier School was closed in 2011 after
 71 investigations by the Florida Department of Law Enforcement and
 72 the Civil Rights Division of the United States Department of
 73 Justice, and

74 WHEREAS, more than 500 former students of Dozier School and
 75 the Okeechobee School have come forward with reports of

76 physical, mental, and sexual abuse by school staff during the
77 1940s, 1950s, and 1960s, and resulting trauma that has endured
78 throughout their adult lives; NOW THEREFORE,
79 Be It Resolved by the House of Representatives of the State of
80 Florida:

81

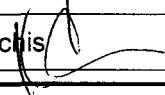
82 That the House of Representatives regrets that the
83 treatment of boys who were sent to the Dozier School and the
84 Okeechobee School was cruel, unjust, and a violation of human
85 decency, and acknowledges this shameful part of the State's
86 history.

87 BE IT FURTHER RESOLVED that the House of Representatives
88 apologizes to the boys who were confined to the Dozier School
89 and the Okeechobee School and their family members, for the
90 wrongs committed against them by employees of the State of
91 Florida.

92 BE IT FURTHER RESOLVED that the House of Representatives
93 expresses its commitment to ensuring that children who have been
94 placed in the State's care are protected from abuse and
95 violations of fundamental human decency.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7091 Probation and Community Control
SPONSOR(S): Criminal Justice Subcommittee, Altman
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 790

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	8 Y, 0 N	Hall	White
1) Justice Appropriations Subcommittee	13 Y, 0 N	Smith	Gusky
2) Judiciary Committee		Hall <i>WH</i>	Camechis 

SUMMARY ANALYSIS

Probation is a form of community supervision that requires an offender to have specified contacts with a probation officer in addition to completing other imposed terms and conditions. In Florida, the Department of Corrections is responsible for supervising probationers.

Chapter 948, F.S., relates to probation and community control and defines the various levels of supervision to which a court may sentence an offender. The bill revises various sections of ch. 948, F.S., to delete obsolete provisions, use terminology consistently, and reflect the Department of Corrections' current practices relating to probation and community control.

The bill also amends s. 948.06, F.S., to address the recent court decision in *Mobley v. State*. In *Mobley*, the Fourth District Court of Appeal held that an offender's probationary term was not tolled when the trial court issued an arrest warrant for technical violations of probation. The court held that the probation statute's reference to s. 901.02, F.S., which authorizes a judge to issue an arrest warrant for the commission of a crime, required the trial court to issue a warrant which alleged the probationer committed a new crime in order for probation to be tolled.

As a result of *Mobley*, an offender's probationary term is not currently tolled if the arrest warrant alleges only technical violations, instead of a new crime. This may result in the offender's probationary term expiring before the court has an opportunity to sentence the offender for the technical violations.

The bill amends s. 948.06, F.S., to remove the requirement for the warrant to be issued pursuant to s. 901.02, F.S., thereby removing the requirement that the warrant be issued for a new crime. As a result, any warrant for a violation of probation, including a technical violation, would result in the offender's probationary term being tolled.

The Criminal Justice Impact Conference (CJIC) met on March 29, 2017, and determined the bill would decrease the prison population by an indeterminate amount. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Probation and Community Control – Updating Definitions and Terminology

Chapter 948, F.S., relates to probation and community control, with s. 948.001, F.S., defining terms relevant to the chapter. Probation is a form of community supervision that requires specified contacts with a parole and probation officer in addition to completion of other imposed terms and conditions.¹ The least restrictive form of probation is administrative probation, which is a form of noncontact supervision in which an offender who presents a low risk of harm to the community may, upon successful completion of at least half the term of probation, be transferred to nonreporting status until the expiration of the probation term.² Community control is the most intense form of probation, in which the offender is subject to supervised custody in the community, including surveillance on weekends and holidays, by a probation officer with a restricted caseload.³

Section 948.001, F.S., provides a definition for a “community residential drug punishment center” as a residential drug punishment center designated by the Department of Corrections (“FDC”).⁴ However, the centers are no longer in existence as the Legislature repealed s. 948.034, F.S., which related to community residential drug punishment centers, in 2010.⁵

Effect of Bill

The bill amends s. 948.001, F.S., to update the definitions for “administrative probation” and “probation” and repeal the definition for “community residential drug punishment center.” The definition for “administrative probation” is amended to specify that it is a form of no contact, nonreporting supervision and specifies that the authority for this type of reduced level of supervision is provided for in s. 948.013, F.S. The definition of “probation” is amended to remove the reference to parole officers as FDC now employs probation officers for all forms of supervision.⁶ Finally, s. 948.001, F.S., is amended to remove the definition for a “community residential drug treatment center” because such centers no longer exist.

The bill also amends ss. 948.03 and 948.101, F.S., relating to the terms and conditions of probation and the terms and conditions of community control, respectively, to remove references to parole officers and correctional probation officers as FDC uniformly uses the term “probation officer”. Additionally, the bill repeals references to “probation program drug punishment center” or “community residential facility” because these centers and facilities no longer exist.

Uniform Order of Supervision

In relevant part, s. 948.01, F.S., authorizes a court to place a defendant on probation or into community control. Pursuant to this statute, FDC is required to consult with the Office of the State Courts Administrator to *develop* and *disseminate* uniform order of supervision⁷ forms to the courts by July 1 of each year. The law requires the courts to use the forms provided by FDC whenever a person is placed on community supervision.

¹ s. 948.001(9), F.S.

² s. 948.001(1), F.S.

³ s. 948.001(3), F.S.

⁴ s. 948.001(4), F.S.

⁵ ch. 2010-113, L.O.F.

⁶ Department of Corrections, Agency Bill Analysis for PCB CRJ 17-05 (2017) (on file with Criminal Justice Subcommittee).

⁷ An order of supervision refers to an individual order of probation, community control, parole, conditional release, or other document from a sentencing, releasing or pretrial authority, providing for specific terms and conditions of a community supervision program.

FLORIDA DEPARTMENT OF CORRECTIONS, *Community Supervision Definitions*,

<http://www.dc.state.fl.us/facilities/comcorinfo/definitions.html> (last visited March 16, 2017).

Effect of Bill

The bill amends s. 948.01, F.S., to revise language to acknowledge that the uniform order of supervision was developed and has been implemented since 2009. The bill amends the requirement for FDC to instead *revise* the form, as necessary, and *make it available* to courts thereafter.

Split Sentences

Section 948.012, F.S., authorizes a sentencing court to sentence a defendant for any felony or misdemeanor, except for a capital felony, to a split sentence. A split sentence occurs when a defendant is sentenced to a specified term of incarceration, in either the county jail or state prison, which is followed by a period of community supervision following his or her release.⁸ The period of probation or community control must begin immediately following a defendant's release from incarceration, except in circumstances where the defendant is subject to an involuntary civil commitment proceeding pursuant to ch. 394, F.S.⁹

Effect of the Bill

The bill creates an additional exception to the requirement for a defendant's period of probation or community control to begin immediately following release from incarceration for those required to complete addiction-recovery supervision.¹⁰ An offender who received a split sentence of probation following his or her release from incarceration must first serve out the term of addiction-recovery supervision before the term of probation or community control may begin. The bill creates the additional exception to acknowledge that such an offender is not permitted to begin his or her term of probation or community control immediately following release from incarceration.

Administrative Probation

Section 948.013, F.S., prohibits certain types of offenders from eligibility for administrative probation. Currently, persons convicted of offenses committed on or after July 1, 1998, are ineligible for administrative probation if they are sentenced to or serving a term of probation for committing, attempting, conspiring, or soliciting to commit, any one of the following felony offenses:

- Section 787.01, F.S. (Kidnapping) or s. 787.02, F.S. (False imprisonment), where the victim is a minor and the defendant is not the victim's parent;
- Section 787.025, F.S. (Luring or enticing a child);
- Section 787.06(3)(g), F.S. (Human trafficking);
- Chapter 794, F.S. (Sexual battery);
- Former s. 796.03, F.S. (Procuring person under age of 18 for prostitution);
- Section 800.04, F.S. (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
- Section 825.1025(2)(b), F.S. (Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person);
- Section 827.071, F.S. (Sexual performance by a child);
- Section 847.0133, F.S. (Protection of minors, prohibition of certain acts in connection with obscenity);
- Section 847.0135, F.S. (Computer pornography, traveling to meet a minor); or
- Section 847.0145, F.S. (Selling or buying of minors).

⁸ *Id.*

⁹ This type of proceeding relates to the civil commitment of a sexually violent predator following his or her release from incarceration which causes them to be transferred to the custody of the Department of Children and Families ("DCF"). The period of probation following release from incarceration for one of these offenders is tolled while he or she remains in the custody of the DCF. ch. 394, F.S.

¹⁰ Any offender released from prison who is convicted of a crime committed on or after July 1, 2001, must be given addiction-recovery supervision if the offender has: 1) a history of substance abuse or addiction; 2) participated in any drug treatment; 3) no current or previous convictions for a violent offense; 4) no current or previous convictions for drug trafficking or for the unlawful sale of a controlled substance; 5) no current or previous convictions for a property offense, with certain exceptions; and 6) no current or previous conviction for a traffic offense involving injury or death. s. 944.4731, F.S.

Effect of Bill

The bill amends s. 948.013, F.S., to specify that the current provisions of ineligibility for administrative probation for certain offenders apply to persons whose crimes were committed after July 1, 1998, but before October 1, 2017. Additionally the bill adds a new provision to make offenders, whose offense was committed on or after October 1, 2017, ineligible for placement on administrative probation if the person is sentenced to or serving a term of probation for committing, attempting, conspiring, or soliciting to commit, any of the following felony offenses:

- Any offense described in s. 775.21(4)(a)1.a. or (4)(a)1.b.;¹¹ or
- Any offense described in s. 943.0435(1)(h)1.a.¹²

The cross-referenced sections of law result in any offender who is convicted of an offense on or after October 1, 2017, which qualifies for designation as a “sexual predator” or “sexual offender,” being ineligible for administrative probation. This eliminates the need for the enumerated offenses currently listed in the statute to be continually updated; instead, the offenses will be updated when the cross-referenced sections of law relating to the classification of sexual predators or sexual offenders are updated.

Community Service

Public service, as it relates to probation and community control, is work an offender performs without pay for the benefit of the community. The work may only be performed for designated tax-supported or tax-exempt entities, which enter into an agreement with FDC to employ offenders as a condition of supervision. Section 948.031, F.S., requires FDC to establish a public works program for a county upon request of the chief judge of the circuit. FDC does not operate an established public service work program in every county in the state.¹³

Effect of Bill

The bill amends s. 948.031, F.S., to authorize FDC to require certain offenders to complete *community service*. The amendment reflects the fact that FDC does not currently have a public service work program in all counties in Florida and emphasizes that such a requirement should be performed for the benefit of the community.

Residential Treatment as a Condition of Probation or Community Control

As a condition of probation or community control, an offender may be sentenced to complete a residential treatment program. Section 948.035, F.S., restricts the court from ordering residential treatment unless supervised by one of the following types of facilities:

- A FDC probation and restitution center;¹⁴
- A probation program drug punishment treatment center;¹⁵
- A community residential facility which is owned and operated by any public or private entity, excluding a community correctional center as defined in s. 944.026, F.S.;¹⁶ or
- A county-owned facility.

¹¹ The Florida Sexual Predator Act lists the offenses for which an offender is designated as a “sexual predator” and is subject to registration and community public notification provisions under the Act. s. 775.21(4), F.S.

¹² This section lists the offenses for which a person is designated a “sexual offender” and is subject to registration and reporting requirements. s. 943.0435, F.S.

¹³ Department of Corrections, Agency Bill Analysis for PCB CRJ 17-05 (2017) (on file with Criminal Justice Subcommittee).

¹⁴ Probation and restitution centers (“PRC”) are medium intensity residential programs for selected offenders on probation and community control who require more supervision. The PRC stresses employment and restitution to the victim, community service work, GED and basic life skills, group and individual counseling, and other opportunities for self-improvement. All offenders in the PRC receive a substance abuse evaluation and, if treatment is needed, are treated at the PRC facility. FLORIDA DEPARTMENT OF CORRECTIONS, *Executive Summary: Probation and Restitution Centers*, <http://www.dc.state.fl.us/pub/subabuse/probation/99-00/execsum3.html>.

¹⁵ Section 948.034, F.S., regarding residential drug punishment centers was repealed in 2010. ch. 2010-113, L.O.F.

¹⁶ Community-based residential drug treatment facilities include both secure and nonsecure facilities. s. 944.026(b), F.S.

Prior to an offender's admission into a treatment center, the court is required to obtain an individual assessment and recommendation pursuant to the Community Control Implementation Manual which must be considered by the court when ordering such a placement.¹⁷

Effect of Bill

The bill amends s. 948.035, F.S., to reflect the current process for evaluating and referring offenders to residential treatment programs. The bill repeals references to a probation program drug punishment treatment center, which no longer exists. Further, the bill removes the requirement for an individualized assessment to be performed in accordance with the Community Control Implementation Manual, as this manual is obsolete.¹⁸ Instead, the bill amends the requirements to reflect the current practice of having a qualified practitioner provide an assessment and recommendation on the appropriate treatment needs of an offender.

Education and Learning as a Condition of Probation

Section 948.037, F.S., requires a court to order an offender who has not obtained a high school diploma or a high school equivalency diploma to make a good faith effort towards obtaining the same as a condition of probation or community control. The law prohibits the court from revoking an offender's probation or community control because he or she is unable to achieve such skills or diploma, but may revoke supervision if the offender fails to make a good faith effort¹⁹ to do so.

Effect of Bill

The bill amends s. 948.037, F.S., to make a court's decision to order an offender to complete education or learning as a condition of supervision discretionary, rather than mandatory.

Violation of Probation and Community Control

Upon a violation of probation, it is typically the probation officer's responsibility to file an affidavit²⁰ alleging the acts which constitute a violation of probation. A violation of probation may occur for a new crime committed while the offender is on probation, or for a technical violation,²¹ such as failure to pay costs of supervision or a positive urinalysis test. In some circuits, the chief judge may direct FDC to use a notification letter for technical violations, instead of using a violation report, affidavit, or warrant.²²

When probation is properly tolled upon the filing of an affidavit alleging a violation of probation, the court continues to maintain jurisdiction over the offender for the violation that is alleged and for any new violation which may occur during the tolling period. The probation officer is permitted to continue to supervise the probationer until the court revokes or terminates the probation.²³

Section 948.06(1)(f), F.S., provides the current alternatives by which an offender's probationary period may be tolled upon a violation of probation. In addition to the filing of an affidavit alleging a violation of probation, one of the following must also occur:

- Issuance of a warrant pursuant to s. 901.02, F.S.;
- A warrantless arrest of the offender; or
- Issuance of a notice to appear.

¹⁷ s. 948.035(3), F.S.

¹⁸ ch. 2008-250, L.O.F.

¹⁹ "Good faith effort" is defined to mean "the offender is enrolled in a program of instruction and is attending and making satisfactory progress toward completion of requirements." s. 948.037(1), F.S.

²⁰ An affidavit "refers to a sworn written statement of fact that details the conditions of supervision violated and the manner in which the conditions were violated." FLORIDA DEPARTMENT OF CORRECTIONS, *Community Supervision Definitions*, www.dc.state.fl.us/facilities/comcorinfo/definitions.html (last visited March 16, 2017).

²¹ "Technical violation" generally means any alleged violation of supervision that is not a new felony offense, misdemeanor offense, or criminal traffic offense. See s. 948.06(h)1., F.S.

²² If this is applicable, the chief judge must provide written direction as to the types of technical violations which are to be reported by notification letter of a technical violation, any exceptions to those violations, and the required process for submissions. s. 948.06(g), F.S.

²³ s. 948.06(1)(f), F.S.

Section 901.02, F.S., relating to the issuance of arrest warrants, authorizes a judge to issue an arrest warrant for *any crime committed* within the judge's jurisdiction, when he or she is satisfied that probable cause exists.²⁴

Recently, a Fourth District Court of Appeal case exposed a potential defect in s. 948.06(1)(f), F.S. In *Mobley v. State*, the defendant was charged with technical violations of probation for failing to make restitution payments and a drug testing fee payment. On the same day the affidavit of violation of probation was filed, the trial court issued warrants to arrest the defendant for the technical violations. After the date the defendant's probation was originally set to expire, the court sentenced him to over 25 years in prison.²⁵

Mobley appealed arguing that the warrant for his arrest was not issued pursuant to s. 901.02, F.S., because it did not allege he committed any crime. Therefore, he argued, his probationary period had not been tolled and had expired before the sentencing hearing, meaning the court lacked jurisdiction to sentence him for the violation.

The Fourth District Court of Appeal agreed, holding that s. 948.06(1)(f), F.S., clearly required a warrant to be issued under s. 901.02, F.S., in order for the probationary period to be tolled. In turn, the court held that s. 901.02, F.S., required that the warrant be issued for a *crime*. In this case, because the warrants were issued for technical violations, and not crimes, they were not issued under s. 901.02, F.S., and the defendant's probation was never tolled.²⁶ At least one other conviction for a violation of probation has been reversed and the sentence vacated based on the same analysis in the court used in *Mobley*.²⁷ Recently, the Florida Supreme Court declined a certified question by the Fourth District Court of Appeal following the *Mobley* decision.²⁸

Effect of the Bill

The bill amends s. 948.06, F.S., to remove the requirement that a warrant for a violation of probation be issued under s. 901.02, F.S. Rather, the bill authorizes a warrant to be issued for any violation, thereby making *any* warrant for a violation of probation sufficient to toll an offender's probationary term. Additionally, the bill amends s. 948.06, F.S., to provide an additional option for technical violations in lieu of a violation report, affidavit, and warrant, by allowing a probation officer to issue a notice to appear. Furthermore, the bill removes references to parole officers throughout s. 948.06, F.S., to conform the language to the rest of ch. 948, using the term "probation officer."

Payment for Cost of Supervision

Supervision fees are used by FDC to offset the costs associated with community supervision programs. Section 948.09, F.S. requires a person placed under any of the following forms of supervision to pay a monthly fee:

- Probation;
- Drug offender probation;
- Community control;
- Parole;
- Addiction-recovery supervision;
- Conditional release supervision; or
- Pretrial intervention program.

The law requires FDC to consider the offender's ability to pay and to incorporate that ability into a payment plan, if necessary. An offender's failure to pay supervision fees may result in the revocation of probation by the court, the revocation of parole or conditional release by the Florida Commission on

²⁴ s. 901.02(1), F.S. (*emphasis added*).

²⁵ *Mobley v. State*, 197 So. 3d 572, 573 (Fla. 4th 2016).

²⁶ *Id.* at 574.

²⁷ *See Lewin v. State*, 192 So. 3d 91 (Fla. 4th 2016).

²⁸ *State v. Mobley*, SC 16-936, 2016 Fla. LEXIS 1174 (Fla. 2016).

Offender Review, the revocation of control release by the Control Release authority, or removal from a pretrial intervention program by the state attorney.²⁹

Section 948.09, F.S., authorizes FDC to exempt a person from payment of any or all of his or her supervision fees if one of the following circumstances applies:

- The offender has diligently attempted, but is unable to *obtain* employment which provides him or her sufficient income to make payments;
- The offender is a student and certification of such student status is supplied by the school to *the Secretary of Corrections*;
- The offender has an employment handicap, as determined by an examination *acceptable to, or ordered by, the Secretary of Corrections*;
- The offender's age prevents him or her from obtaining employment;
- The offender is responsible for dependents and the payment of supervision fees constitutes an undue hardship on the offender;
- The offender's supervision has been transferred outside the state; or
- *There are other extenuating circumstances, as determined by the Secretary of Corrections.*

Section 948.09(4), F.S., authorizes FDC to contract with public or private entities to provide probation services for misdemeanor offenders. The law requires the provider to compile a monthly report, made available to DOC, relating to supervision of misdemeanor offenders.

Effect of Bill

The bill amends s. 948.09, F.S., to remove language specifying the different types of probation or community control requiring an offender to pay a supervision fee. Rather, the bill specifies that anyone placed on supervision or in a pretrial intervention program must pay a monthly supervision fee. The bill repeals reference to parole as a form of supervision that may be revoked for failure to pay supervision fees.

Additionally, the bill amends the factors for which FDC may exempt a person from payment of supervision fees in the following ways:

- Adds the offender's inability to *maintain* employment, despite diligent attempt, which provides him or her with sufficient income to make such payments;
- Changes the person to whom certification of student status must be supplied to the *offender's probation officer*;
- Removes the requirement that the examination determining employment handicap be *acceptable to, or approved by, the Secretary of Corrections*;
- Removes *other extenuating circumstances, as determined by the Secretary of Corrections.*

Further, the bill repeals s. 948.09(4), F.S., related to misdemeanor probation providers, as FDC reports this section is outdated and obsolete.³⁰

Community Control Programs

Community control is the most rigid form of supervision and is generally used as an alternative for offenders that otherwise would have been incarcerated in jail or prison. Section 948.10, F.S., provides that community control should be used to address the following offenders:

- Those who violate probation with technical violations or *misdemeanor* violations;
- Those who violate parole with technical violations or *misdemeanor* violations; or
- Those found guilty of felonies, who, because of their criminal background or the seriousness of the offense, would not be placed on regular probation.

²⁹ s. 948.09, F.S.

³⁰ Department of Corrections, Agency Bill Analysis PCB CRJ 17-05 (2017) (on file with Criminal Justice Subcommittee).

The law requires the caseloads of community control officers to be no more than 25 cases per officer and requires FDC to commit at least ten percent of its probation field staff to the operation of the community control program.³¹ Section 948.10(5), F.S., currently requires FDC to make an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, including a detailed analysis of the community control program.

Effect of Bill

The bill amends s. 948.10, F.S., to add the term “home confinement” to the section directory, specifying that community control is such a program. Additionally, the bill repeals the reference to *misdemeanor* violations in the targeted groups of offenders for community control. As such, the bill authorizes courts and the Florida Commission on Offender Review to use community control for offenders who violate their probation or parole with *any* new violation of law, not just misdemeanor offenses. The bill repeals the requirement for FDC to allocate at least ten percent of its probation field staff to the community control program and increases the maximum caseload of an officer to 30 cases. Furthermore, the bill repeals s. 948.10(5), F.S., requiring FDC to make an annual report to certain government officials, because the law requiring this report was repealed by the Legislature in 2008.³²

Electronic Monitoring

Currently, s. 948.11, F.S., *authorizes* FDC to electronically monitor an offender who is sentenced to community control when the court has imposed electronic monitoring as a condition of supervision.

Effect of Bill

The bill amends s. 948.11, F.S., to *require* FDC to electronically monitor an offender on community control when the court has imposed such as a condition of supervision. Additionally, the bill makes technical changes to s. 948.11, F.S., to use the uniform terminology of “supervision” and “probation officer” as used throughout ch. 948, F.S.

Misdemeanor Probation Services

Section 948.15, F.S., allows a private entity to contract with a county to provide misdemeanor probation services. The law requires such a contract to include certain provisions, including the requirement to report staff qualifications and criminal record checks of staff in accordance with essential standards established by the American Correctional Association as of January 1, 1991.³³

Effect of Bill

The bill removes the requirement for private probation providers to provide staff qualifications and criminal record checks in accordance with essential standards established by the American Correctional Association as of January 1, 1991, as the standards are obsolete.³⁴

Miscellaneous Effects of Bill

The bill repeals s. 948.50, F.S. providing the short title “Community Corrections Partnership Act.”

The bill reenacts the following provisions to incorporate the amendments by the bill:

- Section 921.187, F.S., relating to disposition and sentencing, is reenacted to incorporate the amendment made to s. 948.013, F.S.
- Section 947.1405, F.S., relating to the conditional release program, is reenacted for the purpose of incorporating the amendment made to s. 948.09, F.S.
- Sections 947.1747 and 948.01, F.S., relating to community control as a special condition of parole and when a court may place a defendant on probation or into community control, respectively, are reenacted to incorporate the amendment made to s. 948.10, F.S.

³¹ s. 948.10(2), F.S.

³² ch. 2008-250, L.O.F.

³³ s. 948.15(3), F.S.

³⁴ Department of Corrections, Agency Bill Analysis PCB CRJ 17-05 (2017) (on file with Criminal Justice Subcommittee).

The bill provides an effective date of July 1, 2017, except as otherwise expressly provided in the act. Section 4. of the act takes effect on October 1, 2017.

B. SECTION DIRECTORY:

Section 1: Amending s. 948.001, F.S., relating to definitions.

Section 2: Amending s. 948.01, F.S., relating to when the court may place defendant on probation or into community control.

Section 3: Amending s. 948.012, F.S., relating to split sentence of probation or community control and imprisonment.

Section 4: Amending s. 948.013, F.S., relating to administrative probation.

Section 5: Amending s. 948.03, F.S., relating to terms and conditions of probation.

Section 6: Amending s. 948.031, F.S., relating to conditions of probation or community control; public service.

Section 7: Amending s. 948.035, F.S., relating to residential treatment as a condition of probation or community control.

Section 8: Amending s. 948.037, F.S., relating to education and learning as a condition of probation or community control.

Section 9: Amending s. 948.06, F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.

Section 10: Amending s. 948.09, F.S., relating to payment for cost of supervision and rehabilitation.

Section 11: Amending s. 948.10, F.S., relating to community control programs.

Section 12: Amending s. 948.101, F.S., relating to terms and conditions of community control.

Section 13: Amending s. 948.11, F.S., relating to electronic monitoring devices.

Section 14: Amending s. 948.15, F.S., relating to misdemeanor probation services.

Section 15: Repealing s. 948.502, F.S., relating to a short title.

Section 16: Reenacting s. 921.187(1)(n), F.S., relating to disposition and sentencing, alternatives, and restitution, to incorporate the amendment made to s. 948.013, F.S., in a reference thereto.

Section 17: Reenacting s. 947.1405(7)(b), F.S., relating to conditional release program, to incorporate the amendment made to s. 948.09, F.S., in a reference thereto.

Section 18: Reenacting s. 947.1747, F.S., relating to community control as a special condition of parole, to incorporate the amendment made to s. 948.10, F.S., in a reference thereto.

Section 19: Reenacting s. 948.01(3), F.S., relating to when a court may place a defendant on probation or into community control, to incorporate the amendment made to s. 948.10, F.S., in a reference thereto.

Section 20: Providing effective dates.

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: The Criminal Justice Impact Conference (CJIC) met on March 29, 2017, and determined the bill would decrease the prison population by an indeterminate amount.

"While amending s. 948.013, F.S. should not affect current populations, future decision making by judges could be impacted by the discretion in the use of adult education programs and the expansion of further community control for technical violators. Per FDC, in FY 15-16, there were 19,082 technical violators, and 6,321 were sentenced to prison. It is not known how many currently sent to prison would be affected by changes in this law."³⁵

The Department of Corrections does not anticipate a fiscal impact. Any potential impact on courts is unknown at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill does not appear to have any impact on local government revenues.
2. Expenditures: The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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

2. Other: None.

B. RULE-MAKING AUTHORITY: The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

³⁵ Department of Economic and Demographic Research, HB 7091 – Probation and Community Control, "Criminal Justice Impact Conference", March 29, 2017, <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB939.pdf>.

1 A bill to be entitled
 2 An act relating to probation and community control;
 3 amending s. 948.001, F.S.; redefining terms and
 4 deleting a definition; amending s. 948.01, F.S.;
 5 requiring the Department of Corrections to revise and
 6 make available to the courts, rather than develop and
 7 disseminate to the courts, uniform order of
 8 supervision forms; amending s. 948.012, F.S.; adding
 9 the addiction-recovery supervision program as an
 10 exception to the immediate commencement of the period
 11 of probation upon the release of the defendant;
 12 amending s. 948.013, F.S.; revising the list of
 13 offenses that make an offender ineligible for
 14 placement on administrative probation during specified
 15 time periods; amending s. 948.03, F.S.; authorizing
 16 the court to require a probationer or offender to
 17 report to, to permit visits by, to submit to random
 18 testing as directed by, probation officers, rather
 19 than probation and parole supervisors or correctional
 20 probation officers; removing the option of
 21 incarceration in specified locations if a court
 22 withholds adjudication of guilt or imposes
 23 incarceration as a condition of probation; amending s.
 24 948.031, F.S.; replacing the term "public service"
 25 with the term "community service"; amending s.

26 948.035, F.S.; removing a probation program drug
 27 punishment treatment community facility from the list
 28 of residential treatment or incarceration facilities
 29 that an offender must be restricted to under certain
 30 circumstances; requiring a qualified practitioner to
 31 provide, rather than a court to obtain, an assessment
 32 and recommendation on the treatment needs of an
 33 offender entering a treatment facility; amending s.
 34 948.037, F.S.; authorizing, rather than requiring, a
 35 court to require an offender to make a good faith
 36 effort toward completion of certain skills or a
 37 specific diploma as a condition of community control,
 38 probation, or probation following incarceration;
 39 amending s. 948.06, F.S.; replacing the term "parole
 40 or probation supervisor" with the term "probation
 41 officer"; specifying that the probationary period is
 42 tolled after the issuance of a violation of probation
 43 or community control warrant, rather than an arrest
 44 warrant; authorizing a chief judge to direct the
 45 department to use a notice to appear for technical
 46 violations; amending s. 948.09, F.S.; expanding the
 47 types of supervision under which an offender must pay
 48 for the cost of supervision; conforming provisions to
 49 changes made by the act; revising the factors under
 50 which the department may exempt an offender from

51 | payments; requiring the certification of student
 52 | status to be supplied to the offender's probation
 53 | officer, rather than to the Secretary of Corrections;
 54 | deleting duties of the secretary; deleting provisions
 55 | authorizing the department to provide monthly payments
 56 | to court-approved entities that provide supervision or
 57 | rehabilitation for offenders under certain
 58 | circumstances; deleting provisions relating to
 59 | contract terms with, and a monthly report from,
 60 | certain entities; amending s. 948.10, F.S.; requiring
 61 | a community control program to focus on the provision
 62 | of home confinement with limitations, rather than
 63 | sanctions and consequences, commensurate with the
 64 | crime committed; specifying and revising who the
 65 | target population is for the community control
 66 | program; revising departmental requirements for the
 67 | operation of the program and caseloads; making
 68 | technical changes; specifying the types of facilities
 69 | used for the community control program; deleting an
 70 | annual reporting requirement of the department to the
 71 | Governor and the Legislature which includes certain
 72 | information; amending s. 948.101, F.S.; conforming
 73 | provisions to changes made by the act; amending s.
 74 | 948.11, F.S.; requiring, rather than authorizing, the
 75 | department to electronically monitor offenders

76 sentenced to community control under certain
 77 circumstances; conforming terminology to changes made
 78 by the act; amending s. 948.15, F.S.; revising the
 79 required terms of the contract for a private entity
 80 providing services for the supervision of misdemeanor
 81 probationers; repealing s. 948.50, F.S., relating to a
 82 short title; reenacting s. 921.187(1)(n), F.S.,
 83 relating to disposition and sentencing, alternatives,
 84 and restitution, to incorporate the amendment made to
 85 s. 948.013, F.S., in a reference thereto; reenacting
 86 s. 947.1405(7)(b), F.S., relating to the conditional
 87 release program, to incorporate the amendment made to
 88 s. 948.09, F.S., in a reference thereto; reenacting
 89 ss. 947.1747 and 948.01(3), F.S., relating to
 90 community control as a special condition of parole and
 91 when a court may place a defendant on probation or
 92 into community control, respectively, to incorporate
 93 the amendment made to s. 948.10, F.S., in references
 94 thereto; providing effective dates.

95

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

97

98 Section 1. Subsection (1) and present subsections (4) and
 99 (9) of section 948.001, Florida Statutes, are amended, and
 100 present subsections (5) through (14) of that section are

101 redesignated as subsections (4) through (13), respectively, to
 102 read:

103 948.001 Definitions.—As used in this chapter, the term:

104 (1) "Administrative probation" means a form of no contact,
 105 nonreporting ~~noncontact~~ supervision in which an offender who
 106 presents a low risk of harm to the community may, upon
 107 satisfactory completion of half the term of probation, be
 108 transferred by the Department of Corrections to this type of
 109 reduced level of supervision, as provided in s. 948.013
 110 ~~nonreporting status until expiration of the term of supervision.~~

111 ~~(4) "Community residential drug punishment center" means a~~
 112 ~~residential drug punishment center designated by the Department~~
 113 ~~of Corrections. The Department of Corrections shall adopt rules~~
 114 ~~as necessary to define and operate such a center.~~

115 (8)~~(9)~~ "Probation" means a form of community supervision
 116 requiring specified contacts with ~~parole and~~ probation officers
 117 and other terms and conditions as provided in s. 948.03.

118 Section 2. Paragraph (b) of subsection (1) of section
 119 948.01, Florida Statutes, is amended to read:

120 948.01 When court may place defendant on probation or into
 121 community control.—

122 (1) Any state court having original jurisdiction of
 123 criminal actions may at a time to be determined by the court,
 124 with or without an adjudication of the guilt of the defendant,
 125 hear and determine the question of the probation of a defendant

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126 | in a criminal case, except for an offense punishable by death,
127 | who has been found guilty by the verdict of a jury, has entered
128 | a plea of guilty or a plea of nolo contendere, or has been found
129 | guilty by the court trying the case without a jury.

130 | (b) The department, in consultation with the Office of the
131 | State Courts Administrator, shall revise and make available
132 | ~~develop and disseminate~~ to the courts uniform order of
133 | supervision forms by July 1 of each year or as necessary. The
134 | courts shall use the uniform order of supervision forms provided
135 | by the department for all persons placed on community
136 | supervision.

137 | Section 3. Subsection (1) of section 948.012, Florida
138 | Statutes, is amended, and subsections (4), (5), and (6) of that
139 | section are republished, to read:

140 | 948.012 Split sentence of probation or community control
141 | and imprisonment.—

142 | (1) If punishment by imprisonment for a misdemeanor or a
143 | felony, except for a capital felony, is prescribed, the court
144 | may, at the time of sentencing, impose a split sentence whereby
145 | the defendant is to be placed on probation or, with respect to
146 | any such felony, into community control upon completion of any
147 | specified period of such sentence which may include a term of
148 | years or less. In such case, the court shall stay and withhold
149 | the imposition of the remainder of sentence imposed upon the
150 | defendant and direct that the defendant be placed upon probation

151 or into community control after serving such period as may be
 152 imposed by the court. Except as provided in s. 944.4731(2)(b)
 153 and subsection (6), the period of probation or community control
 154 shall commence immediately upon the release of the defendant
 155 from incarceration, whether by parole or gain-time allowances.

156 (4) Effective for offenses committed on or after September
 157 1, 2005, the court must impose a split sentence pursuant to
 158 subsection (1) for any person who is convicted of a life felony
 159 for lewd and lascivious molestation pursuant to s. 800.04(5)(b)
 160 if the court imposes a term of years in accordance with s.
 161 775.082(3)(a)4.a.(II) rather than life imprisonment. The
 162 probation or community control portion of the split sentence
 163 imposed by the court for a defendant must extend for the
 164 duration of the defendant's natural life and include a condition
 165 that he or she be electronically monitored.

166 (5)(a) Effective for offenses committed on or after
 167 October 1, 2014, if the court imposes a term of years in
 168 accordance with s. 775.082 which is less than the maximum
 169 sentence for the offense, the court must impose a split sentence
 170 pursuant to subsection (1) for any person who is convicted of a
 171 violation of:

- 172 1. Section 782.04(1)(a)2.c.;
- 173 2. Section 787.01(3)(a)2. or 3.;
- 174 3. Section 787.02(3)(a)2. or 3.;
- 175 4. Section 794.011, excluding s. 794.011(10);

- 176 5. Section 800.04;
 177 6. Section 825.1025; or
 178 7. Section 847.0135(5).

179 (b) The probation or community control portion of the
 180 split sentence imposed by the court must extend for at least 2
 181 years. However, if the term of years imposed by the court
 182 extends to within 2 years of the maximum sentence for the
 183 offense, the probation or community control portion of the split
 184 sentence must extend for the remainder of the maximum sentence.

185 (6) If a defendant who has been sentenced to a split
 186 sentence pursuant to subsection (1) is transferred to the
 187 custody of the Department of Children and Families pursuant to
 188 part V of chapter 394, the period of probation or community
 189 control is tolled until such person is no longer in the custody
 190 of the Department of Children and Families. This subsection
 191 applies to all sentences of probation or community control which
 192 begin on or after October 1, 2014, regardless of the date of the
 193 underlying offense.

194 Section 4. Effective October 1, 2017, subsection (2) of
 195 section 948.013, Florida Statutes, is amended to read:

196 948.013 Administrative probation.—

197 (2) (a) Effective for an offense committed on or after July
 198 1, 1998, and before October 1, 2017, a person is ineligible for
 199 placement on administrative probation if the person is sentenced
 200 to or is serving a term of probation or community control,

201 regardless of the conviction or adjudication, for committing, or
 202 attempting, conspiring, or soliciting to commit, any of the
 203 felony offenses described in s. 787.01 or s. 787.02, where the
 204 victim is a minor and the defendant is not the victim's parent;
 205 s. 787.025; s. 787.06(3)(g); chapter 794; former s. 796.03; s.
 206 800.04; s. 825.1025(2)(b); s. 827.071; s. 847.0133; s. 847.0135;
 207 or s. 847.0145.

208 (b) Effective for an offense committed on or after October
 209 1, 2017, a person is ineligible for placement on administrative
 210 probation if the person is sentenced to or is serving a term of
 211 probation or community control, regardless of the conviction or
 212 adjudication, for committing, or attempting, conspiring, or
 213 soliciting to commit, any of the felony offenses described in s.
 214 775.21(4)(a)1.a. or (4)(a)1.b. or s. 943.0435(1)(h)1.a.

215 Section 5. Paragraphs (a), (b), (l), and (m) of subsection
 216 (1) and subsection (2) of section 948.03, Florida Statutes, are
 217 amended to read:

218 948.03 Terms and conditions of probation.—

219 (1) The court shall determine the terms and conditions of
 220 probation. Conditions specified in this section do not require
 221 oral pronouncement at the time of sentencing and may be
 222 considered standard conditions of probation. These conditions
 223 may include among them the following, that the probationer or
 224 offender in community control shall:

225 (a) Report to the probation officer ~~and parole supervisors~~

226 as directed.

227 (b) Permit the probation officer ~~such supervisors~~ to visit
 228 him or her at his or her home or elsewhere.

229 (1)1. Submit to random testing as directed by the
 230 ~~correctional~~ probation officer or the professional staff of the
 231 treatment center where he or she is receiving treatment to
 232 determine the presence or use of alcohol or controlled
 233 substances.

234 2. If the offense was a controlled substance violation and
 235 the period of probation immediately follows a period of
 236 incarceration in the state correction system, the conditions
 237 must ~~shall~~ include a requirement that the offender submit to
 238 random substance abuse testing intermittently throughout the
 239 term of supervision, upon the direction of the ~~correctional~~
 240 probation officer ~~as defined in s. 943.10(3)~~.

241 (m) Be prohibited from possessing, carrying, or owning
 242 any:

243 1. Firearm.

244 2. Weapon without first procuring the consent of the
 245 ~~correctional~~ probation officer.

246 (2) The enumeration of specific kinds of terms and
 247 conditions does ~~shall~~ not prevent the court from adding thereto
 248 such other or others as it considers proper. However, the
 249 sentencing court may only impose a condition of supervision
 250 allowing an offender convicted of s. 794.011, s. 800.04, s.

251 827.071, s. 847.0135(5), or s. 847.0145~~7~~ to reside in another
 252 state~~7~~ if the order stipulates that it is contingent upon the
 253 approval of the receiving state interstate compact authority.
 254 The court may rescind or modify at any time the terms and
 255 conditions theretofore imposed by it upon the probationer.
 256 However, if the court withholds adjudication of guilt or imposes
 257 a period of incarceration as a condition of probation, the
 258 period may ~~shall~~ not exceed 364 days, and incarceration shall be
 259 restricted to either a county facility, or a probation and
 260 restitution center under the jurisdiction of the Department of
 261 Corrections, ~~a probation program drug punishment phase I secure~~
 262 ~~residential treatment institution, or a community residential~~
 263 ~~facility owned or operated by any entity providing such~~
 264 ~~services.~~

265 Section 6. Section 948.031, Florida Statutes, is amended
 266 to read:

267 948.031 Condition of probation or community control;
 268 community public service.-

269 (1) Any person who is convicted of a felony or misdemeanor
 270 and who is placed on probation or into community control may be
 271 required as a condition of supervision to perform some type of
 272 community public service for a tax-supported or tax-exempt
 273 entity, with the consent of such entity. Such community public
 274 service shall be performed at a time other than during such
 275 person's regular hours of employment.

276 (2) Upon the request of the chief judge of the circuit,
 277 the Department of Corrections shall establish a community ~~public~~
 278 service program for a county, which program may include, but is
 279 ~~shall not be~~ limited to, any of the following types of community
 280 ~~public~~ service:

281 (a) Maintenance work on any property or building owned or
 282 leased by any state, county, or municipality or any nonprofit
 283 organization or agency.

284 (b) Maintenance work on any state-owned, county-owned, or
 285 municipally owned road or highway.

286 (c) Landscaping or maintenance work in any state, county,
 287 or municipal park or recreation area.

288 (d) Work in any state, county, or municipal hospital or
 289 any developmental services institution or other nonprofit
 290 organization or agency.

291 Section 7. Subsections (1) and (3) of section 948.035,
 292 Florida Statutes, are amended to read:

293 948.035 Residential treatment as a condition of probation
 294 or community control.—

295 (1) If the court imposes a period of residential treatment
 296 or incarceration as a condition of probation or community
 297 control, the residential treatment or incarceration shall be
 298 restricted to the following facilities:

299 (a) A Department of Corrections probation and restitution
 300 center;

301 ~~(b) A probation program drug punishment treatment~~
 302 ~~community;~~
 303 (b)(e) A community residential facility that ~~which~~ is
 304 owned and operated by a ~~any~~ public or private entity, excluding
 305 a community correctional center as defined in s. 944.026; or
 306 ~~(c)(d)~~ A county-owned facility.
 307 (3) Before ~~Prior to~~ admission to such a facility or center
 308 ~~treatment community~~, a qualified practitioner must provide the
 309 ~~court shall obtain~~ an individual assessment and recommendation
 310 on the appropriate treatment needs ~~pursuant to the Community~~
 311 ~~Control Implementation Manual which shall be considered by the~~
 312 ~~court in ordering such placements~~. Placement in such a facility
 313 or center may, ~~or in the phase I secure residential phase of a~~
 314 ~~probation program drug punishment treatment community~~, shall not
 315 exceed 364 days. Early completion of an offender's placement
 316 shall be recommended to the court, when appropriate, by the
 317 facility or center supervisor, by the supervising probation
 318 officer, or by the program manager. The Department of
 319 Corrections is authorized to contract with appropriate agencies
 320 for provision of services.
 321 Section 8. Subsection (1) of section 948.037, Florida
 322 Statutes, is amended to read:
 323 948.037 Education and learning as a condition of probation
 324 or community control.—
 325 (1) As a condition of community control, probation, or

326 | probation following incarceration, the court may ~~shall~~ require
 327 | an offender who has not obtained a high school diploma or high
 328 | school equivalency diploma or who lacks basic or functional
 329 | literacy skills, upon acceptance by an adult education program,
 330 | to make a good faith effort toward completion of such basic or
 331 | functional literacy skills or high school equivalency diploma,
 332 | as defined in s. 1003.435, in accordance with the assessed adult
 333 | general education needs of the individual offender. The court
 334 | may ~~shall~~ not revoke community control, probation, or probation
 335 | following incarceration because of the offender's inability to
 336 | achieve such skills or diploma but may revoke community control,
 337 | probation, or probation following incarceration if the offender
 338 | fails to make a good faith effort to achieve such skills or
 339 | diploma. The court may grant early termination of community
 340 | control, probation, or probation following incarceration upon
 341 | the offender's successful completion of the approved program. As
 342 | used in this subsection, "good faith effort" means the offender
 343 | is enrolled in a program of instruction and is attending and
 344 | making satisfactory progress toward completion of the
 345 | requirements.

346 | Section 9. Paragraphs (a), (e), (f), and (g) of subsection
 347 | (1) of section 948.06, Florida Statutes, are amended to read:

348 | 948.06 Violation of probation or community control;
 349 | revocation; modification; continuance; failure to pay
 350 | restitution or cost of supervision.—

351 (1) (a) Whenever within the period of probation or
 352 community control there are reasonable grounds to believe that a
 353 probationer or offender in community control has violated his or
 354 her probation or community control in a material respect, any
 355 law enforcement officer who is aware of the probationary or
 356 community control status of the probationer or offender in
 357 community control or any ~~parole or~~ probation officer ~~supervisor~~
 358 may arrest or request any county or municipal law enforcement
 359 officer to arrest such probationer or offender without warrant
 360 wherever found and return him or her to the court granting such
 361 probation or community control.

362 (e) Any ~~parole or~~ probation officer ~~supervisor~~, any
 363 officer authorized to serve criminal process, or any peace
 364 officer of this state is authorized to serve and execute such
 365 warrant. Any ~~parole or~~ probation officer ~~supervisor~~ is
 366 authorized to serve such notice to appear.

367 (f) Upon the filing of an affidavit alleging a violation
 368 of probation or community control and following issuance of a
 369 warrant for such violation ~~under s. 901.02~~, a warrantless arrest
 370 under this section, or a notice to appear under this section,
 371 the probationary period is tolled until the court enters a
 372 ruling on the violation. Notwithstanding the tolling of
 373 probation, the court shall retain jurisdiction over the offender
 374 for any violation of the conditions of probation or community
 375 control that is alleged to have occurred during the tolling

376 period. The probation officer is permitted to continue to
 377 supervise any offender who remains available to the officer for
 378 supervision until the supervision expires pursuant to the order
 379 of probation or community control or until the court revokes or
 380 terminates the probation or community control, whichever comes
 381 first.

382 (g) The chief judge of each judicial circuit may direct
 383 the department to use a notification letter of a technical
 384 violation in appropriate cases in lieu of a violation report,
 385 affidavit, and warrant or a notice to appear when the alleged
 386 violation is not a new felony or misdemeanor offense. Such
 387 direction must be in writing and must specify the types of
 388 specific technical violations which are to be reported by a
 389 notification letter of a technical violation, any exceptions to
 390 those violations, and the required process for submission. At
 391 the direction of the chief judge, the department shall send the
 392 notification letter of a technical violation to the court.

393 Section 10. Section 948.09, Florida Statutes, is amended
 394 to read:

395 948.09 Payment for cost of supervision and other monetary
 396 obligations ~~rehabilitation.~~-

397 (1)(a)1. Any person ordered by the court, the Department
 398 of Corrections, or the Florida Commission on Offender Review to
 399 be placed under ~~on probation, drug offender probation, community~~
 400 ~~control, parole, control release, provisional release~~

401 ~~supervision, addiction-recovery supervision, or conditional~~
 402 ~~release~~ supervision under this chapter, chapter 944, chapter
 403 945, chapter 947, or chapter 958, or in a pretrial intervention
 404 program, must, as a condition of any placement, pay the
 405 department a total sum of money equal to the total month or
 406 portion of a month of supervision times the court-ordered
 407 amount, but not to exceed the actual per diem cost of the
 408 supervision. The department shall adopt rules by which an
 409 offender who pays in full and in advance of regular termination
 410 of supervision may receive a reduction in the amount due. The
 411 rules shall incorporate provisions by which the offender's
 412 ability to pay is linked to an established written payment plan.
 413 Funds collected from felony offenders may be used to offset
 414 costs of the Department of Corrections associated with community
 415 supervision programs, subject to appropriation by the
 416 Legislature.

417 2. In addition to any other contribution or surcharge
 418 imposed by this section, each felony offender assessed under
 419 this paragraph shall pay a \$2-per-month surcharge to the
 420 department. The surcharge shall be deemed to be paid only after
 421 the full amount of any monthly payment required by the
 422 established written payment plan has been collected by the
 423 department. These funds shall be used by the department to pay
 424 for correctional probation officers' training and equipment,
 425 including radios, and firearms training, firearms, and attendant

426 equipment necessary to train and equip officers who choose to
 427 carry a concealed firearm while on duty. This subparagraph does
 428 not limit the department's authority to determine who shall be
 429 authorized to carry a concealed firearm while on duty, or limit
 430 the right of a correctional probation officer to carry a
 431 personal firearm approved by the department.

432 (b) Any person placed on misdemeanor probation by a county
 433 court must contribute not less than \$40 per month, as decided by
 434 the sentencing court, to the court-approved public or private
 435 entity providing misdemeanor supervision.

436 (2) Any person being electronically monitored by the
 437 department as a result of being placed on supervision shall pay
 438 the department for electronic monitoring services at a rate that
 439 may not exceed the full cost of the monitoring service in
 440 addition to the cost of supervision as directed by the
 441 sentencing court. The funds collected under this subsection
 442 shall be deposited in the General Revenue Fund. The department
 443 may exempt a person from paying all or any part of the costs of
 444 the electronic monitoring service if it finds that any of the
 445 factors listed in subsection (3) exist.

446 (3) Any failure to pay contribution as required under this
 447 section may constitute a ground for the revocation of
 448 supervision ~~probation~~ by the court or, ~~the revocation of parole~~
 449 ~~or conditional release~~ by the Florida Commission on Offender
 450 Review, the revocation of control release by the Control Release

451 Authority, or the removal from the pretrial intervention program
 452 by the state attorney. The Department of Corrections may exempt
 453 a person from the payment of all or any part of the contribution
 454 if it finds any of the following factors ~~to exist~~:

455 (a) The offender has diligently attempted, but has been
 456 unable, to obtain or maintain employment that ~~which~~ provides him
 457 or her sufficient income to make such payments.

458 (b) The offender is a student in a school, college,
 459 university, or course of career training designed to fit the
 460 student for gainful employment. Certification of such student
 461 status shall be supplied to the offender's probation officer
 462 ~~Secretary of Corrections~~ by the educational institution in which
 463 the offender is enrolled.

464 (c) The offender has an employment handicap, as determined
 465 by a physical, psychological, or psychiatric examination
 466 ~~acceptable to, or ordered by, the secretary.~~

467 (d) The offender's age prevents him or her from obtaining
 468 employment.

469 (e) The offender is responsible for the support of
 470 dependents, and the payment of such contribution constitutes an
 471 undue hardship on the offender.

472 (f) The offender has been transferred outside the state
 473 under an interstate compact adopted pursuant to chapter 949.

474 ~~(g) There are other extenuating circumstances, as~~
 475 ~~determined by the secretary.~~

476 ~~(4) In addition to the contribution required under~~
 477 ~~subsection (1), the department may provide a maximum payment of~~
 478 ~~\$10 per month for each misdemeanor probationer who is~~
 479 ~~contributing \$10 per month to the court approved public or~~
 480 ~~private entity which is providing him or her with misdemeanor~~
 481 ~~supervision or rehabilitation. The \$10 payment set forth herein~~
 482 ~~shall only be for first degree misdemeanors, petty theft, and~~
 483 ~~worthless checks. The department shall make such payment to the~~
 484 ~~court approved public or private entity which is providing~~
 485 ~~supervision to the offender under this section. Such payment~~
 486 ~~shall be implemented through a contract to be entered into by~~
 487 ~~the Secretary of Corrections and the entity. Terms of the~~
 488 ~~contract shall state, but are not limited to, the extent of the~~
 489 ~~services to be rendered by the entity providing supervision or~~
 490 ~~rehabilitation. In addition, the entity shall supply the~~
 491 ~~department with a monthly report documenting the acceptance of~~
 492 ~~each offender placed under its supervision by the court,~~
 493 ~~documenting the payment of the required contribution by each~~
 494 ~~offender under supervision or rehabilitation, and notifying the~~
 495 ~~department of all offenders for whom supervision or~~
 496 ~~rehabilitation will be terminated. Supervisory records of the~~
 497 ~~entity shall be open to inspection upon the request of the~~
 498 ~~department or its agents.~~

499 (4)~~(5)~~ As a condition of an interstate compact adopted
 500 pursuant to chapter 949, the department shall require each out-

501 of-state probationer or parolee transferred to this state to
 502 contribute not less than \$30 or more than the cost of
 503 supervision, certified by the Department of Corrections, per
 504 month to defray the cost incurred by this state as a result of
 505 providing supervision and rehabilitation during the period of
 506 supervision.

507 (5)~~(6)~~ In addition to any other required contributions,
 508 the department, at its discretion, may require offenders under
 509 any form of supervision to submit to and pay for urinalysis
 510 testing to identify drug usage as part of the rehabilitation
 511 program. Any failure to make such payment, or participate, may
 512 be considered a ground for revocation by the court, the Florida
 513 Commission on Offender Review, or the Control Release Authority,
 514 or for removal from the pretrial intervention program by the
 515 state attorney. The department may exempt a person from such
 516 payment if it determines that any of the factors specified in
 517 subsection (3) exist.

518 (6)~~(7)~~ The department shall establish a payment plan for
 519 all costs ordered by the courts for collection by the department
 520 and a priority order for payments, except that victim
 521 restitution payments authorized under s. 948.03(1)(f) take
 522 precedence over all other court-ordered payments. The department
 523 is not required to disburse cumulative amounts of less than \$10
 524 to individual payees established on this payment plan.

525 Section 11. Section 948.10, Florida Statutes, is amended

526 | to read:

527 | 948.10 Community control programs; home confinement.—

528 | (1) The Department of Corrections shall develop and
 529 | administer a community control program. This ~~complementary~~
 530 | program shall be rigidly structured and designed to accommodate
 531 | offenders who, in the absence of such a program, would have been
 532 | incarcerated in a jail or prison. The program shall focus on the
 533 | provision of home confinement subject to an authorized level of
 534 | limited freedom and special conditions ~~sanctions and~~
 535 | ~~consequences which~~ that are commensurate with the seriousness of
 536 | the crime. The program shall offer the courts and the Florida
 537 | Commission on Offender Review an alternative, community-based
 538 | method to punish an offender in lieu of incarceration and shall
 539 | provide intensive supervision to closely monitor compliance with
 540 | restrictions and special conditions, including, but not limited
 541 | to, treatment or rehabilitative programs. The targeted
 542 | population for this community control program includes ~~if the~~
 543 | ~~offender is a member of one of the following target groups:~~

544 | (a) Probation violators charged with technical violations
 545 | or new ~~misdemeanor~~ violations of law.

546 | (b) Parole or conditional release violators charged with
 547 | technical violations or new ~~misdemeanor~~ violations of law.

548 | (c) Individuals found guilty of felonies, who, due to
 549 | their criminal backgrounds or the seriousness of the offenses,
 550 | would not be placed on regular probation.

551 (2) ~~The department shall commit not less than 10 percent~~
 552 ~~of the parole and probation field staff and supporting resources~~
 553 ~~to the operation of the community control program.~~ Caseloads
 554 should be restricted to a maximum of 30 ~~25~~ cases per officer in
 555 order to ensure an adequate level of staffing. Community control
 556 is an individualized program in which the offender is restricted
 557 to a residential treatment facility or a nursing facility
 558 ~~noninstitutional quarters~~ or restricted to his or her approved
 559 ~~own~~ residence subject to an authorized level of limited freedom.

560 (3) Procedures governing violations of community control
 561 are ~~shall be~~ the same as those described in s. 948.06 with
 562 respect to probation.

563 (4) Upon completion of the sanctions imposed and ~~in the~~
 564 ~~community control plan~~ before the expiration of the community
 565 control term ordered by the court, the department may petition
 566 the court to terminate early the supervision of ~~discharge~~ the
 567 offender from community control supervision or to return the
 568 offender to a program of regular probation supervision for the
 569 remainder of the term. In considering the petition, the court
 570 should recognize the limited staff resources committed to the
 571 community control program, the purpose of the program, and the
 572 offender's successful compliance with the conditions set forth
 573 in the order of the court.

574 ~~(5) In its annual report to the Governor, the President of~~
 575 ~~the Senate, and the Speaker of the House of Representatives~~

576 ~~under s. 20.315(5), the department shall include a detailed~~
 577 ~~analysis of the community control program and the department's~~
 578 ~~specific efforts to protect the public from offenders placed on~~
 579 ~~community control. The analysis must include, but need not be~~
 580 ~~limited to, specific information on the department's ability to~~
 581 ~~meet minimum officer-to-offender contact standards, the number~~
 582 ~~of crimes committed by offenders on community control, and the~~
 583 ~~level of community supervision provided.~~

584 Section 12. Subsection (2) of section 948.101, Florida
 585 Statutes, is amended to read:

586 948.101 Terms and conditions of community control.-

587 (2) The enumeration of specific kinds of terms and
 588 conditions does not prevent the court from adding any other
 589 terms or conditions that the court considers proper. However,
 590 the sentencing court may only impose a condition of supervision
 591 allowing an offender convicted of s. 794.011, s. 800.04, s.
 592 827.071, s. 847.0135(5), or s. 847.0145 to reside in another
 593 state if the order stipulates that it is contingent upon the
 594 approval of the receiving state interstate compact authority.
 595 The court may rescind or modify at any time the terms and
 596 conditions theretofore imposed by it upon the offender in
 597 community control. However, if the court withholds adjudication
 598 of guilt or imposes a period of incarceration as a condition of
 599 community control, the period may not exceed 364 days, and
 600 incarceration shall be restricted to a county facility, a

601 probation and restitution center under the jurisdiction of the
 602 Department of Corrections, or a ~~probation program drug~~
 603 ~~punishment phase I secure residential treatment institution, or~~
 604 ~~a community residential~~ facility owned or operated by any entity
 605 providing such services.

606 Section 13. Subsections (1), (2), and (3) of section
 607 948.11, Florida Statutes, are amended, and subsection (5) of
 608 that section is republished, to read:

609 948.11 Electronic monitoring devices.-

610 (1) The Department of Corrections shall ~~may~~ electronically
 611 monitor an offender sentenced to community control when the
 612 court has imposed electronic monitoring as a condition of
 613 community control.

614 (2) Any offender placed under supervision ~~on community~~
 615 ~~control~~ who violates the terms and conditions of supervision
 616 ~~community control~~ and is restored to supervision ~~community~~
 617 ~~control~~ may be supervised by means of an electronic monitoring
 618 device or system if ordered by the court.

619 (3) For those offenders being electronically monitored,
 620 the Department of Corrections shall develop procedures to
 621 determine, investigate, and report the offender's noncompliance
 622 with the terms and conditions of sentence 24 hours per day. All
 623 reports of noncompliance shall be immediately investigated by a
 624 probation ~~community control~~ officer.

625 (5) Any person being electronically monitored by the

626 department as a result of being placed on supervision shall pay
 627 the department for the electronic monitoring services as
 628 provided in s. 948.09(2).

629 Section 14. Paragraph (b) of subsection (3) of section
 630 948.15, Florida Statutes, is amended to read:

631 948.15 Misdemeanor probation services.—

632 (3) Any private entity, including a licensed substance
 633 abuse education and intervention program, providing services for
 634 the supervision of misdemeanor probationers must contract with
 635 the county in which the services are to be rendered. In a county
 636 having a population of fewer than 70,000, the county court
 637 judge, or the administrative judge of the county court in a
 638 county that has more than one county court judge, must approve
 639 the contract. Terms of the contract must state, but are not
 640 limited to:

641 (b) Staff qualifications and criminal record checks of
 642 staff ~~in accordance with essential standards established by the~~
 643 ~~American Correctional Association as of January 1, 1991.~~

644
 645 In addition, the entity shall supply the chief judge's office
 646 with a quarterly report summarizing the number of offenders
 647 supervised by the private entity, payment of the required
 648 contribution under supervision or rehabilitation, and the number
 649 of offenders for whom supervision or rehabilitation will be
 650 terminated. All records of the entity must be open to inspection

651 upon the request of the county, the court, the Auditor General,
 652 the Office of Program Policy Analysis and Government
 653 Accountability, or agents thereof.

654 Section 15. Section 948.50, Florida Statutes, is repealed.

655 Section 16. For the purpose of incorporating the amendment
 656 made by this act to section 948.013, Florida Statutes, in a
 657 reference thereto, paragraph (n) of subsection (1) of section
 658 921.187, Florida Statutes, is reenacted to read:

659 921.187 Disposition and sentencing; alternatives;
 660 restitution.—

661 (1) The alternatives provided in this section for the
 662 disposition of criminal cases shall be used in a manner that
 663 will best serve the needs of society, punish criminal offenders,
 664 and provide the opportunity for rehabilitation. If the offender
 665 does not receive a state prison sentence, the court may:

666 (n) Impose split probation whereby upon satisfactory
 667 completion of half the term of probation, the Department of
 668 Corrections may place the offender on administrative probation
 669 pursuant to s. 948.013 for the remainder of the term of
 670 supervision.

671 Section 17. For the purpose of incorporating the amendment
 672 made by this act to section 948.09, Florida Statutes, in a
 673 reference thereto, paragraph (b) of subsection (7) of section
 674 947.1405, Florida Statutes, is reenacted to read:

675 947.1405 Conditional release program.—

676 (7)
 677 (b) For a releasee whose crime was committed on or after
 678 October 1, 1997, in violation of chapter 794, s. 800.04, s.
 679 827.071, s. 847.0135(5), or s. 847.0145, and who is subject to
 680 conditional release supervision, in addition to any other
 681 provision of this subsection, the commission shall impose the
 682 following additional conditions of conditional release
 683 supervision:

684 1. As part of a treatment program, participation in a
 685 minimum of one annual polygraph examination to obtain
 686 information necessary for risk management and treatment and to
 687 reduce the sex offender's denial mechanisms. The polygraph
 688 examination must be conducted by a polygrapher who is a member
 689 of a national or state polygraph association and who is
 690 certified as a postconviction sex offender polygrapher, where
 691 available, and at the expense of the releasee. The results of
 692 the examination shall be provided to the releasee's probation
 693 officer and qualified practitioner and may not be used as
 694 evidence in a hearing to prove that a violation of supervision
 695 has occurred.

696 2. Maintenance of a driving log and a prohibition against
 697 driving a motor vehicle alone without the prior approval of the
 698 supervising officer.

699 3. A prohibition against obtaining or using a post office
 700 box without the prior approval of the supervising officer.

701 4. If there was sexual contact, a submission to, at the
 702 releasee's expense, an HIV test with the results to be released
 703 to the victim or the victim's parent or guardian.

704 5. Electronic monitoring of any form when ordered by the
 705 commission. Any person who has been placed under supervision and
 706 is electronically monitored by the department must pay the
 707 department for the cost of the electronic monitoring service at
 708 a rate that may not exceed the full cost of the monitoring
 709 service. Funds collected under this subparagraph shall be
 710 deposited into the General Revenue Fund. The department may
 711 exempt a person from the payment of all or any part of the
 712 electronic monitoring service cost if the department finds that
 713 any of the factors listed in s. 948.09(3) exist.

714 Section 18. For the purpose of incorporating the amendment
 715 made by this act to section 948.10, Florida Statutes, in a
 716 reference thereto, section 947.1747, Florida Statutes, is
 717 reenacted to read:

718 947.1747 Community control as a special condition of
 719 parole.—Upon the establishment of an effective parole release
 720 date as provided for in ss. 947.1745 and 947.1746, the
 721 commission may, as a special condition of parole, require an
 722 inmate to be placed in the community control program of the
 723 Department of Corrections as described in s. 948.10 for a period
 724 not exceeding 6 months. In every case in which the commission
 725 decides to place an inmate on community control as a special

726 condition of parole, the commission shall provide a written
 727 explanation of the reasons for its decision.

728 Section 19. For the purpose of incorporating the amendment
 729 made by this act to section 948.10, Florida Statutes, in a
 730 reference thereto, subsection (3) of section 948.01, Florida
 731 Statutes, is reenacted to read:

732 948.01 When court may place defendant on probation or into
 733 community control.—

734 (3) If, after considering the provisions of subsection (2)
 735 and the offender's prior record or the seriousness of the
 736 offense, it appears to the court in the case of a felony
 737 disposition that probation is an unsuitable dispositional
 738 alternative to imprisonment, the court may place the offender in
 739 a community control program as provided in s. 948.10. Or, in a
 740 case of prior disposition of a felony commitment, upon motion of
 741 the offender or the department or upon its own motion, the court
 742 may, within the period of its retained jurisdiction following
 743 commitment, suspend the further execution of the disposition and
 744 place the offender in a community control program upon such
 745 terms as the court may require. The court may consult with a
 746 local offender advisory council pursuant to s. 948.90 with
 747 respect to the placement of an offender into community control.
 748 Not later than 3 working days before the hearing on the motion,
 749 the department shall forward to the court all relevant material
 750 on the offender's progress while in custody. If this sentencing

751 alternative to incarceration is utilized, the court shall:

752 (a) Determine what community-based sanctions will be
 753 imposed in the community control plan. Community-based sanctions
 754 may include, but are not limited to, rehabilitative restitution
 755 in money or in kind, curfew, revocation or suspension of the
 756 driver license, community service, deprivation of nonessential
 757 activities or privileges, or other appropriate restraints on the
 758 offender's liberty.

759 (b) After appropriate sanctions for the offense are
 760 determined, develop, approve, and order a plan of community
 761 control which contains rules, requirements, conditions, and
 762 programs that are designed to encourage noncriminal functional
 763 behavior and promote the rehabilitation of the offender and the
 764 protection of the community. If the offense was a controlled
 765 substance violation, the conditions shall include a requirement
 766 that the offender submit to random substance abuse testing
 767 intermittently throughout the term of supervision, upon the
 768 direction of the correctional probation officer as defined in s.
 769 943.10(3).

770 Section 20. Except as otherwise expressly provided in this
 771 act, this act shall take effect July 1, 2017.